

**Eastern Virginia Ground Water Management Area Regulation Amendments and  
Ground Water Withdrawal Regulation Amendments  
Regulatory Advisory Panel Meeting  
DEQ Piedmont Regional Office  
November 19, 2009- 9:30 a.m.**

**RAP members present**

David Bailey, The Environmental Law Group  
Ron Harris, Newport News Waterworks, representing the Va. Section of the American Waterworks Association  
Gayl Fowler representing SAIF Water Wells, Inc.  
Christian Volk, Ph.D., Water Quality Manager, representing VA/MD-American Water  
Eric Schmidt (alternate for Thomas Roberts), Smurfit-Stone Container, representing Mission H<sub>2</sub>O  
Britt McMillan, Malcolm Pirnie, representing Eastern Shore of Virginia Ground Water Committee  
Al Moor, (Alternate for Larry Foster) representing Hampton Roads Planning District Commission  
Susan Douglas, Va. Dept of Health  
Curtis Consolvo, GeoResources  
Frank W Fletcher, PhD, PG, Retired professor  
Bill Pennell, Lancaster County Administrator  
Mark Bennett (alternate for George Harlow), U.S. Geological Survey  
Steve Werner, (alternate for Jesse Royall, Sydnor Hydro)  
John D. O'Dell, Water Well Solutions, LC  
Mike Neuhard, Deputy County Administrator, Stafford County  
Lewis Lawrence- Middle Peninsula Planning District Commission  
P.J. Smith (alternate for Sheryl Raulston) representing VMA

**RAP Members not present**

Sheryl Raulston, International Paper- Franklin Mill, representing VMA  
George Harlow, U.S. Geological Survey  
Thomas J. Roberts, Smurfit-Stone Container, representing Mission H<sub>2</sub>O  
Jesse Royall, Sydnor Hydro  
Butch Nottingham-VDACS  
Lynn Gayle, Taylor and Fulton, Inc. and member of the Va. Potato and Vegetable Grower's Association

**Public Attendees**

Jeff Fletcher  
Harry Critzer  
Whitney Katchmark  
Martin Schlesinger  
Barry Fitz-Jones  
Peter Nash  
Janet Pawlukiewicz

Andrea Wortzel  
Davis Phaup

**DEQ Staff**

Ellen Gilinsky  
Scott Kudlas  
Robin Patton  
Hank Ghittino  
Melissa Porterfield  
Erinn Tisdale  
Robyne Bridgman  
Laura Galli  
B. N. Sinha  
Previn Smith

**Introductions and Administrative Issues**

Melissa Porterfield welcomed everyone to the meeting and introductions were made. All individuals present were asked to sign in on the attendance sheet.

Melissa Porterfield discussed administrative issues with the group. The group was reminded that the next meeting will be held in the Williamsburg area on December 9<sup>th</sup>. Members should have received a notification concerning the meeting date and directions to the meeting. Larry Foster has arranged for the December 9<sup>th</sup> meeting to be held at the James City – Williamsburg Community Center. Melissa Porterfield will be polling GW RAP members concerning potential meeting dates in January 2010 soon. Due to the thanksgiving holiday, there will be a very short number of working days to review meeting notes. The goal will be to distribute draft meeting notes for review on Monday 11/23.

The group was reminded that they are an appointed body and are subject to the requirements of FOIA. GW RAP members were reminded to not “reply all” to e-mails. If information needs to be distributed to the group, information should be sent to Melissa Porterfield for distribution to the group. All meetings of the GW RAP are required to be public noticed. Discussions pertaining to revisions of the ground water withdrawal regulations and the ground water management area between more than two GW RAP members should be avoided; otherwise these discussions could be viewed as unannounced meetings of the GW RAP.

The group was reminded that the goal of the meetings is to reach consensus concerning issues discusses. Consensus is defined as a willingness of each member of the RAP to be able to say that he or she can live with the decisions reached and recommendations made and will not actively work against them outside of the process.

At previous meetings, the focus was on education of GW RAP members concerning groundwater issues. Throughout these meetings the agency has been listening to the

thoughts and comments of the group. Melissa Porterfield informed the group that beginning from this point forward the scope of the discussions will be narrowed in order to obtain input on specific issues from GW RAP members.

Scott Kudlas informed the group that there had been interest in learning more about the development of the Coastal Plain Ground Water model by USGS and HRPDC. Time will not be allocated at the GW RAP meeting to present this information. HRPDC or USGS may host an opportunity for members to learn more about this model. If this occurs, members of the GW RAP are welcome to attend but must not discuss issues pertaining to the regulatory revisions concerning the ground water management area or the ground water withdrawal regulations.

### **Review of Permit Review Process**

Hank Ghittino reviewed a flow chart that illustrated the process undertaken to review groundwater withdrawal permits. He discussed the main reasons that the applications are not complete. Pre-application meetings were discussed as a valuable tool to use to assist applicants with submitting a complete application. DEQ staff currently meets with applicants at pre-application meetings when requested. He discussed the timeframes associated with the review of permits. Discussion occurred concerning the inclusion of reasonable timeframes to include in the regulations. In the VWP program, inclusion of goals for review has assisted with moving permits through the permitting process. There was mention that appropriate staffing and resources would need to be available to meet timeframes included in regulations. The volume of material that needs to be reviewed (inside of application) was mentioned as a concern with establishing timeframes for review. There was mention of establishing a goal for beginning the review of the application, not completing the review of the application.

As part of the presentation and discussion of the permit review process, the GW RAP identified the following issues that need to be considered as part of the process- These are issues for future discussion and no consensus has been reached on these issues.

- Should a pre-application meeting be required as part of the permit application process?
- Should review timeframes be included in the regulation? Goals or deadlines?
- How should incomplete applications be handled? (charge for re-review or suspension of review for unresponsive applicants mentioned)
- How should the agency handle processing a permit that exceeds the permit term? Continuation of the permit and addressing the request for additional water in particular? Should a provisional approval be granted?

- Consider an expedited permit or general permit based on the amount of water being withdrawn, the aquifer, aquifer sensitivity, the geographic location, or the type of water use to facilitate issuances of permits. Consider single use permits.
- Aquifer Storage and Recovery (ASR)- more clearly identifying how this would be dealt with in the regulations. This does not cover the active injection of water which is regulated by EPA. This issue has been put into the parking lot- for future discussion. Should ASR water be examined differently in the permit process? Should ASR be considered an alternate source?
- Specificity of alternate sources- and the criteria for when and how to use, and consider including this information in the regulation. Resource based criteria for water use- consider which is better for the resource, compare aquifers and impacts- ground water withdrawals vs. surface water withdrawals
- At what point should a well be drilled in DEQ-VDH process? (Collection of well drill information, and making sure applicants are meeting requirements of both agencies) Note- VDH and DEQ are working together to address issues concerning well permitting issues.
- What does “minimum water necessary for the beneficial use” mean in practice? (need justification)
- Aquifer tests, when should they be required?
- Can a non-linear process module be developed to concurrently process parts of the permit?

During the morning presentation, a question was asked for a clarification about the expansion of the groundwater management area. There will be one set of regulations that will govern withdrawals in the current and expanded groundwater management area and the agency is refining the ground water withdrawal regulations that will regulate withdrawals in the current and expanded ground water management area.

Lunch Break 11:30-12:30

### **Public Forum**

Andrea Wortzel- Hunton and Williams, representing Mission H2O  
Provisions of the water supply planning process directly relate to the ground water withdrawal regulations being revised and the water supply planning process should be considered during these regulatory revisions.

### **Identification of Problem Issues in the Permit Flow Chart**

GW RAP members familiar with the ground water permitting process were invited to identify one place on the permit flowchart where they believed the permit application process could be improved, and identify how they believe the process could be reviewed. The following is a list of areas identified by GW RAP for improving the permit application process.

#### *Aquifer test required*

When an Aquifer Test Plan is required, there is a repeat of documentation required to be submitted as part of the application. Well records required for the Aquifer Test Plan are also required in the permit application. It seems there could be a reference to the material rather than re-submission.

#### *Aquifer test plans*

Extensive data collection is costly. Consider creative ways to achieve the goal and balance the need for information with the hardship placed on localities to obtain information during aquifer tests.

#### *DEQ Technical review*

The length of time required to process is a concern. Justification of need, changes over time, the 10 year planning cycle is hard to project, and standardization of numbers for justification of need would speed up the process

#### *DEQ Prepares deficiency response*

A linear approach, with multiple parts of the permit being reviewed concurrently may speed up the permitting process. Also consider if a completeness and technical review be conducted before the agency provides a response.

#### *RO submits for modeling*

Modeling- let the applicant have the option of submitting modeling results for review and approval or revised by the agency- there would be more certainty in the application process. (this is currently allowed under the regulations)

#### *Modeler evaluates technical info for modeling evaluations*

Model evaluation- there seems to be a need for more funding and people on the agency side for conducting modeling. (Contractors have recently been hired for reviewing the current modeling backlog. A GW RAP member inquired why DEQ has to run the ground water model when applicants run the models in the air permitting program, as this could expedite the modeling portion of an application. DEQ staff informed the GW RAP that applicants do currently have the option of running their own model.) Consistency needs to be maintained between the model used by applicants, contractors, and DEQ. Data requirements need to be standardized by those using the model so the results are the same.

### **Discussion of some issues identified during the morning portion of the meeting**

### *Pre-application meetings*

The group discussed pre-application meetings and most members agree that these meetings are important and valuable. The group discussed having a requirement for requiring the pre-application meeting. No consensus was reached on requiring a meeting to be required to be held. There was hesitation from a RAP member that has not been through the permitting with requiring these meetings. In general the pre-application meeting is an information exchange that can be beneficial to both the applicant and DEQ because site specific issues can be discussed. Timeframes for when pre-application meetings would be held would not be required. Some member indicated that those not conducting pre-application meetings would require more staff resources during the permit process and would take resources away from those projects that did choose to conduct a pre-application meeting. VDH is an agency that wants to be involved in the process. The agency will draft language for the group to review at a future meeting.

### *Review timeframes*

The group discussed timeframes for review, this could be target dates, goals, or deadlines. There was some support for including timeframes into the regulations, however consensus was not reached on this issue. Views were expressed that the inclusion of timeframes would be supported by some if the timeframes provided consistency, timeliness and certainty to the permit process. There was concern that timeframes could be added for staff to begin a review, not complete a review. The quality of the review of staff if deadlines were placed agency review was an issue of concern. The agency will draft language for the group to review. There may be a need to have separate time constraints for different types of permits. (There may need to be multiple timeframes depending on permit types and/or phase of review - different time period for short form or general permit if these are created)

### *Incomplete applications*

The group discussed that for new applications, there is an incentive to get a complete application since the applicant wants to obtain approval to withdraw ground water. There was a suggestion to allow one free review of an application, and that additional reviews of an application should be assessed an additional review fee as a means to encourage submittal of complete applications. (This would require a revision to the fee regulation not this regulation.) One member stated that there is a need to have the ability to terminate the application for lack of response. The agency will develop some language for the GW RAP to review concerning incomplete applications.

One issue that has been brought up by RAP members is that the 10 year permit term should be extended. The permit length is established in statute and the regulations will not be able to be revised to extend the permit term past a ten year term. One member voiced an opinion that issues raised by RAP members that are related to issues with statutory requirements should be identified and noted by the group.

Due to a lack of progress toward completing these discussions, the agency informed the GW RAP that the agency would begin to provide draft language for the group to review

concerning these issues. This hopefully will help focus the discussions and will allow the GW RAP members to have more productive discussions on the issues identified by the GW RAP.

### **Discussion of Justification of Need**

Robyne Bridgman provided the GW RAP information on challenges faced with justification of the need for ground water included in permit applications. The group was asked about the possibility of including default values into the regulations for residences, or including this information as guidance. There was not general support for including these values into the regulation since these values may change in the future. Discussion took place concerning the difference between the VDH numbers and the DEQ numbers. The VDH value is a 400 maximum gallon per day value and the DEQ value is 185 gal per day average. Discussion took place concerning the need to gather data on industrial and commercial users and use these numbers as part of justification of need for these types of users. Information from HRPDC and municipal users is one way to obtain information on usage rates.

Build out expectations are also an area in which the GW RAP discussed. In the past the presence of infrastructure, and marketing of sites are two factors that are reviewed as part of build out expectations. Robyne Bridgman provided the group with an overview of the challenges faced with a recent application of a locality seeking a groundwater withdrawal permit for their growing locality. Growth rates were discussed and need to project future growth and water needs is a difficult projection to validate. As not all areas will develop at the same rate, the burden is on the applicant to compare themselves to other localities that are similar to themselves.

In general some members of the group suggested not placing set values into the regulation, but including in the regulation criteria to be met concerning build out, to include referencing historical data, and referencing zoning and planning issues. These would be mandatory submissions that need to be submitted with the application. Some of this information may be in the water supply plan.

One suggestion is to include language in these regulations similar to the VWP language that says that you need to supply specific information or refer to your approved water supply plan. Consider linking the plan requirements and the permit projections. No conclusions of consensus points were reached on these issues.

### **Water Conservation and Management Plan Requirements**

Erinn Tisdale presented information on components of the Water Conservation and Management Plans to the group. GW RAP members had an opportunity to ask questions concerning the programs. Plans need to include actions that will be conducted under the plan.

A suggestion was made for DEQ to consider having a follow-up review or report submitted on these plans. Questions were asked about the proven effectiveness of these plans and if the effectiveness of the plan should be reported on by the permittee. Some

plans contain language that states that certain things will be considered as part of a plan, but does not specify which measures will be implemented. This raises the question of what is being implemented and what are the results.

Educational websites were mentioned that provide information on conserving water. These websites do not provide information on the effectiveness of the water conservation management plan.

A statement was made suggesting that the agency have information to distribute to localities concerning Water Conservation and Management Plan Requirements. (The agency does work with localities to provide them with information to localities when requested, such as copies of other plans and ordinances.)

A statement was made that the conservation plans are not unique to the ground water management plans, and that there needs to be uniformity within all plans that address water conservation and management measures.

Discussion took place between RAP members concerning the current language of the regulations concerning plan requirements. There was discussion concerning how good a plan needs to be and how specific a plan needs to be. There will be differences between plans depending upon the users of the water, for example the activities and industries included in the plan. Statements were made that there may be a need to revise or strengthen language. A suggestion was made to have a template for localities to use to develop a plan to meet the requirements of the plan.

A suggestion was made that the GW RAP members should review the section and think about the current language of the regulations.

While discussing water conservation, cost to users is an element that is effective in reducing water usage. (commodity pricing needs to be a component of a water conservation and management plan)

A question was raised concerning the relationship between a self supplier and a locality and the requirement for a permittee to have a water conservation and management plan. The permittee's plan will need to be consistent with the locality's water supply plan.

From the discussions that took place, there were some members that believe that there is a need for the Water Conservation and Management Plan section of the regulations to be more specific. The GW RAP will be reviewing this section further as part of the homework assignment.

### **Homework**

Review the Water Conservation Management Plan section of the regulations 9 VAC 25-610-100 and provide suggestions/ideas for beefing up or changing the language

Create a definition of "minimum water necessary for beneficial use."



The above information should be provided to Melissa Porterfield by close of business November 30, 2009.