

# REGULATORY ADVISORY PANEL (RAP): HB542

January 6, 2022

Bank of America Building, 3<sup>rd</sup> Floor Conference Room,  
1111 East Main Street, Richmond, VA

## MEETING SUMMARY

### Meeting Attendees

HB542 RAP MEMBERS & ALTERNATES	
Whitney Katchmark, Hampton Roads Planning District Commission (HRPDC)	Scott Morris, Virginia Municipal Drinking Water Association, Chesterfield County Department of Utilities
Jon Brindle, Stafford County	Chad Neese, Southside PDC
Kelly Evko (Alternate), RiverLink	Robert Cornett, Washington County Service Authority
Michael Ward, Henry County	Greg Prelewicz, Fairfax Water
Eldon James, Virginia Chapter American Planning Association, Rappahannock River Basin Commission	Erin Reilly, James River Association
Ben Rowe (Alternate) VA Farm Bureau	Andrea Wortzel (alternate), City of Richmond

**NOTE: RAP Members NOT in Attendance:** Kevin Byrd, New River Valley Regional Commission; Pam Baughman, VA Rural Water Association, Louisa County Water Authority; Anne Doyle, A-NPDC; Jay Ford, Chesapeake Bay Foundation; James Maupin, Virginia Water Well Association (Maupin Drilling); Randy Owen, Virginia Marine Resources Commission; Jessica Phillips (replaced by Leigh Mitchell for any subsequent meetings), Virginia Regional Tribal Operations Committee–Eastern Division; Dwayne Roadcap, Virginia Department of Health Office of Drinking Water; Brett Vassey, Virginia Manufacturers Association; Jay Ford, Chesapeake Bay Foundation; Pam Kenel, Loudoun Water; Eric Lawrence, Frederick Water; Kyle Shreve, VA Agribusiness Council; Amy Martin, Virginia Department of Wildlife Resources

PUBLIC/INTERESTED PARTIES	
George Hayes	

DEQ STAFF	
Brandon Bull, Water Policy Manager	Jutta Schneider, Water Planning Division Director
Joseph Grist, Water Withdrawal Permitting and Compliance Manager	Scott Kudlas, Office of Water Supply Director

### Proceedings

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#### 1) Welcome

- a) The meeting began at 10:05am and was called to order by Scott Kudlas.

#### 2) Goals

- a) Discuss the Strawman document for proposed amendments to the Local and Regional Water Supply Planning Regulation, with focus on sections not covered at the previous meeting, and on edits made since the previous meeting based on the statute and comments from RAP members.
- b) Staff provided context on internal discussions since the last meeting that centered around the need to ensure any proposed amendments are within the scope of the Notice of Intended Regulatory Action (NOIRA). As a result the updated draft provided to the panel includes a

number of revisions in sections where previously proposed changes were determined to be beyond the scope of the NOIRA.

### 3) Review and Approve Meeting Summary from RAP Meeting #3

- a) The panel corrected attendance: George “Hayes” not “Hugo”, and Jay Ford was absent.
- b) The panel commented on section 4k-viii, noting that more than one participant agreed with the proposal to include information on grandfathered withdrawals, and noting discussion of reported grandfathered withdrawals would be basically another form of information reporting and would not represent a determination of a claim.
- c) There was a correction to section 4H-i, to swap the words “independent” and “incorporated”.
- d) There was a suggestion in item 4q-iv, to replace “water supply risk” with “water supply”. Also, the summary mentions that DEQ provided examples, and there was a request to record what those examples were.

### 4) Review of Strawman for Proposed Amendments to Local and Regional Water Supply Planning Regulation

Staff reviewed proposed changes in the draft regulation for the following sections:

#### a) 9VAC25-780-10. Application

- i) The term “Water Plan” will be changed to “Water Supply Plan” throughout the regulation to address concerns expressed by the RAP. The language used in the definition of Water Plan will be otherwise maintained as the definition of Water Supply Plan.
- ii) In response to a question about whether to identify community water systems and self-supplied users as participants, DEQ responded that in this section, the statute requirement of plan submission applies to localities, and those participants are listed in another section.

#### b) 9VAC25-780-20. Purpose of Chapter

- i) In response to panel recommendations, the following language was added:  
*“This chapter establishes the required planning process and criteria that local governments with the participation of other stakeholders, shall use in the development of ~~the local and~~ regional water supply plans.”*

#### c) 9VAC25-780-30. Definitions

- i) “Local Program” definition has been removed and replaced with the “Regional Program” definition. Language used in “Regional Program” definition comes from the “Local Program” language in the original regulation.
- ii) “Planning Area” has been replaced with the “Regional Planning Area” definition, and the reference to 9VAC25-780-55 has been corrected to 9VAC25-780-45.
- iii) “Regional planning unit” definition reflects that regional plans are now required, and associated language was removed due to designation of planning areas. Panel suggested including participation of Planning District Commission or Authorities, DEQ responded that the definition pertains to entities that submit a regional plan.

- iv) “Regional water plan” definition was replaced by the “water supply plan” definition as all plans are now regional.
- v) “Regional program” definition - panel raised the confusion between the institution and the documents submitted, DEQ responded that the existing approach includes implementing provisions (ex. local ordinances) that are submitted in addition to the water supply plan. DEQ acknowledged the confusion but also noted that this structure is from the original regulation and the fallback preference it to leave it unchanged but DEQ will review proposed language to address the confusion from the panel.
- vi) “Release rules” definition was removed as its addition was outside the scope of the NOIRA.
- vii) “Unaccounted for losses” definition – panel suggested terminology changes. DEQ responded that changing this definition is outside the scope of the NOIRA.
- viii) “Water Supply Risk” definition was revised based on comments from the RAP. It now includes a broader concept of risk based with some language pulled from statutory language in [§ 62.1-44.38](#) B. A RAP member suggested changing “or other beneficial uses” to “and other beneficial uses” on line 112. DEQ responded that this will be reviewed based on statute. Additional language suggestions for this definition will be submitted by the RAP.

**d) 9VAC25-780-40. Program Development**

- i) Language previously added by DEQ was removed to be consistent the NOIRA, and language suggested by the RAP was included:

*...Community water systems and self-supplied users that utilize more than 300,000 gallons of water in any month including agricultural, industrial, and power generations users within the planning area shall cooperate and participate with the locality local governments during preparation of the local regional program. Counties, cities, and towns are encouraged to develop regional programs. Local governments shall make a good faith effort to invite and encourage other stakeholders including but not limited to, developers, economic development organizations and agricultural, industrial, conservation, and environmental organizations shall be invited and encouraged to participate in the preparation of a regional program. Other stakeholders may participate at the discretion of the regional planning unit.*

A panel member suggested adding participation of water authorities. Following discussion was that the existing language of “community water systems” includes water authorities. Panel noted ambiguity in how to demonstrate a good faith effort to “encourage” participation, and DEQ responded that documentation of coordination would be something to address through guidance.

**e) 9VAC25-780-45. Designation of Regional Planning Areas**

- i) Comments regarding the Middle James were submitted by the City of Richmond the day before this meeting. Comments will be considered alongside all regional planning area feedback.
- ii) Additional feedback received prior to the meeting included language allowing modification of regional boundaries based on a set of criteria, thus a full APA process would not be required to redefine regional planning areas. This feedback was supported by other members of the RAP. DEQ acknowledged the reason for this comment, and discussed that regulation does not supersede the APA process, so regulation language alone cannot make exemptions from the APA process.

**f) 9VAC25-780-50. Preparation and submission of a program**

- i) Section B was updated to use the statutory language from HB542, and timeline language suggested previously by the RAP:

*Each locality in a regional planning area shall develop and submit, with the other localities in that planning area, a single jointly produced local regional water supply plan to the department in accordance with the following schedule: within five years from the effective date of the regulation.*

- ii) Based on prior RAP discussion of what would demonstrate stakeholder process and coordination, required documentation was revised. Also, as per RAP recommendation, additional outreach materials would be optional to include, but provided upon request.

*Copies of any public notices, comments received and responses to comments shall be included. Other correspondence and documentation such as invitations, meeting agendas, and outreach materials may be included and shall be provided upon request.*

A panel member asked about submitting representative invitations, and DEQ responded that such clarifications belong in guidance. The public comment period during guidance development can be used to notify DEQ if produced guidance is missing something needed.

**g) 9VAC25-780-60. State role in program preparation**

- i) DEQ reiterated that changes to this section were to address statutory language describing new agency responsibilities.

- ii) Language was added to clarify that financial assistance would be provided if available. Funding for planning is not currently provided by general assembly.

- iii) A member of the RAP asked if there should be a description of DEQ's role in coordinating the regions. The response was that in the last planning cycle there was varying interest in having DEQ involvement, and that there is already a commitment for DEQ to provide assistance based on regional need:

*... the board will: Provide planning, policy, and technical assistance to each regional planning area differentiated according to each area's water supply challenges, existing resources, and other factors.*

- iv) A member of the RAP suggested simplification of Item 2 (line 257) to begin with "Provide financial assistance available"

- v) Additional language was added directly from the statute:

*9. Ensure that local governments coordinate sufficiently in the development of regional plans; 10. Ensure that each regional plan clearly identifies the region's water supply risks and proposes strategies to address those risks;*

**h) 9VAC25-780-70. Existing water source information**

- i) In response to RAP concerns, and consideration of the scope of the NOIRA, the requirements for including latitude and longitude coordinates has been removed throughout this section.

- ii) A prior RAP comment was reiterated suggesting this section include grandfathered withdrawals as it's relevant to available water sources and to risk assessment.

- iii) The previous DEQ edit for plans to include reservoir release rules was removed for consideration of the scope of the NOIRA.

**i) 9VAC25-780-80. Existing water use information**

- i) In locations in this section where the edit was previously not made, “300,000 gallons per month” was changed to “300,000 gallons in any month” for consistency with other sections.
  - ii) In response to RAP comments and consideration of the scope of the NOIRA, disaggregated water use categories to include was returned to the original regulation language (“may include”).
- j) 9VAC25-780-90. Existing resource information**
- i) A RAP member suggested in section B.10 for point source discharges to include language about if those discharges are permitted to use a mixing zone for initial dilution of the discharge. Suggested language will be provided to DEQ.
- k) 9VAC25-780-100. Projected water demand information**
- i) DEQ edits to Section D.4 were removed based on consideration of the scope of the NOIRA.
- l) 9VAC25-780-110. Water demand management information**
- i) No changes other than “water plan” to “water supply plan” as made throughout the regulation.
- m) 9VAC25-780-120. Drought response and contingency plans**
- i) In response to RAP feedback that edits to section A were unclear, the new language is:  
*A regional program shall contain a drought response and contingency plan for each local government that includes community water systems and self-supplied users who withdraw more than an average of 300,000 gallons per month of surface water and ground water in accordance with the following requirements*
  - ii) A RAP member made a correction “300,000 gallons in any month”.
  - iii) Clarification was provided that drought plans already included self-supplied users.
  - iv) A RAP member suggested a correction “surface water or ground water”. DEQ will check if that’s correct.
  - v) In response RAP comments on section 4, encouragement of regional drought response plans was retained but the risk identification was removed:  
*Regional programs that do not contain consistent drought responses and stages within the regional planning area shall identify any risks associated with inconsistencies in drought response and contingency plans within the region as part of the identification of water supply risks required by 9VAC25-780-125.*
  - vi) A RAP member suggested changing “shall include” to “may include”. DEQ will consider.
- n) 9VAC25-780-125. Identification of water supply risks and proposed regional strategies**
- DEQ led the panel through a brief discussion of this section during Meeting #3, held December 6, 2021. An in-depth discussion was held during Meeting #4, and is summarized below.
- i) A panel member asked if DEQ would be providing guidance on the meaning of the phrase “likelihood of severity” in Section A. DEQ responded yes, and referenced a previous panel discussion on using ‘high’, ‘medium’, and ‘low’ designations as a possible option that would be described in further detail in guidance.

- ii) DEQ has removed Items 2 & 3 to address panel concerns about addressing risks outside of locality authority. DEQ emphasized, however, the importance of localities starting to consider these issues as they play into water availability and addressing local water supply risks. An opportunity for localities to do so is provided in Item 10. A panel member asked if localities would be required to address water quality issues under Item 10. DEQ responded ‘yes’.
  - iii) DEQ referenced previous panel discussion that these requirements were too ‘specific’, so DEQ has simplified language in Items 4, 5, and 6.
  - iv) A panel member referenced the need to review and solidify the definition of “water supply risk”. Another panel member referenced the use of the term ‘non-revenue’, citing previous discussions about not using this term in the regulation; and the use of “unaccounted for water” instead of “unaccounted for losses”. DEQ will revise the language as appropriate after review.
  - v) Panel member offered comments on Item 10, regarding concern over what items localities have the ability or authority to address. Panel members noted they will submit additional comments regarding the definition of ‘risk’.
  - vi) A panel member referenced that Item 10 generally addresses future uses. The panel member stated that it is unclear whether Item 10 applies to current or future water use. DEQ responded first, that the water supply planning program was conceived originally with focus on future water use, so risks related to current supplies would be a somewhat new focus for the program. A panel member expressed value in addressing future water use, especially as it relates to climate change. DEQ expressed that panel members likely have a better idea of best way to clarify language to include both existing source and future source assessment. DEQ will look to the panel to provide suggested amendments to the language.
  - vii) A panel member requested clarification of the intent of “cross-jurisdictional projects”. DEQ responded that this is intended as a strategy for addressing risks.
- o) 9VAC25-780-130. Statement of need and alternatives**
- i) DEQ addressed Items 1, 2, and 3. DEQ has made changes to the language consistent with the scope of the NOIRA.
  - ii) DEQ mentioned that the cross-jurisdictional language used in Section C is intended to remain consistent with statutory language from HB542. DEQ mentioned this could be an opportunity for more language feedback from the panel.
- p) 9VAC25-780-140. Review of regional programs**
- i) DEQ mentioned an addition to Item 10 to ensure water supply risks have been identified and strategies identified to address those risks.
  - ii) DEQ mentioned the language in Item 13 is intended to ensure sufficient cross-jurisdictional communication.
  - iii) A panel member asked if the drought response plan, mentioned in Item 9, was intended to be for the entire region, and asked if the drought plan could be a separate document. DEQ

responded that in the past, localities have expressed that a drought plan is separate from the water supply plan itself. DEQ suggested that the drought plan could be a separate document, or part of the large regional water supply plan.

**q) 9VAC25-780-150. Public notice and public comment period**

- i) A panel member asked if there is a need for two public comment periods, especially when the localities have already had public comment periods and public meetings during the plan development process. DEQ responded that the intent in the past was to address locality desire to comment on plans from upstream jurisdictions. The process may have also been impacted by the tiered approach to plan submittal during the last submission process. DEQ will review this part of the process.

**r) 9VAC25-780-160. Public meetings**

- i.) DEQ mentioned there are very few changes to this section, aside from the change of ‘water plan’ to ‘water supply plan’ made consistently throughout the regulation.

**s) 9VAC25-780-170. Appeals**

- i) No discussion pertaining to Section 170.

**t) 9VAC25-780-180. Enforcement**

- i) A panel member expressed that it may be helpful to include language that if a locality puts in good faith effort to comply, it will not be penalized for other localities in a planning region noncompliance. DEQ will rely on the panel to provide suggestions for additional language.
- ii) A panel member asked if the forms referenced in the section are new or existing. DEQ responded that these are existing forms and some changes are expected. Changes are likely to occur during the guidance development process. DEQ to confirm whether this process would undergo public comment.
- iii) A panel member requested a circulation of all comments received by DEQ to the other panel members. DEQ responded that they anticipate doing so once all are received by the January 30, 2022 deadline.

**u) 9VAC25-780-190. Delegation of authority**

- i) No discussion pertaining to Section 190.

**5) Public Comment**

- a) DEQ asked for public comment. No public comment was offered.

**6) Wrap-Up & Next Steps**

- a) Panel members to provide comments, feedback and language suggestions to DEQ staff by January 30, 2022.
- b) RAP Meeting #5 will be scheduled, if needed, after DEQ has a chance to review the comments received. There is currently no set date for Meeting #5.