

**VWPP – WATER SUPPLY PERMITTING WORK GROUP**

**MEETING**

**AMENDMENTS**

**TO THE**

**VIRGINIA WATER PROTECTION PERMIT REGULATIONS**

**DEQ Piedmont Regional Office**  
**Thursday, July 14, 2005**

**Meeting Minutes**

<b>Meeting Attendees</b>	
<b>VWPP Water Supply Work Group</b>	<b>Interested Parties</b>
Bos, Bob	Kyger, Katie
*Carlock, John (Kristen Lentz)	Lain, John
*Crowder, Charlie (Traci Kammer-Goldberg)	Mitchell, Becky
Dunscumb, Judy	Prelewiiz, Greg
*Foster, Larry (Kristen Lentz)	Reid, Terry
*Hayes, Tim (Andrea Wortzel)	
Imhoff, Ed	
Jennings, Ann	
*Kiernan, Brian (Andrea Wortzel)	
Paylor, David	
Petrini, Art	<b>Staff</b>
Sanders, Frank	Frahm, Kathy (DEQ)
Strickland, Wayne	Harold, Catherine (DEQ)
Taylor, Cathy	Hassell, Joseph (DEQ)
Weeks, Richard	Hulburt, Barbara (The McCammon Group)
	Kudlas, Scott (DEQ) (Team Leader)
<b>Resource Group</b>	Linker, Rick (DEQ)
*Bowman, Steve (VMRC) (Bob Grabb)	Norris, William (DEQ)
Kauffman, John (DGIF)	Rubin, Mark (The McCammon Group)
Williams, Bruce	Wagner, Terry (DEQ)

- 1. Welcome/Introductions/Process for the Day:** Barbara Hulburt welcomed everyone to the meeting and asked for brief introductions from the meeting attendees. She noted that during the meeting the meeting attendees will be working with the 52-page version of the VWP Regulation that incorporates the changes that the TAC has been working on and is a result of the comments made at the last meeting and some policies and positions that have been put forth by

DEQ. The goal of today's meeting is to work through the document and discuss the issues as they come up and to identify those specific sections that still need work. It was suggested that wordsmithing issues be handled through emails with DEQ staff.

2. **Review of Draft Regulation: Definitions:** Mark Rubin introduced the Definition section as the first discussion area. Rick Linker reviewed the definitions that had been modified, added or deleted.

~~“Abandonment of a water withdrawal” means that the owner or operator of the withdrawal structure intentionally deserts the structure or intentionally ceases the withdrawal.~~

“Affected stream reach” means the portion of a surface water **body** beginning at the location of a withdrawal and ending at a point where effects of the withdrawal on beneficial uses become minimal.

~~“Aquatic resources” or “aquatic **“Aquatic** environment” mean **means** surface waters and the habitat they provide, including both plant and animal communities.~~

~~“Code” means Code of Virginia.~~

“Ecologically preferable” means capable of providing a higher likelihood of replacing existing wetland **or stream** functions and values, water quality and fish and wildlife resources than alternative proposals.

“Emergency Virginia Water Protection Permit” means a Virginia Water Protection Permit issued pursuant to §62.1-44.15:5.J authorizing a new or increased **surface** water withdrawal to address insufficient **public** drinking water supplies that are caused by a drought and may result in a substantial threat to human health or public safety.

“Enhancement” means activities conducted in existing wetlands or other **portions of the** aquatic resources **environment** that increase one or more aquatic functions or values.

~~“Existing Withdrawal” means a water withdrawal in existence on July 1, 1989, provided there was an actual withdrawal on that date, or provided there was an intermittent withdrawal before that date and it has not been abandoned.~~

“Function” means

**“Intake structure” means any portion of a Surface Water Withdrawal System used to withdraw surface water that is located in surface water, such as, but not limited to, a pipe, culvert, hose, tube, or screen.**

“Increased Withdrawal” means

“Mandatory Conservation Measures” means measures mandated by local or state authorities that are taken to reduce water consumption by the elimination of non essential water uses. Such measures include, but are not limited to, the prohibition of lawn and landscape watering, vehicle washing, the watering of recreation fields, refilling of swimming pools, the washing of streets and sidewalks, and the operation of decorative fountains.

TAC members discussed the definition of “mandatory conservation measures” and agreed that it should be deleted from the Definition Section and included in some form in the Emergency Section (9 VAC 25-210-80. Application for a VCP Permit – B 3.)

*Staff was asked to work the mandatory conservation measures language into Section 80.*

“New Withdrawal” means a water withdrawal in existence or initiated after July 1, 1989.

“Person” means any firm **one or more individuals**, a corporation, a **partnership**, an association, or one or more individuals **a governmental body**, a municipal corporation, or any governmental unit or agency of it other legal entity.

**“Potomac River Low Flow Allocation Agreement” means the Agreement among the United States of America, the State of Maryland, the Commonwealth of Virginia, the District of Columbia, the Washington Suburban Sanitation Commission, and the Fairfax County Water Authority dated January 11, 1978, consented to by Congress in Section 181 of the Water Resources Development Act of 1976, Public Law 94-587.**

“Section 401” means **Section 401 of the Clean Water Act or 33 USC § 1341 as amended 1987.**

“Surface Water Withdrawal Structure” means any device or combination of devices used to withdraw surface water, such as, but not limited to, a machine, pump, pipe, culvert, hose, tube, screen, or fabricated concrete or metal.

“Water **supply emergency**” means a substantial threat to public health or safety due to insufficient **public** drinking water supplies caused by drought.

**“Withdrawal system” means any device or combination of devices used to withdraw surface water, such as, but not limited to, a**

**machine, pump, pipe, culvert, hose, tube, screen, or fabricated concrete or metal structure.**

The TAC discussed these definition changes and agreed to the proposed changes as indicated above.

The TAC also discussed the definitions of “Permanent impacts” and “Temporary impacts” included below. The discussion centered on how you define at what point an impact becomes “permanent” and whether it would be more useful to define “temporary impacts” and just say that anything that is not “temporary” is “permanent”. The concept of developing a definition based on a certain period of time was discussed. It was agreed that defining that period of time after which a “temporary” impact would become “permanent” would be difficult. Another problem with establishing a set time period is that “temporary” impacts are not necessarily short term impacts.

“Permanent impacts” are those impacts to surface waters, including wetlands, which cause a permanent alteration of the physical, chemical, or biological properties of the surface waters, or of the functions and values of a wetland.

“Temporary impacts” means those impacts to surface waters, including wetlands, that do not cause a permanent alteration of the physical, chemical or biological properties of the surface water, or of the functions and values of a wetland. Temporary impacts include activities in which the ground is restored to its preconstruction contours and elevations, such that previous functions and values are restored.

*Staff was asked to look at the issue of “temporary” versus “permanent” impacts.*

TAC members noted the need for definitions of “cumulative impact” and “surface water supply project”.

*Staff was asked to develop definitions for “cumulative impact” and “surface water supply project”.*

- 3. Review of Draft Regulation: Exclusions:** Mark Rubin introduced the Exclusion section (9 VAC 25-210-60. Exclusions). Rick Linker summarized the changes and modifications to this section. He noted that throughout the document the word “exemption” had been replaced with the word **“exclusion”**. In addition, the word **“surface”** had been added to the phrase “water withdrawal” to clarify that the changes address surface water withdrawals. Also, the phrase “withdrawal structure” has been changed to **“withdrawal system”** to eliminate any confusion and to help distinguish it from “intake structure”.

TAC members discussed the need to take into consideration the maximum design capacity of each excluded withdrawal. It was noted that if an applicant was already excluded from permitting requirements for a set amount, for example, 15 MGD, and was seeking a permit for an additional 15 MGD that the evaluation of the added 15 would include an examination of the entire 30 MGD and would impose any necessary MIF requirements for the additional 15 MGD. DEQ's intent would be to require a permit for the entire 30 MGD if the system was "oversubscribed". It was noted that in that case there would need to be conditions in the permit that addressed the entire withdrawal capacity.

4. **Review of Draft Regulation: Alternative Analysis:** Barbara Hulburt introduced the sections that had been addressed by the Permitting and Alternatives Analysis work groups. Scott Kudlas summarized the changes and modifications to the regulation dealing with these issues. He noted that a lot of new material had been suggested for insertion into Section 80 which had made that section somewhat confusing. To clarify any confusion, materials dealing with the preapplication process and procedures have been pulled out and inserted into a new section as indicated below:

**9VAC25-210-75. Preapplication procedures for a VWP permit for surface water supply projects.**

A. Preapplication Review Panel. For **surface** water supply projects, a preapplication review panel may be convened prior to submission of a VWP application and upon request by an applicant to the Department of Environmental Quality. The preapplication review panel shall assist applicants that are proposing **surface** water supply projects with the early identification of issues related to the protection of beneficial instream and offstream uses of state waters. The DEQ shall notify the Virginia Marine Resources Commission, the Virginia Institute of Marine Science, the Virginia Department of Game and Inland Fisheries, and the Virginia Department of Conservation and Recreation, the Corps of Engineers, U.S. Fish and Wildlife Service, and the Environmental Protection Agency and any other appropriate local, state, and federal agencies of the preapplication review panel request. These agencies shall participate in the preapplication review panel by providing information and guidance on the potential natural resource impacts and regulatory implications of the options being considered by the applicant.

**B. Preapplication Public Notice. For new or expanded surface water supply projects, an applicant shall request public comment on the proposed project prior to filing a VWP individual permit application in order to provide information on the project, provide an opportunity for public comment, and assist in identifying public concerns or issues.**

**1. Except as provided in this subsection, the applicant shall provide for publication of notice once a week for two consecutive weeks in a newspaper of general circulation serving the locality where the surface water supply project is proposed to be located and shall hold at least one public information meeting, if requested by any person. Notice of any public meeting held pursuant to this subsection shall be provided at least 14 days prior to the public meeting date and shall be published in the same manner as required for Public Notice as provided above. An applicant shall submit the notice to the DEQ for posting on the DEQ Website. At a minimum, any notice required by this subsection shall include:**

**a. A statement of the applicant's intent to apply for a VWP permit for a surface water supply project;**

**b. The proposed location of the surface water supply project;**

**c. Information on how the public may request such a public information meeting or in the alternative, the date, time and location of the public information meeting the applicant will hold; and**

**d. The name, address and telephone number of a person employed by an applicant who can be contacted by interested persons to answer questions or receive comments on the proposed surface water supply project.**

**2. An applicant shall not be required to publish public notice or provide an opportunity for a public information meeting if a public meeting has been held on a local or regional water supply plan, which includes the proposed project, in accordance with the provisions of 9 VAC 25-780-50 C 11 and/or 9 VAC 25-780-150, within 2 years prior to the application for a VWP Permit.**

It was noted that this section on preapplication public notice mirrors the requirements contained in the Waste Management Regulations. Rick Weeks noted that DEQ feels that these preapplication public notice requirements need to be included. DEQ is working diligently to increase opportunities for public involvement, which helps make DEQ regulatory processes more effective. DEQ wants to make sure that the issues involved in VWP permits have been aired. Thus, this regulation needs to include public participation and public information meeting language and requirements.

TAC members discussed the opportunities for public comment and participation in these meetings. It was noted that the real value of “preapplication review panel” meetings was the opportunity to sit down with the regulatory agencies to discuss a project and even though the meeting would not be “noticed”, that the public would be able to attend and observe.

It was noted that DEQ is offering to routinely hold “preapplication review meetings” to discuss upcoming projects and that an applicant can ask for a spot on the agenda to discuss a proposed project. It was also noted that these language changes had been developed in response to the requirements of the “Bolling Bill” (Code of Virginia § 28.2-1205.1 and § 62.1-44.15:5.01). TAC members also discussed the best ways to deal with the public comment requirements for the preapplication public notices.

TAC members also discussed the language in Section B 1 which provides that the applicant shall hold at least one public information meeting, “if requested by one person”. An interested party raised the question of whether some other mechanism ought to be used as a trigger for holding an information meeting. TAC members discussed the issue and appeared to be able to live with the language as drafted.

***Staff was asked to develop language to address the “public comment” concerns.***

Scott Kudlas reviewed Section 80. He noted that, as mentioned earlier, the word “**surface**” had been added to the phrase “water withdrawal” and the word “**public**” had been added to the phrase “water supply emergency” throughout this section as well as the entire document. He noted the following additional language modifications:

**9VAC25-210-80. Application for a VWP Permit.**

A. ~~How to apply~~ Application. Any person who is required to obtain a VWP permit shall submit a complete VWP permit application to DEQ through VMRC, ~~consisting of the JPA with the DEQ VWP Addendum, or shall submit a complete registration statement for coverage under a VWP general permit, as applicable~~ the most current Joint Permit Application procedures, as established in each type of Joint Permit Application (JPA). The Virginia Department of Transportation (VDOT) may use its monthly Interagency Coordination Meeting (IACM) process for submitting JPAs ~~or registration statements.~~ **There shall be no commencement of any activity for which a VWP permit is required prior to the issuance of a VWP permit or VWP general permit authorization.**

~~1. The amount of time allowed by §62.1-44.15:5 D of the Code of Virginia for DEQ to process a complete VWP permit application for any project, excluding water withdrawal projects, is 15 days for completeness review; 120 days for processing the complete~~



~~application by issuing a VWP permit, issuing a VWP permit with conditions, denying the VWP permit, or deciding to conduct a public meeting or hearing; 60 days to hold a public meeting or hearing; and 90 days after the public meeting or hearing, if held, to make a final VWP permit decision. The required 15-day timeframe for completeness review for all projects, with the exception of minimum instream flow and water withdrawal projects, will commence upon receipt of the application by the DEQ office having authority over the project (i.e., the regional office in the region in which the project is located, or central office for VDOT projects).~~

~~2. There shall be no commencement of any activity for which a VWP permit is required prior to the issuance of a VWP permit.~~

B. Informational requirements.

~~1. A complete VWP permit application, at a minimum, consists of a JPA completed in its entirety with all appropriate maps, appendices, attachments and addenda included. The JPA must include the following information:~~

~~a. Name, and mailing address, telephone number, and if applicable, fax number of applicant (and property owner, if different).~~

~~b. If different from applicant, name, mailing address, telephone number, and if applicable, fax number of property owner.~~

~~bc. If applicable, Name name, and mailing address, telephone number, and if applicable, fax number and electronic mail address of authorized agent (if applicable).~~

~~ed. Name of the **impacted** waterbody, or waterbodies, or receiving waters, as applicable.~~

~~de. Name of the city or county where the project occurs.~~

~~2. In addition to requirements of subdivision 1 of this subsection, applications involving a instream flow requirements, surface water withdrawal or a Federal Energy Regulatory Commission (FERC) license or re-license shall include:~~



- a. The drainage area, the average annual flow and the median monthly flows at the withdrawal point, and historical low flows if available;
- b. The average daily withdrawal, the maximum daily and instantaneous withdrawals and information on the variability of the demand by season;
- ~~c. Information on how the proposed withdrawal will impact flows in terms of flow reduction;~~
- ~~d.~~ c. The consumptive use and the average daily return flow of the proposed project and the location of the return flow;
- ~~e. Information on the proposed use of and need for the surface water and information on how the demand for surface water was determined (e.g., per capita use, population growth rates, new uses, changes to service areas, and if applicable, acreage irrigated and evapotranspiration effects);~~
- ~~f.~~ d. Information on flow dependent beneficial uses ~~at the proposed project location~~ along the affected stream reach; and
- ~~g.~~ e. Information on the aquatic life ~~at the proposed project location~~ along the affected stream reach, including species and habitat requirements;
- ~~h.~~ f. Information on how the proposed withdrawal will ~~impact~~ alter flows ~~in terms of flow reduction~~ along the affected stream reach; and,
- ~~i.~~ g. Information on the proposed use of and need for the surface water and information on how demand for surface water was determined (for example, per capita use, population growth rates, new uses, changes to service areas, and if applicable; acreage irrigated and evapotranspiration effects). If during the water supply planning process, the need for the withdrawal was established, the applicant may submit said planning process information, provided that the submittal address all requirements of 9 VAC 25-210-115.B. The board shall deem such a submittal as meeting the requirements of this subsection. For public drinking water supply projects see also 9 VAC 25-780-115.

**h. Applications involving new or expanded surface water supply projects shall include a statement of the steps taken by the applicant to seek public comment as required by 9 VAC 25-210-75 and a summary of the public comment received.**

TAC members discussed the informational requirements for this section and debated the form and content that a summary of public comment received should take. It was noted that the intent was to provide an opportunity for the public to identify issues and concerns early in the process. It was also noted that the purpose of requiring a summary of public comment was to identify those issues that might derail a proposed project.

*Staff was asked to develop language to shift the emphasis here to “issues identification.”*

Additional changes to this section included the following:

**4. Within 14 days after the issuance of an Emergency Virginia Water Protection Permit, the permit holder shall apply for a VWP permit under the other provisions of this regulation.**

C. Additional information. The board shall require additional information if needed to evaluate compliance with this chapter.

D. Incomplete application. Where an application is not accepted as complete by the board within 15 days of receipt, the board shall request additional ~~specific~~ information from the applicant, and may suspend processing of any application until such time as the applicant has supplied ~~missing or deficient~~ the requested information and the board considers the application complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a VWP permit application, or submitted incorrect information in a VWP permit application or in any report to the board, ~~he~~ the applicant shall immediately submit such facts or the correct information. **Such submission shall be deemed a new application for purpose of reviews, but shall not require additional notice or an additional permit application fee.**

Changes to Section 115 included the following:

**9VAC25-210-115. Evaluation of ~~mitigation~~ project alternatives.**

~~AC. Avoidance and minimization opportunities~~ For all proposed projects under a VWP permit, the applicant shall be evaluated as follows: ~~The applicant must demonstrate to the satisfaction of the board that~~ avoidance and minimization opportunities have been identified and applied to the proposed activity, that practicable alternatives, including design alternatives, have been evaluated for the proposed activity, and that the proposed activity, in terms of impacts to water

quality and fish and wildlife resources, is the least environmentally damaging practicable alternative.

2. Any alternatives analysis conducted specifically for public **drinking** water supply projects shall include:

a. The range of alternatives to be analyzed by the applicant, as follows:

**(1) All applicable alternatives contained in the local or regional water supply plan developed in accordance with 9 VAC 25-780, et. seq.;**

(2) All reasonable alternatives that are practicable or feasible from both a technical and economic standpoint;

(3) Alternatives that are available to the applicant but not necessarily under the current jurisdiction of the applicant; and,

(4) Water conservation measures **that could** be considered as a means to reduce demand for each alternative considered by the applicant.

b. The applicant shall provide a narrative description that outlines the opportunities and status of regionalization efforts undertaken by the applicant.

c. The criteria used to evaluate each alternative for the purpose of establishing the least environmentally damaging practicable alternative, which includes but is not limited to:

(1) Demonstration that the proposed alternative meets the demonstrated need of the project and project purpose, as determined by the application pursuant to 9 VAC 25-210-115.B;

(2) Availability of the alternative to the applicant;

(3) Evaluation of interconnectivity of water supply systems (both existing and proposed);

(4) Evaluation of the cost of the alternative on an equivalent basis;

(5) Evaluation of alternative safe yields;

(6) Presence and potential impact of alternative on state and federally listed threatened and endangered species;

(7) Presence and potential impact of alternative on wetlands and streams (based on maps and aerial photos for all alternatives, field delineation required for preferred alternative);

(8) Evaluation of effects on instream flow; and,

(9) Water Quality Considerations:

i. Land use within a watershed where the type of land use may impact the water quality of the source,

ii. The presence of impaired streams and the type of impairment,

iii. The location of point source discharges,

iv. Potential threats to water quality other than those listed in i through iii of this subsection.

It was noted that this section originally contained suggested new language as number (9) above that read, “(9) Presence and potential impact of alternative on historic and archeological resources.” This phrase was deleted since DEQ does not have jurisdiction over historic or archeological resources. It was noted that the Board does get a handle on some of these concerns from an evaluation of “cultural significance” in their review of a permit application.

***Staff was requested to look at some possible additional “wordsmithing” in Section 115.***

The concept of “impaired waters” was discussed. It was noted that DEQ currently addresses “impaired waters” concerns on a case-by-case basis in their evaluation of permit applications since there are a number of different types of impairment.

Changes to Section 140 included the addition of a new Paragraph A as indicated below:

**9VAC25-210-140. Public notice of VWP permit applications, permit actions, and public comment period-periods.**

**A. The initial application for surface water supply projects that requires both an individual Virginia Water Protection Permit and a Virginia Marine Resources permit under § 28.2-1205 shall be advertised concurrently by the**

**Department of Environmental Quality and the Virginia Marine Resources Commission. Such advertising shall be paid for by the applicant.**

TAC members discussed the concept of “initial application”. It was noted that the intent was to advertise the initial “receipt” of an application so that the earliest possible public notification of a proposed project could be given. It was also noted that both the Code and the Bolling Bill use the phrase “initial application”.

*Staff was asked to consider the inclusion of a definition of “initial application”.*

- 5. Review of Draft Regulation: Cumulative Impact:** Mark Rubin introduced the Cumulative Impact Section. Terry Wagner reviewed and summarized the cumulative impact modifications to the regulations. He noted that the first changes to Section 110 included the following:

**9VAC25-210-110. Establishing applicable standards, limitations or other VWP permit conditions.**

In addition to the conditions established in 9VAC25-210-90 and 9VAC25-210-100, each VWP permit shall include conditions meeting the following requirements where applicable:

A. Instream flow conditions. Subject to the provisions of Chapter 24 (§62.1-242 et seq.) of Title 62.1 of the Code of Virginia, and subject to the authority of the State Corporation Commission over hydroelectric facilities contained in Chapter 7 (§62.1-80 et seq.) of Title 62.1 of the Code of Virginia, instream flow conditions may include but are not limited to conditions that limit the volume and rate at which **surface** water may be withdrawn at certain times and conditions that require water conservation and reductions in water use.

1. In the development of conditions that limit the volume and rate at which **surface** water may be withdrawn, consideration shall be given to the seasonal needs of water users and the seasonal availability of surface water flow.

2. Consideration shall also be given to the affected stream reach and the amount of water that is put to a consumptive use in the process.

3. In the development of instream flow conditions for new withdrawals, the Board shall take into consideration the cumulative impact **on beneficial uses in an affected stream reach** of:

**a. permitted withdrawals based on permitted amounts and consumptive use, and**

**b. withdrawals that are exempted from obtaining a permit based upon information submitted to and collected by the Board regarding estimated maximum capacities and consumptive use, and reasonably foreseeable increases in such consumptive uses.**

TAC members discussed the modifications to Section 110. Staff noted that the majority of the changes were in Section 110 A 3. The real issue is trying to address those water withdrawals who are currently excluded from permit requirements, but who are not withdrawing at their maximum capacity. It was noted that it would be fairly easy to determine their actual withdrawal and return flow, but that some consideration has to be given for the increment between their current withdrawal amount and their maximum capacity.

It was noted that it is necessary to protect the rights of these legislatively-excluded users. DEQ has to take into consideration what their use might be in the future (up to their maximum capacity) so that volume is protected. In evaluation of cumulative impacts it is necessary to take into consideration what the law says about excluded withdrawals, to look at current consumptive and non-consumptive uses, and to attempt to make some reasonable determination as to how the increment between current and maximum withdrawal might also be used.

Discussions included looking at whether there was another way to look at this issue given what the law says and whether it would be feasible to impose conditions on new permit applications based simply on their length (for example, someone could withdraw a certain amount for 15 years, but at the end of that time if the excluded user had increased its withdrawal, the permit would not be reissued). It was decided that such a scenario would not be feasible. Given the current wording of the law and the protection of the maximum capacities of excluded withdrawals, there may be a point where no more permits could be issued. It was noted that this was the same thing that happened in the management of Ground Water Withdrawals.

Terry Wagner summarized the next changes to this section that dealt with requests for a variance from minimum instream flow requirements during drought conditions.

**4. The Board may grant one variance to a permittee for temporary relief from instream flow permit conditions for a period up to 120 days during periods of low flow if the permittee demonstrates to the satisfaction of the Board that it has avoided and minimized the need for such relief to the fullest extent possible. As a condition of any relief granted, the permittee shall either:**

**a. modify its operations or facility to comply with the existing instream flow permit condition; or**

**b. provide new evidence to the Board that a lower instream flow requirement is appropriate and apply for a major permit modification. If the Board determines that a lower instream flow requirement is appropriate, the Board may modify the permittee's permit.**

TAC members discussed the issuance of a variance to a permittee and the time period of such a variance. Concerns were raised over the inclusion of a 120-day limit to the variance. It was suggested that more flexibility should be included so that staff could address the appropriate length of time for these variances on a case-by-case basis. It was noted that the existing regulation has no “variance authority” and that the language being proposed was a first cut at providing that authority. It was suggested that the language should be modified to address the concept that “Variances are available and are contingent on the fact that the applicant has demonstrated that he is able to deal with reasonably foreseeable future flow reductions or will make the necessary adjustments to be able to do so for the next occurrence.” Need to also leave open the possibility of other planning options/considerations. The idea of a requirement for the development of offstream storage in certain instances was also raised.

*Staff was requested to revisit this section and to develop revised language to address the concerns raised.*

- 6. Review of Regulations: Technical Changes:** Staff reviewed the general technical changes that had been made to the regulation. These changes have been noted in the text sections included above. Additional section changes and renumbering were also identified throughout the regulation. One change that was noted was the inclusion of a reference to the Potomac River Low Flow Agreement in the Definition Section and in Section 110.

**“Potomac River Low Flow Allocation Agreement” means the Agreement among the United States of America, the State of Maryland, the Commonwealth of Virginia, the District of Columbia, the Washington Suburban Sanitation Commission, and the Fairfax County Water Authority dated January 11, 1978, consented to by Congress in Section 181 of the Water Resources Development Act of 1976, Public Law 94-587.**

**Section 110 A 5. For Potomac River withdrawals, any person that seeks to withdraw surface water from the Potomac River or its tributaries between the Little Falls Dam and the furthest upstream limit of the pool of water behind the Chesapeake and Ohio Canal Company rubble dam at Seneca, Maryland, shall either become a member party of the Potomac River Low Flow Allocation Agreement or shall be governed by a permit that contains a condition that includes the low flow allocation formula or reduces withdrawals consistent with this formula when a restriction stage is declared under the provisions of that agreement.**



Concerns over the deletion of specific time frames for the transferability of VWP permits were also discussed.

**9VAC25-210-200. Transferability of VWP permits.**

A. Transfer by modification. Except as provided for under automatic transfer in subsection B of this section, a VWP permit shall be transferred only if the VWP permit has been modified to reflect the transfer or has been revoked and reissued to the new permittee.

B. Automatic transfer. Any VWP permit shall be automatically transferred to a new permittee if:

1. The current permittee notifies the board ~~within 30 days~~ of the proposed transfer of the title to the facility or property;
2. The notice to the board includes a written agreement between the existing and proposed permittee containing a specific date of transfer of VWP permit responsibility, coverage and liability to the new permittee, or that the existing permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and
3. The board does not ~~within the 30 day time period~~ 15 days notify the existing permittee and the new permittee of its intent to modify or revoke and reissue the VWP permit.

The TAC discussed inclusion of the wording “at least 30 days prior to” for Section 200 B 1 and the retention of the original wording for the 30 day time period in Section 200 B 3.

- 7. Meeting Wrap-Up:** Barbara Hulburt requested that TAC Members review the revised regulation and send any suggested changes and additions and any wordsmithing suggestions via email to DEQ staff as soon as possible so that they can be incorporated into a revised document and routed back to the group for their review and comment as soon as possible. She noted that between now and the next meeting that staff will be working on the areas needing clarification and rewriting so that they can be included in the next transmittal to the group. She also noted that those with specific concerns should communicate their thoughts directly with Terry Wagner and/or Scott Kudlas as soon as possible.

***She suggested that the proposed changes be incorporated into a section by section list for distribution to and review by the TAC as soon as possible.***

**8. Future Meeting Schedule:** Barbara Hulburt discussed the remaining meeting schedule. She noted that the next meeting was scheduled for Thursday, August 25<sup>th</sup> from 9:30 to 3:30 at the DEQ Piedmont Regional Office. This meeting will be used to go over the entire VWP Regulation and to discuss final modifications and changes with the intent of agreeing to a modified regulation that is ready to prepare for presentation to the State Water Control Board at their September meeting. She noted that there were some additional items that had been raised over the course of the TAC process that weren't necessarily regulation related that still needed to be addressed in this process. She suggested that the remaining TAC meeting originally scheduled for Friday, September 16<sup>th</sup> be left on everyone's calendars for a final meeting of the TAC. This meeting would be used to address any outstanding issues or concerns, such as advocacy and streamlining.

**9. Remaining Meeting Schedule:**

- a. August 25, 2005 – DEQ Piedmont Regional Office
- b. September – Draft Regulation to SWCB
- c. September 16, 2005 – DEQ Piedmont Regional Office

**10. Adjournment:** Meeting adjourned at 3:30 P.M.