

**VWPP – WATER SUPPLY PERMITTING WORK GROUP**

**MEETING**

**AMENDMENTS**

**TO THE**

**VIRGINIA WATER PROTECTION PERMIT REGULATIONS**

**DEQ Piedmont Regional Office**  
**Thursday, August 25, 2005**

**Final Meeting Minutes**

<b>Meeting Attendees</b>	
<b>VWPP Water Supply Work Group</b>	<b>Interested Parties</b>
Bos, Bob	Kammer-Goldberg, Traci
* Carlock, John (Larry Foster)	Kyger, Katie
Crowder, Charlie	Lain, John
Dunscumb, Judy	Land, Larry
Foster, Larry	Mitchell, Becky
Hayes, Tim	Reid, Terry
James, Eldon	Thompson, Denise
Jennings, Ann	Tinsley, Stephanie
Kiernan, Brian	
Paylor, David	
Petrini, Art	<b>Staff</b>
Sanders, Frank	Drucker, Geoff (The McCammon Group)
Stoneman, Wilmer	Harold, Catherine (DEQ)
Taylor, Cathy	Kudlas, Scott (DEQ) (Team Leader)
Weeks, Richard	Linker, Rick (DEQ)
	Norris, William (DEQ)
<b>Resource Group</b>	Rubin, Mark (The McCammon Group)
*Bowman, Steve (VMRC) (Bob Grabb)	Wagner, Terry (DEQ)
*Gray, Tom (VDH) (Chris Adkins)	Winn, Brenda (DEQ)
Kauffman, John (DGIF)	
Williams, Bruce	

- 1. Welcome/Introductions/Process for the Day:** Mark Rubin welcomed everyone to the meeting. He noted that Barbara Hulbert had been called away to a meeting in Washington, D.C. and would not be attending today's meeting. He introduced a new member of the McCammon Group, Geoff Drucker. He asked for brief introductions from the meeting attendees. He stressed that we all have a role to play in today's meeting. The goal of today's meeting is to reach consensus on the

draft regulation. At the end of the day, we need to be able to say that we can live with the regulation as revised. He noted that the standard is not “perfection” it is “I can live with that.” The current schedule is to finalize the regulation by the end of August so that it can be forwarded to the State Water Control Board for review at their meeting on September 27<sup>th</sup>. He also noted that it was the TAC members sitting around the table who have to reach consensus. As in previous meetings, we will also have an “Open Seat” rule so that those interested parties can have an opportunity to express their thoughts for consideration by the TAC members.

**2. Review of Draft Regulation:** Mark Rubin noted that the bulk of the work today would be based on the version of the Draft Regulation Revisions dated 07/27/2005. This is the version that had been sent out to TAC members and Interested Parties for review for this meeting. Copies of the 07/27/2005 Regulation Revisions were distributed so that everyone would be working off of the same version. He noted that we had received comments from several TAC members that we be included in today’s discussions. (Copies of Comments from Ann Jennings – CBF; Bruce Williams – USACE; the Fairfax County Water Authority; and the AWWA were distributed.) He noted that the plan was to go over all of the proposed revisions Section-by-Section and Page-by-Page so that everyone would have an opportunity to comment.

**3. 9 VAC 25-210-10. Definitions.**

**A.** The definition of “Affected Stream Reach” was discussed. It was noted that there needed to be an element of reasonableness, because it is clear that there is a judgement that has to be made. It was suggested that any removal of water causes an effect. At some point it ceases to have a negative impact. Problems were noted with the suggested use of the terms “significant” and “minimal”. It was suggested that the phrase should be “...where effects are not reasonably expected to adversely affect beneficial uses.” The TAC agreed on the following definition:

“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 are not reasonably expected to adversely affect beneficial uses.

**B.** The definition of “Consumptive Use” was discussed. The TAC agreed to the following change:

"Consumptive water use" means the withdrawal of surface waters, without recycle of said waters to their source or basin of origin.

**C.** The definition of “Intake Structure” was discussed. After some discussion of what was meant by the use of the term “within the surface water”, the TAC members agreed to leave the definition as originally proposed.

“Intake structure” means any portion of a withdrawal system used to withdraw surface water that is located within the surface water, such as, but not limited to, a pipe, culvert, hose, tube, or screen.

D. Suggested definitions for “Low Flow Augmentation”; “Municipal Water Use”; “Non-Municipal Water Use”; and “Section for Cooperative Water Supply Operations on the Potomac” were withdrawn with the understanding that once the final language for addressing Potomac River withdrawals has been drafted and agreed to by the Fairfax County Water Authority and DEQ that related definitions would have to be developed and reinserted into the document.

E. The definition of “Nationwide Permit” was discussed and the following change was agreed to:

"Nationwide permit" means a general permit issued by the USACE under 40 CFR Part 241 and, except where suspended by individual USACE Corps District, applicable nationwide.

The definition of “Normal Agricultural Activities” was discussed. Questions were raised about whether “livestock production” was part of the exclusion referenced by this definition. The issue of “fencing livestock out of the streams” and “livestock watering facilities” was discussed. Questions regarding “very small discrete withdrawals” such as those by small Rural Fire Fighters were also raised. Staff noted that there was a new General Regulation for Small Withdrawals that had recently been proposed to the SWCB which should address these concerns. In addition, staff was asked to see if this could be clarified in the VWP Regulation.

#### **4. 9 VAC 25-210-75. Preapplication procedures for a VWP permit for surface water projects.**

A. Proposed revisions to 9 VAC 25-210-75 A were discussed. Changes suggested by the AWWA were accepted.

A. Preapplication Review Panel. At the request of an applicant for a surface water supply projects, a preapplication review panel shall be convened prior to submission of a VWP application upon request by a potential applicant to the Department of Environmental Quality. The preapplication review panel shall assist potential 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 and the identification of the affected stream reach. The DEQ shall notify the Virginia Marine Resources Commission, the Virginia Institute of Marine Science, the Virginia Department of Game and Inland Fisheries, the Virginia Department of Conservation and Recreation, the Virginia Department of Health, the Corps of Engineers, the U.S. Fish and

Wildlife Service, the Environmental Protection Agency and any other appropriate local, state, and federal agencies of the preapplication review panel request. These agencies shall participate to the extent practical 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 and shall provide comments within 60 days of the initial meeting of the preapplication panel.

- B.** The inclusion of the phrase “requiring an individual VWP permit” in 9 VAC 25-210-75 B was discussed and agreed to.

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

- C.** Suggestions to remove 9 VAC 25-210-75 B 2 e were discussed. It was agreed that DEQ would include “model language” in Guidance that could be used to satisfy this requirement, so that the language as proposed would remain.

e. A statement of how any oral or written public comments will be used.

- D.** Proposed revisions to 9 VAC 25-210-75 3 were discussed. The main issue was whether the 2 year time period included in the section was too long or too short of a period. It was decided that the time period would be left at the proposed 2 year interval.

3. In accordance with the provisions of 9 VAC 25-780-50 C 11 or 9 VAC 25-780-150, a potential 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 within 2 years prior to the submittal of an application for a VWP permit on a local or regional water supply plan, which includes the proposed project.

- E.** Proposed revisions to 9 VAC 25-210-75 B 4 as proposed by AWWA were accepted.

4. The potential applicant shall maintain a list of persons and their addresses making comment and shall make a good faith effort to notify commentors, at the address provided by the commenter, when the public notice for the draft VWP individual permit is available.

**5. 9 VAC 25-210-80. Application for a VWP Permit.**

- A. The issue of supplying information on the proposed need for surface water as required in 9 VAC 25-210-80 B was discussed. The issue was one of how this projected need was to be demonstrated. It was noted that the Water Supply Planning Regulations identify different methods for identifying this need. Staff noted that guidance to address this concern would be developed. Staff also stressed that there would be advocacy to support the idea that “if you followed the Water Supply Planning Regulation that you would be consistent with this regulation in demonstrating need”.
- B. Revisions proposed by AWWA for 9 VAC 25-210-80 D were withdrawn.
- C. Concerns raised on behalf of the City of Norfolk regarding 9 VAC 25-210-80 D regarding the inclusion of the phrase “Such submission shall be deemed a new application for purpose of reviews, but shall not require additional notice or an additional permit application fee” were discussed. The concern was that this would start the review clock all over again for an application. It was decided that since the time period involved was actually only a 15 day period to determine completeness that this was not an issue.

**6. 9 VAC 25-210-110. Establishing applicable standards, limitations or other VWP permit conditions.**

- A. Revisions proposed by CBF for 9 VAC 25-210-110 A 3 that would include both “upstream and downstream consumptive uses” were discussed. It was agreed that the word “upstream” would be removed from the section so that it would identify “consumptive uses” which would cover both.

3. In the development of instream flow conditions for new withdrawals, the board shall take into consideration the combined effect on the hydrologic regime within an affected stream reach due to consumptive water uses associated with:

- B. Revisions proposed by AWWA for 9 VAC 25-210-100 A 3 a, b, and c were discussed. It was agreed to leave the language for this section as drafted.

a. all existing permitted withdrawals, and,

b. the total amount of withdrawals excluded from VWP permit requirements, and,

c. any other existing lawful withdrawals.

- C. Revisions to 9 VAC 25-210-100 A 5 dealing with Potomac River withdrawals were discussed. Language to deal with Potomac River withdrawals that had been proposed by FCWA was withdrawn. It was noted that staff was currently working with the FCWA on this section. It was noted that this was just the beginning of addressing the need to meet Virginia's obligation under the Agreement to protect these withdrawals. Staff noted that it recognized that Virginia wasn't as far along as Maryland in addressing the issue of "consumptive use" as a means of implementing the LFAA but that it would continue to be discussed and had been identified as a possible discussion topic for the September 16<sup>th</sup> meeting of the TAC. It was also noted that this issue could also be brought before the Board as an unresolved issue at their meeting on the 27<sup>th</sup> if necessary. It was agreed that DEQ and representatives of the FCWA would rework this language and would submit revised language and associated definitions that would be included in the proposed revisions that would be submitted to the SWCB.

**7. 9 VAC 25-210-115. Evaluation of project alternatives.**

- A. The recommendation to include "projected demand for the project service area if such area is smaller than the planning area used above" as a component of 9 VAC 25-210-115 B 2 a was discussed. This recommendation was agreed to.

a. Projected demand contained in the local or regional water supply plan developed in accordance with 9 VAC 25-780, et. seq. or for the project service area, if such area is smaller than the planning area; or

- B. TAC members discussed and approved a recommendation to include the word "applicable" in 9 VAC 25-210-115 C 2 a 1.

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

- C. Revisions proposed by AWWA for Section 9 VAC 25-210-115 C 2 a 1 were discussed. The TAC decided not to make the suggested change.
- D. Revised language for Section 9 VAC 25-210-115 C 2 c 1 was discussed and approved by the TAC members.

(1) Demonstration that the proposed alternative meets the project purpose and project demonstrated need as documented pursuant to 9 VAC 25-210-115 A and B;

- E. The inclusion of specific language to address alternative analysis requirements for both private projects as well as public drinking water supply projects in 9 VAC 25-210-115 C 2 was discussed. It was noted that the regulation as proposed does give more attention to public water supplies than other uses. It was suggested that a new section could be added that would address these concerns. The TAC agreed to the development and inclusion of a new section 9 VAC 25-210-115 C 3.

3. Any alternatives conducted for projects other than drinking water supply projects shall include all applicable items included in 9 VAC 25-210-115 C 2.

- 8. **9 VAC 25-210-116. Compensation.** Staff recommended a change in wording for section 9 VAC 25-210-116 B 2 to refer to “wetland acreage and functions or lost stream functions and water quality benefits”. It was noted that this phrase occurred in several places throughout the document and should also be changed in those other sections. The TAC agreed to this change.

2. ~~An alternatives-~~Such analysis shall include, but is not limited to, the following criteria, which shall be compared between the impacted and replacement sites: water quality benefits; acreage of impacts; distance from impacts; hydrologic source; ~~hydrologic and regime;~~ watershed; functions and values; vegetation type; soils; constructability; timing of compensation versus impacts; property acquisition; and cost. The ~~alternatives-~~analysis shall compare the ability of each compensatory mitigation option to replace lost wetland acreage and function-functions or lost stream functions and water quality benefits.

- 9. **9 VAC-25-210-140. Public notice of VWP permit applications, permit actions and public comment periods.** A suggestion to clarify 9 VAC 25-210-140 A by deletion of the words “the initial” was discussed and rejected.

- 10. **9 VAC 25-210-175. Variances from VWP permit conditions.** Concerns over the granting of variances were raised and discussed. It was suggested that the current variance language needed to be tightened up. It was noted that can’t anticipate all of the options. It was also stressed that everyone doesn’t automatically get a variance, they have to demonstrate the items included in either 9 VAC 25-210-80 B 3 for Public Water Supplies or the items identified in 9 VAC 25-210-175 B are met. Staff agreed to work on this language.

- A. Following a discussion between staff and members of the TAC, it was agreed that the insertion of the words “health and safety” into 9 VAC 25-210-175 B 1 would address the concerns for tightening up the variance language.

1. Public health and safety interests are served by the issuance of such variance, and;



- B. An additional recommendation to include the word “immediately” in the wording of Section 9 VAC 25-210-175 F was also approved.

F. Public notice of any variance issued by the board shall be given as required for draft permits in 9 VAC 25-210-140 B, C, and D. Such notice shall be given immediately upon issuance of any variance and the board may modify such variances based on public comment. Publication costs of all public notices shall be the responsibility of the permittee.

**11. 9 VAC 25-210-180. Rules for modification, revocation and reissuance and termination of VWP permits.**

- A. A suggestion to delete 9 VAC 25-210-180 D 6 was discussed and rejected. (This is existing regulation language that was part of Section 9 VAC 25-210-190. Causes for Modification which was shifted to this section.)
- B. Staff recommended incorporating Section 9 VAC 25-210-200 into this section. The TAC members agreed with this recommendation.

9 VAC 25-210-180. Rules for modification, revocation and reissuance, transfer, and termination of VWP permits.

E. A VWP permit shall be transferred only if the VWP permit has been modified to reflect the transfer, has been revoked and reissued to the new permittee, or has been automatically transferred.

1. 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.

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

a. The current permittee notifies the board within 30 days of the proposed transfer of the title to the facility or property;

b. The notice to the board includes a written agreement between the existing and proposed permittee containing a proposed 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



c. The board does not within the 30-day time period notify the existing permittee and the new permittee of its intent to modify or revoke and reissue the VWP permit, and

d. The permit transferor and the permit transferee provide written notice to the board of the actual transfer date.

**12. 9 VAC 25-210-200. Transferability of VWP permits.**

- A. A suggestion to include the phrase “or a portion thereof” in Section 9 VAC 25-210-200 B was discussed and rejected.
- B. A suggestion to include the phrase “or a portion of the property subject to an individual VWP permit” in Section 9 VAC 25-210-200 B 1 was discussed and rejected.
- C. A suggestion to include the “proposed” date of transfer instead of the “specific” date in Section 9 VAC 25-210-200 B 2 was discussed and accepted.

2. The notice to the board includes a written agreement between the existing and proposed permittee containing a proposed 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

- D. A suggestion to include a new section 9 VAC 25-210-200 B 4 regarding the “actual transfer date” was discussed and accepted.

4. The permit transferor and the permit transferee provide written notice to the board of the actual transfer date.

- E. Staff suggested that 9 VAC 25-210-200 be moved into Section 9 VAC 25-210-180 in order to consolidate these items into one section. The TAC agreed to this suggestion.
- F. All the proposed and accepted changes to this section have been incorporated into 9 VAC 25-210-180 as illustrated above.

**13. Meeting Wrap-Up:** TAC members agreed to all of the other changes that had been incorporated into the regulation over the course of the TAC process and agreed that it was ready to send to the Board. It was noted that the presence and involvement of representatives from the federal agencies had helped to facilitate the discussions of the TAC and was most appreciated.

**14. Preparation for Final Meeting:** Mark Rubin pointed out that the Agenda for today's meeting identified a number of outstanding issues that the TAC could discuss at their last scheduled meeting on September 16<sup>th</sup>. These issues include: Streamlining; Advocacy; Designing process for cumulative impact modeling; Funding for cumulative impact modeling; and Legislation. Dave Paylor noted discussions of "streamlining" and "advocacy" were important and he would appreciate input from the TAC members at the meeting on the 16<sup>th</sup> as to how to proceed with addressing these topics. It was noted that the issue of "cumulative impact modeling design process" might need more technical input than that available from members of the TAC. It was agreed that the meeting on the 16<sup>th</sup> would serve as an opportunity for discussion of "streamlining" and "advocacy" and any other topics identified by the TAC members as needed further discussions.

**15. Meeting Adjournment:** Mark Rubin and members of the staff thanked all of the TAC members and Interested Parties for their participation and input to the TAC process. The meeting was adjourned at 3:00 PM.