

VIRGINIA WATER PROTECTION PERMIT PROGRAM REGULATION AND ASSOCIATED VIRGINIA WATER PROTECTION GENERAL PERMIT REGULATIONS

CITIZEN ADVISORY GROUP - MEETING #5 - NOTES - FINAL

MEETING MONDAY, OCTOBER 6, 2014

DEQ PIEDMONT REGIONAL OFFICE – TRAINING ROOM

Meeting Attendees

<i>CITIZEN ADVISORY GROUP MEMBERS</i>	<i>INTERESTED PARTIES</i>	<i>SUPPORT STAFF</i>
Nina Butler – Virginia Manufacturers Association/Mission H2O	Tom Broderick – Loudoun Water	Melanie Davenport
Katie Frazier – Virginia Agribusiness Council	John Brooks – Resource International/VTCA	Dave Davis
Bob Kerr – Kerr Environmental	Roger Cronin – Greeley & Hansen LLC	Mike Murphy
Dan Lucey – Virginia Homebuilders Association (Alternate for Mike Rolband)	Justin Curtis - Aqualaw	Bill Norris
Greg Prelewicz – Fairfax Water	Dean E. Dickey – Prince William Service Authority	Ann Regn
Peggy Sanner – Chesapeake Bay Foundation (CBF)	Steven T. Edgemon – Fairfax Water	Brenda Winn
Oula K. Shehab-Dandan – Dominion Resources Services, Inc. (Alternate for Jason Erickson)	Chris Edwards – Spotsylvania County	<i>OTHER DEQ STAFF</i>
	James Francis – Gloucester County	Elizabeth Andrews
	Christopher Gill – City of Norfolk	Lee Crowell
	Chris Harbin – City of Norfolk	Steve Hardwick
	Steven Herzog – Hanover County Department of Public Utilities	Scott Kudlas
	Jerry Higgins – Maury Service Authority/VA AWWA	Sarah Marsala
	Jay Johnstone - STANTEC	Bert Parolari
	Dave Kearney – City of Richmond	Jeff Steers
	John Lain – McGuire Woods LLP	Curt Thomas
	Thomas Leahy – City of VA Beach	
	Craig Maple – City of Chesapeake	
	Jim McCarthy – Hazen and Sawyer	
	David Morris – Newport News Waterworks	
	Glenn Muckley - STANTEC	
	Paul Peterson - ARCADIS	
	Art Petrini – Henrico County	
	Gary Robertson – Western VA Water Authority	
	Dan Savage – Chesapeake Bay Foundation (CBF)	
	Dennis Slade – Dominion Resources Services, Inc.	
	Wilmer Stoneman – Virginia Farm Bureau	
	Mark Williams – LUCK Companies	
	Andrea W. Wortzel – Troutman Sanders (Alternate for Nina Butler)	
	Beate Wright – Loudoun Water	

1. Welcome - Background Information - Introductions (Melanie Davenport):

Melanie Davenport, Director of DEQ's Water Division, welcomed the attendees to the meeting and thanked them for being here today. She noted that she wanted to take a few moments to attempt to set the stage for the current regulatory process especially given that there are a number of new folks in attendance at this meeting. We have a number of Virginia Water Protection General Permits that expire in 2016. Initially we began a regulatory action that would have involved reissuance of those permits and then realized that there were some improvements we needed to make to the underlying VWP regulation. So this is a combined effort of tweaking the base regulation so that then those changes can be incorporated into the General Permits as we move forward with reissuing them. As you are aware we cannot issue a permit that is not consistent with the underlying regulation.

It is fair to say that most of the conversations that we have had so far in this process relates to the wetlands and streams impacts that are involved, but we did start some conversations about actually moving the provisions related to surface water withdrawals into their own section. The theory being that they would then be in one place in the regulations. If you have every had to work through the VWP regulation with respect to surface water withdrawals you know that you have to flip constantly back and forth through the regulation because the requirements are interwoven throughout the regulation with some of the wetland and stream language. The big thing that we want to do is to actually get everything related to surface water withdrawal permitting into one spot.

Then we also have some proposed changes which we, at the staff level, think will improve the permitting process and ultimately permitting actions. One of things that we learned in going through the stormwater management program is that just because we at DEQ as a regulatory agency understand the regulation, understand an issue and propose a fix doesn't mean that our point of view is as broad as it needs to be and is consistent with how our stakeholders look at something. That is one of the keys in this process. We don't want there to be any "unintended consequences". We want to be clear about what we hope to accomplish with the changes to the regulation. We, at the staff level, also have spent about 12 months taking a really hard look, during a series of meetings, at the regulation and identifying issues that we didn't understand what they meant when were issuing the permit and looking at requirements that perhaps we didn't utilize and trying to figure out how we could use our compliance resources in a better way to actually target non-compliance.

The first look at this regulation was by DEQ staff. Early on in this internal process we looked at some language changes that could have been interpreted to change some of the underlying provisions regarding grandfathering and how that worked in a permitting process with respect to surface water withdrawals. We did look at some language related to grandfathering and we talked to Dave Paylor, Director of DEQ, about the proposed changes and the decision was made to take those proposals off the table. We are not going to pursue any changes to the regulations related to grandfathering related to the permitting process with respect to surface water withdrawals.

The bulk of what we are going to talk about today is reordering things for the world of surface water withdrawals and there are a few permitting concepts that we will be discussing. We wanted to make sure that as many folks that were particularly interested in surface water withdrawal permitting were

here today for this meeting. That is why we are here today. We do appreciate you all coming and listening. Again, one of our challenges is that we may see something that makes a lot of sense from our point of view, but we may not have the benefit of the experience of our stakeholders.

She then asked for introductions from today's meeting attendees.

2. Process and Schedule for the Day (Mike Murphy):

Mike Murphy, DEQ Piedmont Regional Office Manager welcomed the members of the Advisory Group and members of the Interested Parties to the meeting and thanked everyone for being here today. He went over the evacuation plan for the building in case of an emergency.

He noted that today's meeting is somewhat different from the group's other meetings, this is a slightly different group of public that is attending today. The members of the advisory group are sitting around the table. Our objective is to always try to get to consensus on these ideas and suggestions for language that staff has developed that we will be discussing. As has been mentioned is that one of our primary goals is to streamline the regulations but we never want to turn away from our bottom line which is protecting the environment and health and human resources.

He noted that the individuals sited at the table today are the official members of the Advisory Group and the conversations and discussions will take place between them and members of staff who will be presenting the topics and proposed revisions. He also noted that this is a public meeting. We have been real informal up to now in our previous meetings because there have been only a few members of the interested public in attendance, so there has been a lot of informal discussions that have been possible during the course of those meetings. However, today we have a larger number of interested parties in attendance today so we will need to have a more structured approach to accommodating any concerns from the public – we won't be able to call on folks as we have in the past to gain their input into the process. He stressed however that there will be an opportunity for those members of the public – “interested parties” to express their concerns either by working through a member of the Advisory Group during the course of the meeting or at the designated “public comment” period which will take place immediately after the lunch break today. We will set aside some time then to allow for members of the public to have an opportunity to make comments on the proposals presented today; this regulatory process; and the deliberations of the group.

Again we want to try to be respectful of the process and to try to get to consensus – we don't have to reach consensus in this process so if there are differing opinions at the end of this process then we will include those in our presentation to the board. It is the staff's obligation to make any consensus items as well as any areas where there was no consensus known to the board prior to their deliberations on the proposed language. The board is the body who will ultimately promulgate this regulation. Your presence and participation here today, in no way limits your ability to comment later in the process once the regulatory language is officially proposed and is put out for “public comment”. If you do make comments during the “public comment” period you will also have an opportunity to address the board when they consider the regulation as “final”.

3. Notes from Previous Meeting (September 22, 2014):

Bill Norris, Regulatory Analyst with DEQ's Office of Regulatory Affairs, asked the group if there were any edits needed for the notes from the previous meeting of the group on September 22, 2014.

ACTION ITEM: The notes from the September 22, 2014 meeting of the VWP Citizen Advisory Group will be revised as “Final” and submitted for posting on Town Hall.

4. Concerns and Comments from Members of the VWP Advisory Group (Ann Regn):

Ann Regn asked the members of the advisory group whether they had any advice; questions or concerns that they wanted to put on the table before the discussions take place today. The following items were noted:

- The staff has been very responsive to questions that have been raised.
- Anxious to hear the explanations for the changes that appear in the document – there appear to be quite a few changes that are incorporated here – glad to hear that “grandfathering” has been taken off the table – want to make sure that we are not substantially changing anything – hope that the additional folks that are here today have an opportunity to have their concerns heard.
- Hope that there will be plenty of opportunity given for those that are attending today to have their comments and concerns heard and noted by staff – appreciate DEQ making the effort to set up this special surface water withdrawal interest meeting.
- Before we get into a line-by-line discussion of the proposed changes, please present DEQ’s concept for these changes in broad themes as we look at each section of the regulation so that everyone has the same basic understanding of the process and the rationale behind the proposed changes.
- Thanks for setting up this special meeting of the Advisory Group to address the topic of surface water withdrawals. It is a very laudable and good goal to try to clarify these regulations but there is still a level of trepidation about making substantive changes that really don’t need to be made.
- During this process to date, the group has seen various pieces and parts of the regulation, it would be nice to be able to see the whole thing at one time, and so that we can make sure that there is nothing that is contradictory that is being proposed – to make sure that there are no unintended consequences of these actions.
- Would like to know the reasoning behind the proposed changes to the surface water withdrawal requirements as the changes are discussed.

5. Review and Discussion of Proposed Clarifications Specific to Surface Water Withdrawals – Background (Sarah Marsala):

Sarah Marsala, Surface Water Withdrawal Project Manager, with DEQ's Office of Water introduced the concepts and approach taken by staff on the proposed clarifications specific to surface water withdrawals. She noted the following:

- What has been distributed for discussion today is a “track-changes” version of the regulation components that address surface water withdrawals.
- What we hear from the members of the advisory group is that in order to make the proposed changes clearer and to make better use of the limited time available and make the time more productive for the proposed changes to be addressed through these “track-changes” versions.
- The “track-change” document outlines our thoughts – we are interested in getting your thoughts and feedback on these proposals.
- All of the “black” text is existing regulatory language from the current regulation that has been cut from other parts and sections of the regulation and pasted into this new proposed section or part to address surface water withdrawal requirements. The “track-changes” portions of the document are what is being proposed as changes/revisions to the regulations.
- The plan for today is to tackle each broad section at a time and provide an overview of each section and identify why we are proposing to make the changes and then to address each of the proposed changes before moving to the next broad section.

6. Review and Discussion of Proposed Clarifications Specific to Surface Water Withdrawals – Permitting Exclusions (Sarah Marsala):

Sarah Marsala, Surface Water Withdrawal Project Manager, with DEQ's Office of Water introduced the proposed clarifications specific to surface water withdrawals in the permitting exclusions section. These include the following:

9VAC25-210-(TBD). Exclusions from permits for surface water withdrawals [portions of -60]

- A.** The following surface water withdrawals are excluded from VWP permit requirements. Activities, other than the surface water withdrawal, which are contained in 9VAC25-210-50 and are associated with the construction and operation of the surface water withdrawal, are subject to VWP permit requirements unless excluded by 9VAC25-210-60 of this chapter. Other permits under state and federal law may be required.
1. Any surface water withdrawal in existence on July 1, 1989; however, a permit shall be required if a new § 401 certification is required to increase a withdrawal. To qualify for this exclusion, the surface water withdrawal shall be deemed to be in existence on July 1, 1989, if there was an actual withdrawal on or before that date that has not been abandoned.
 - a. Abandonment of a surface water withdrawal. A surface water withdrawal shall be deemed to be abandoned if the owner of the withdrawal system (i) notifies the DEQ in writing that the withdrawal has been abandoned or (ii) removes or disables the withdrawal system with the intent to permanently cease such withdrawal. Transfer of ownership or operational control of the withdrawal system, a change in use of the water, or temporary cessation of the withdrawal shall not be deemed evidence of abandonment. The notification shall be signed by the owner of record or shall

include evidence satisfactory to the DEQ that the signatory is authorized to submit the notice on behalf of the owner of record. Evidence may include, but shall not be limited to, a resolution of the governing body of the owner or corporate minutes.

- b. Information to be furnished to the DEQ. Each owner or operator of a permanent withdrawal system engaging in a withdrawal that is subject to this exclusion shall provide the DEQ the estimated maximum capacity of the intake structure, the location of the existing intake structure and any other information that may be required by the board. Each owner or operator of a temporary withdrawal system engaging in a withdrawal that is subject to this exclusion, where the purpose of the withdrawal is for agriculture, shall provide to the DEQ the maximum annual surface water withdrawal over the last 10 years. The information shall be provided within one year of the date that notice of such request is received from the DEQ and shall be updated when the maximum capacity of the existing intake structure changes. The information provided to the DEQ shall not constitute a limit on the exempted withdrawal. Such information shall be utilized by the DEQ and board to protect existing beneficial uses and shall be considered when evaluating applications for new withdrawal permits.
2. Any surface water withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal received a § 401 certification before January 1, 1989, with respect to installation of any necessary withdrawal structures to make such withdrawal; however, a permit shall be required before any such withdrawal is increased beyond the amount authorized by the certification.
 3. Any existing lawful unpermitted surface water withdrawal initiated between July 1, 1989, and July 25, 2007 that has complied with the Water Withdrawal Reporting Regulations (9VAC25-200), which is not subject to other exclusions contained in this section. The largest 12-consecutive month withdrawal that occurred in the 10 years prior to July 25, 2007 shall constitute a limit on the withdrawal that is excluded from permit requirements and any increase in that withdrawal above the limited amount shall require an application for a permit for the withdrawal system. All owners and operators of surface water withdrawals excluded from permit requirements by this section shall annually report withdrawals as required by Water Withdrawal Reporting Regulations (9VAC25-200). Failure to file annual reports either reporting actual withdrawals or the fact that withdrawals did not occur may result in the owner or operator being required to file an application and receive a permit prior to resuming any withdrawal. Information regarding excluded withdrawal amounts shall be utilized by the DEQ and board to protect existing beneficial uses and shall be considered when evaluating applications for new withdrawal permits.
 4. Agricultural surface water withdrawals from nontidal waters that total less than one million gallons in a single month.
 5. Surface water withdrawals from nontidal waters for all purposes other than agriculture that total less than 10,000 gallons per day.

6. Surface water withdrawals from tidal waters for nonconsumptive uses.
 7. Agricultural surface water withdrawals from tidal waters that total less than 60 million gallons in a single month.
 8. Surface water withdrawals from tidal waters for all purposes other than agriculture for which the combined consumptive and non-consumptive use volume totals less than two million gallons per day.
 9. Surface water withdrawals for firefighting or for the training activities related to firefighting, such as dry hydrants and emergency surface water withdrawals.
 10. Surface water withdrawals placed into portable containers by persons owning property on, or holding easements to, riparian lands.
 11. Surface water withdrawals for the purposes of hydrostatic pressure testing of water tight containers, pipelines, and vessels.
 12. Surface water withdrawals for normal single family home residential gardening, lawn, and landscape maintenance.
 13. Surface water withdrawals that are located on a property, such that the withdrawal returns to the stream of origin; not more than half of the instantaneous flow is diverted; not more than 1,000 feet of stream channel separate the withdrawal point from the return point; and both banks of the affected stream segment are located within that property boundary.
 14. Surface water withdrawals from quarry pits, such that the withdrawal does not alter the physical, biological, or chemical properties of surface waters connected to the quarry pit.
 15. Surface water withdrawals from a privately owned agriculture pond, emergency water storage facility, or other water retention facility, provided that such pond or facility is not placed in the bed of a perennial or intermittent stream or wetland. Surface water withdrawals from such facilities constructed in beds of ephemeral streams are excluded from permit requirements.
- ⊕B. DEQ may require any owner or operator of a withdrawal system excluded from permit requirements by subdivisions A 3 through 15 of this section to cease withdrawals and file an application and receive a permit prior to resuming any withdrawal when the board's assessment indicates that a withdrawal, whether individually or in combination with other existing or proposed projects:
1. Causes or contributes to, or may reasonably be expected to cause or contribute to, a significant impairment of the state waters or fish and wildlife resources;
 2. Adversely impacts other existing beneficial uses; or
 3. Will cause or contribute to a violation of water quality standards.

Sarah noted that the group should first look at the end of the section under new Section B (Old C) to see a correction that has been made to the document that was sent to the group for review. She noted that the document that had been sent to the group contained a reference to a strike-out of “B 3” and an addition of “A 1” in this paragraph”: “~~B~~. DEQ may require any owner or operator of a withdrawal system excluded from permit requirements by subdivisions ~~3~~A 1 through 15 of this section...” This has been corrected in the version that is being presented to the group on the screen today to read: “~~B~~. DEQ may require any owner or operator of a withdrawal system excluded from permit requirements by subdivisions A 3 through 15 of this section...”

- Group Comment: So what new B (old C) is saying that if you qualify for an exclusion under A 1 or A 2 that paragraph B does not apply? *Staff Response: Correct.*

She noted now that based on the comments of the group that she would go through each items being proposed for revisions and provide an opportunity for feedback from the group. Her presentation included the following:

- The section title has been revised to reflect that these requirements are related to surface water withdrawals.
- Section A now contains “linkage language” back to 9VAC25-210-60 – the traditional VWP exclusions section.
- There are no changes in A 1; A 1 a; A 1 b; or A 2.
- Section A 3 contains a number of track-changes. This is the section of the regulations that address exclusions for those activities that are classified as “conditionally grandfathered”, i.e., “any existing lawful unpermitted surface water withdrawal initiated between July 1, 1989 and July 25, 2007...” This requirement was included when the regulation went out in 2007 to institutionalize those sets of withdrawals, the maximum amounts they were withdrawing, as a limit – they had a deadline to submit that information which was a year – there was some level of flexibility in the submittal deadlines of that information. There was a huge mailing effort undertaken to get these withdrawers to submit the required information. Now we are 6 years past that deadline, so we are proposing to do is to update that section to identify what is required now. We don’t believe that this changes anything. The intent is to truncate the section and to identify what is required today. Some of the language is currently existing and was taken from existing section A 3 b and A 3 c. The intent is to delete all of the reference to information that was to have been submitted by July 25, 2008 (i.e., A 3 a (1) and (2)).
- The next proposed changes in the section are items A 5 and A 8 where the language used has been revised in an attempt to clarify the requirements. Staff does not feel that these proposed revisions change the intent of the text – it just clarifies it to say that activities “other than agriculture” fall into these categories of exclusions.

Group Discussions included the following:

- **RE: A 3:** What happened if any of these activities failed to submit the required information as required by the regulations? *Staff Response: If the information was never submitted then the activities were not “conditionally grandfathered” and therefore need they need a permit. Has DEQ required people in this situation over the past 6 years to get a permit? Staff Response: Yes – in order for an activity to fall under this exclusion they would have had to submit the required information within the time-frame provided. It was noted that this appears to be a big shift for some particular interest groups. Need to make sure that DEQ has been following the regulation requirements over the past 6 years and actually requiring permits for activities that failed to submit the required information within the originally allowed time-frame including the 1 year grace-period. Staff Response: The regulation did contain an original deadline and the one-year additional period to submit the information – that time has passed and now that exclusion category is no longer provided for in the regulation so a permit is required for those activities.*
- How about all of the information under existing A 3 a and A 3 a (1) & (2)? *Staff Response: All of that language is being proposed to be stricken – it corresponds to the annual reporting requirements.*
- There was an opportunity for large agricultural operations to estimate their withdrawal amounts to establish their limit, how is that handled with the proposed language that reads: “The largest 12-consecutive month withdrawal that occurred in the 10 years prior to July 25, 2007 shall constitute a limit...” *Staff Response: That could be one of the methods used to arrive at this withdrawal amount and what their largest usage was. This becomes the established – the conditionally grandfathered” - withdrawal amount and it the operator exceeds this amount then they need to get a permit.*
- A concern was noted that there may be some confusion over this requirement since there is no requirement to identify which method you used to calculate this maximum withdrawal amount and no methods for calculating this withdrawal amount are specified in the regulation. Is there a need to include a notation of whether the maximum withdrawal amount is estimated or measured?

ACTION ITEM: Staff will look at the requirements to see if a notation regarding the need to identify the method used to calculate the maximum withdrawal amount, i.e., estimated or measured, needs to be included as a proposed revision to the regulation.

- Is there a threshold for exceedence of the withdrawal? *Staff Response: No just that they used more than their original estimate for their maximum withdrawal.*
- **RE: A 8:** Why is staff proposing to insert the word “non-consumptive” in A 8? *Staff Response: Items 6; 7; and 8 all deal with tidal waters. Item 6 says that if it is all non-consumptive it is excluded. Item 7 says that for agricultural surface water withdrawals if it is less than 60 million gallons in a single month it is excluded. Item 8 comes in to deal with everything else, i.e., all other uses less than two million gallons per day. Staff has come to realize that there is apparently some confusion over whether that applies to both consumptive and non-consumptive components of a withdrawal. Most, if not all, withdrawals have both a “consumptive” and a “non-consumptive” component that needs to be considered and included. These are normally*

not broken out as separate components – the whole withdrawal amount is what is considered. The amount considers the total amount that is being withdrawn from a stream, both that portion that is considered consumptive and that portion that is considered non-consumptive. The change in A 8 appears to be a substantive change when compared with A 6 which is an exclusion for non-consumptive uses. Staff Response: A 6 is totally “non-consumptive: so it all goes back into the tidal waters. In a tidal water the impacts of that use and return would be minimal.

- **RE: A 6:** A proposal was made to revise this exclusion to read: “6. Surface water withdrawals from tidal waters for solely non-consumptive uses.” It was suggested that this would need to be looked at in regard to what is included in the definitions section.
- **RE: A 8:** A proposal was made to revise this exclusion to read: “8. Surface water withdrawals from tidal waters for all purposes ~~other than agriculture~~ for which the combined consumptive and non-consumptive use volume totals less than two million gallons per day.”

7. Review and Discussion of Proposed Clarifications Specific to Surface Water Withdrawals – Definitions (Sarah Marsala):

Sarah introduced the proposed clarifications specific to surface water withdrawals in the permitting exclusions section. These include the following:

9VAC25-210-(TBD). Definitions for surface water withdrawals [portions of -10]

"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.

"Agricultural surface water withdrawal" means a withdrawal of surface water in Virginia or from the Potomac River for the purpose of agricultural, silvicultural, horticultural, or aquacultural operations. Agricultural surface water withdrawals include withdrawals for turf farm operations, but do not include withdrawals for landscaping activities, or turf installment and maintenance associated with landscaping activities.

"Consumptive water use" means a surface water withdrawal through a man-made conveyance system or impoundment, or any part thereof, due to evaporation, transpiration, domestic use, incorporation into products or crops, or diversion from the source basin or any other process by which the water is not returned undiminished in quantity **at or near the point from which it was taken.**

"Drought" means the declaration of a Drought Stage by the Virginia Drought Coordinator or the Governor of Virginia for a particular area or locality within Virginia. Drought stage declarations include Watch, Warning and Emergency, depending upon severity, as defined by the Virginia Drought Assessment and Response Plan.

“Drought of Record” means the time period during which the most severe drought conditions occurred for a particular area or location, as indicated by the available hydrologic and meteorologic data.

"Emergency Virginia Water Protection Permit" means a Virginia Water Protection Permit issued pursuant to § 62.1-44.15:22 C of the Code of Virginia 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.

“Human consumption” means the use of water to support human survival and health, including drinking, bathing, showering, cooking, dishwashing, and maintaining hygiene.

“Instream flow” means the natural variation of water levels and flows of a stream or waterbody.

"Intake structure" means any device or combination of devices that is part of a withdrawal system used to withdraw surface water that is located within the surface water, such as, but not limited to, a machine, pump, pipe, culvert, hose, tube, screen, or fabricated concrete or metal structure.

Major river basin” means the Potomac-Shenandoah River Basin, the Rappahannock River Basin, the York River Basin, the James River Basin, the Chowan River Basin, the Roanoke River Basin, the New River Basin, or the Tennessee-Big Sandy River Basin.

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"Nonconsumptive use" means the use of water withdrawn from a surface water in such a manner that it is returned to the surface water without substantial diminution in quantity at or near the point from which it was taken and would not result in or exacerbate low flow conditions.

"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 § 181 of the Water Resources Development Act of 1976, Public Law 94-587, as modified on April 22, 1986.

Public water supply "means water from a surface water in Virginia or from the Potomac River used for the production of drinking water, distributed to the general public for the purpose of, but not limited to, human consumption.

"Public water supply emergency" means a substantial threat to public health or safety due to insufficient public drinking water supplies caused by drought.

“Safe yield” means the highest average annual volumetric rate of water that can be withdrawn by a surface water withdrawal during the worst drought of record in Virginia since 1930 under specific operational conditions established in a permit.

"Section for Cooperative Water Supply Operations on the Potomac (CO-OP)" means a section of the Interstate Commission on the Potomac River Basin designated by the Water Supply Coordination Agreement as responsible for coordination of water resources during times of low flow in the Potomac River.

"Surface water withdrawal" means a removal or diversion of surface water from a waterbody in Virginia or from the Potomac River for consumptive or nonconsumptive use thereby altering the instream flow or hydrologic regime of the surface water. Projects that do not alter the instream flow or that alter the instream flow but whose sole purpose is flood control or storm water management are not included in this definition.

"Variance" means a mechanism which allows temporary waiver of the generally applicable withdrawal limitation requirements or instream flow conditions of a VWP permit.

"Water Supply Coordination Agreement" means the agreement among the United States of America, the Fairfax County Water Authority, the Washington Suburban Sanitary Commission, the District of Columbia, and the Interstate Commission on the Potomac River Basin, dated July 22, 1982, which establishes agreement among the suppliers to operate their respective water supply systems in a coordinated manner and which outlines operating rules and procedures for reducing impacts of severe droughts in the Potomac River Basin.

"Water supply plan" means a document developed in compliance with 9VAC25-780 et seq.

"Withdrawal system" means i) one or more surface water withdrawals located on the same or contiguous properties under common ownership for which the withdrawal is applied to the same beneficial use or (ii) two or more connected surface water withdrawals which are under common ownership but are not necessarily located on contiguous properties.

Sarah presented each of the proposed changes/revisions to the "definitions" section. Her presentation included the following:

- The title of the section has been revised to include a clear reference that these are definitions that relate to surface water withdrawals.
- Staff is proposing revisions to the definitions because of what we have learned since 2007 – we may be applying definitions a little differently than originally anticipated, or we are using one that has not been defined. The revisions that are being proposed are being made in an attempt to provide greater clarity.
- The term "Consumptive Water Use" is not defined in Code but is proposed as revised for inclusion in the regulations.
- The revision of the definition of "drought" makes it align with the "Virginia Drought Assessment and Response Plan" which is what we are currently using.
- The term "Drought of Record" is a new definition that is being proposed.

- The definition of “Human Consumption” is consistent with VDH. They are undertaking a concurrent regulatory action and this is the definition that they are proposing and they have requested that DEQ include it in these regulations.
- The term “instream flow” is used in the regulation and a new definition is being proposed. This definition was developed through a search of how other states and programs across the US defined the term.
- The term “intake structure” incorporates language from the “withdrawal system” definition.
- The term “Major river basin” has been added in the definitions section – it deals with water supply planning and inter-basin transfers. Also, in some areas of the state the major river basins don’t line up well with the HUC codes so each of the basins is identified by name in the definition.
- The definition of “withdrawal system” is pretty much similar to the term used in the groundwater regulations for groundwater withdrawal system. The proposal is to revise the definition to reflect how we use the word in current practice and to provide consistency with the groundwater permitting regulations.
- The definition of "nonconsumptive use" is a statutory definition that is being proposed to be brought into the regulation.
- The definition of "Public surface water supply" is being revised through some wordsmithing to remove the terms "withdrawal" and "surface" to define a "use" and to include the phrase "human consumption" instead of "domestic use". This is to conform to VDH current terminology.
- The definition of "safe yield" is being proposed. This is how DEQ defines it. We have been coordinating with VDH who is also looking at their regulations and they are planning on removing the definition of "safe yield" from their regulations and that it should be defined in these regulations.
- Staff is proposing to delete the terms "major surface water withdrawal" and "minor surface water withdrawal" to eliminate the distinction between a major and a minor withdrawal. The rationale for these deletions will be addressed during the discussion of the "application section" of the regulations.
- Staff is proposing to delete the term "surface water supply project" because this definition overlaps with the term "surface water withdrawal". This is a type of use considered as a "surface water withdrawal". This is being proposed to clarify the terms.
- Staff is proposing to incorporate the definition of "surface water supply project" into the definition of "surface water withdrawal".
- A definition of "variance" is being proposed for inclusion in these regulations as clarifying language. It was crafted from language from the VPDES regulations.
- A definition of "water supply plan" is also being proposed. It just refers them back to the regulations for water supply planning.

Group Discussions included the following:

- **RE: Drought:** Does the removal of the reference to a “Severe Intensity Drought (D2)” lessening the level of drought that is being referenced here with this change? *Staff Response: No, because “D2” is just one of several components that are used and looked at to determine drought level.*
- **RE: Consumptive water use and “man-made conveyance system”:** What is included in a “man-made conveyance system”? This term does not have a definition. Does it need to be defined? Can it be or does it need to be linked to another definition for clarity? How does that relate to “intake” or “intake structure” which is defined? Does “intake structure” include everything that would be considered a “man-made conveyance”? It was noted that the term “man-made conveyance system” is fairly well understood because it is tied to the Clean Water Act. It was suggested that we might not want to remove the definition but instead we may need to add something to it for clarification.

ACTION ITEM: Staff will look at the term “man-made conveyance system” to determine if a definition is needed or whether there is some clarifying language that should be added.

- **RE: “Consumptive water use”:** A question was raised as to whether we need to call out the specific items of “evaporation”, “transpiration” etc. in the definition. How would “transpiration” be calculated? *Staff Response: That would be handled on the permitting side of the requirements. The reason that those items were proposed to be specifically identified was to make it clear that there are a number of different ways that water loss can occur and therefore needs to be accounted for.*
- **RE: “Consumptive water use”:** The definition needs to be clarified – it doesn’t make sense as worded – either we are missing a word or the order of the words is incorrect. It was suggested that it should be reworded to delete the phrase “or any part thereof”. The wording needs to be reviewed to make sure it is clear. The revised definition would then read: "Consumptive water use" means a surface water withdrawal through a man-made conveyance system or impoundment, ~~or any part thereof~~, due to evaporation, transpiration, domestic use, incorporation into products or crops, or diversion from the source basin or any other process by which the water is not returned undiminished in quantity at or near the point from which it was taken. Further clarification and/or rewording was requested.

ACTION ITEM: Staff will review the definition of “consumptive water use” to see if the wording needs to be revised to better clarify the meaning.

- **RE: “Consumptive water use” and “cooling water”:** If you have a cooling water intake and 2% evaporates - does that turn it into a “consumptive use” and now therefore require a permit? *Staff Response: If they are using it for cooling water and there is an evaporative loss then it is a consumptive use and would require a permit. Evaporation is a consumptive loss.*
- **RE: “Consumptive water use” and the phrase “incorporation into products or crops”:** If I am an agricultural user but am I now covered under the consumptive use category too? *Staff Response: If you are irrigating you are a consumptive water use. But that is an agricultural*

surface water withdrawal. *Staff Response: The agricultural water withdrawal describes a type of use and there are two of those, one for public water supplies and agricultural surface water. Uses can be consumptive or non-consumptive. They have components of both. So, if I am an agricultural user and I am defined as both a consumptive and a non-consumptive use. Staff Response: Yes, but the real question is what exclusion would you fall under or qualify for – an agricultural withdrawal would fall under the “agricultural exclusion” in the exclusion section of the regulation. The “exclusions section” specifies several specific examples that needed to have a different exclusion specified – agriculture is one of those – firefighting is another. A concern was raised over an activity, specifically agricultural water withdrawals, being defined and included as both a consumptive and a non-consumptive use and what may happen with staff turnover at DEQ and a possible different interpretation of the exemption for agriculture as it relates to the consumptive and non-consumptive components of its water withdrawals. If a farmer comes in for a permit for irrigation and staff tells him that since he is “incorporating it into his crops” then he doesn’t get his exemption. Staff Response: Maybe we are not communicating this correctly – every water use has a consumptive and non-consumptive component – the governing factor related to the exemptions is not whether your use is consumptive or non-consumptive it is your use category, for example are you a “public water supply” or “agriculture”? You would fall into that exemption category. The concern is that now the definition is now very specific and may lead to some confusion and that in the future it may lead to someone being told that they do not fit into the agricultural exemption because of the consumptive component of their water use. The question is which exemption or category of use takes priority? Staff Response: The problem may be the addition of the term “other than agricultural use” in the Exclusion section categories. It was suggested that the exclusion noted in number 8 in the Exclusion section should be reworded to try to clarify the intent and to address this concern. A 8 should be revised to read:*

8. Surface water withdrawals from tidal waters for all purposes total less than two million gallons per day.

ACTION ITEM: Staff will revise the wording in the exclusion section based on comments from the advisory group regarding the use of the phrase “other than agriculture” that had been proposed for inclusion but will now be deleted.

- A suggestion was made that maybe the exclusions noted for agriculture and non-agricultural activities should be separated into separate subsections as a way to clarify them. There needs to be a way to separate agricultural use from the discussion of consumptive versus non-consumptive use.

ACTION ITEM: Members of the Advisory Group and Staff will revisit the Exclusions section and see if there are wording changes or organizational changes that could be made that would clarify the requirements and address the concerns noted.

- The terms “evaporation” and “transpiration” seem to be incredible broad terms – everything else seems to be much more specific – why are these terms included in the definition of “Consumptive water use”? *Staff Response: Evaporation comes into play with the cooling water process – transpiration is related to irrigation practices. When staff crafted this definition, a search as to how other people were defining consumptive water use was undertaken and resulted in the definition that is being proposed. These are all calculated components of the water balance. All of these items are all part of the hydrologic model that have calculated values. The values for evaporation come in the permit application; the values for transpiration come from either land-use type or stock type – they are all text book values.* There seems to be a jumble of processes and uses included that are confusing. Could you use the terms “cooling water” and “irrigation” instead? *Staff Response: That would be too limiting – what we are trying to identify is through what means is water consumed.* It was noted that all uses have an evaporative loss component.
- How about the term “non-consumptive”? *Staff Response: There is a proposed definition of “non-consumptive use” that is taken from the Code. The term “consumptive use” is not defined in the Code.*
- It was suggested that the definition of “Consumptive water use” be revised to include the phrase “or use” and would then read:

"Consumptive water use" means a surface water withdrawal through a man-made conveyance system or impoundment, or any part thereof, due to evaporation, transpiration, domestic use, incorporation into products or crops, or diversion from the source basin or any other process or use by which the water is not returned undiminished in quantity at or near the point from which it was taken.

- The group discussed the terms “consumptive water use” and “non-consumptive water use” and noted that the terms have to match up. Could we just way that “consumptive water use” is everything that is not “non-consumptive”? The definitions have to match up. Why complicate things with the definition?

ACTION ITEM: Staff and members of the Advisory Group will review the definition of “consumptive water use” to see if there is a way to revise it to simplify and clarify the term.

- What is DEQ trying to accomplish through the addition of these terms? What is the underlying purpose? *Staff Response: The thought was that these additions would serve to clarify the requirements. The surface water portions of the VWP regulation were developed to address instream flow – maintaining instream flows sufficient to protect beneficial uses. All of the sections that you look at related to non-consumptive use (which is a statutorily defined term) speak to periods of low flow. During a drought of record or a period of low flow everything is based on the size of the withdrawal, and whether as has been noted a 2% evaporative loss is significant or not. 2% of a 50 MGD withdrawal is a significant impact during periods of low flow. If it is a 1 MGD withdrawal or a 10,000 gallon a day withdrawal, which is the threshold, then it is not such a big deal. That is the overarching principle is trying to better respond when*

we are trying to define consumptive and non-consumptive. The other component to consider is that large consumptive uses have a significant impact on downstream uses during times of low flow. Staff is looking for help from the group as to how we should define these terms and incorporate them into the regulation revisions so that we can better address both consumptive and non-consumptive uses and continue to maintain stream flows sufficient to protect beneficial instream uses. We need to make sure that we get the information that we need to be able to run the analysis needed.

- **RE: “Instream flow”:** Are there other existing DEQ regulations where this term is defined? *Staff Response: Not that we are aware of.* It was suggested that the definition as written does not read right. The instream flow is not the natural variation but it is the level of flow, including the natural variation. In addition shouldn't this refer to “over some time period” or “over time”? It was suggested that the definition be revised to read:

“Instream flow” means the level of flow, including the natural variation of water levels and flows of a stream or waterbody over time.

ACTION ITEM: Staff will review the definition of “instream flow” and work with the comments and suggestions of the Advisory Group to revise and clarify the definition.

- It was suggested that when we review the proposed revisions to the Minor Modification section of the regulations that we may need to revisit the definition of “instream flow”.
- **RE: “Intake structure” and the inclusion of some of the existing language from the definition of “withdrawal system”:** Would the replacement of a pump or machine result in requiring a permit? *Staff Response: If there is a change to the permit conditions then a minor modification would be required.*
- **RE: “Intake structure”:** Do you need to say “a withdrawal system used to withdraw surface water”? Couldn't it be reworded to read “a system used to withdraw surface water”? *Staff Response: The term “withdrawal system” is a term of art and is a defined term.*
- **RE: “Withdrawal system”:** The group discussed the definition of “withdrawal system”. What is the effect of only addressing withdrawals with the same beneficial use? Is it possible that there may be multiple or different beneficial uses for the same withdrawal? Want to make sure that the definition doesn't exclude any withdrawals that have more than one beneficial use.
- **RE: “Withdrawal system”:** How does this work in concert with the elimination of the major and minor surface water categories? If there is a manufacturing facility that is expanding and traditionally they might get a minor withdrawal permit because they have a temporary withdrawal associated with the construction of that expansion and simultaneously they may be applying for a major withdrawal associated with their long term operation of that expanded area. They have an existing withdrawal that they have a permit for. So in that context when they come in for a VWP permit for their two new withdrawals, one that has traditionally been a minor temporary withdrawal and one that is a long term major withdrawal would that then have to be combined with the existing withdrawal permit? And all be one withdrawal system? How would this work? *Staff Response: First there is not a minor surface water withdrawal permit*

versus a major. They are all permitted under the same VWP Individual Permit. They all go through the same process. When someone comes in with a project, program staff looks at it the type and amount of withdrawal that is being proposed and whether it is a construction or operational withdrawal. If a project is looking to irrigate a golf course through the use of two separate ponds that is considered one project because the purpose is the same. If the impact is going to occur at the same time it would be looked at cumulatively. Is the purpose of this definition to try to bring more withdrawals under the same umbrella when DEQ is issuing permits? Staff Response: No, it is trying to update it to how we currently look at withdrawals. There may be more than one intake for a project but it is still one system, we are looking to permit the whole system.

- **RE: “Withdrawal system” and “connected surface water withdrawals”:** The group discussed how properties under common ownership are handled relative to the surface water withdrawals being “connected”. It was suggested that the concept of “independent utility” needed to be included in the definition. The group discussed various options to clarify this definition. It was proposed that the definition should be revised to read:

"Withdrawal system" means i) one or more surface water withdrawals located on the same or contiguous properties under common ownership for which the withdrawal is applied to the same beneficial use or (ii) two or more connected surface water withdrawals which are under common ownership but are not necessarily located on contiguous properties that do not have independent utility or that are part of a single and complete operation.

- It was noted that there is extensive case law to support the concept of "single and complete" operation.
- **RE: "Public water supply" definition and the replacement of the term "domestic use" with "human consumption":** If the term "domestic use" is being deleted throughout the regulation and being replaced with the term "human consumption" then the definition of "consumptive water use" also needs to be revised. The definition needs to be revised to read:

"Consumptive water use" means a surface water withdrawal through a man-made conveyance system or impoundment, or any part thereof, due to evaporation, transpiration, ~~domestic use~~ human consumption, incorporation into products or crops, or diversion from the source basin or any other process or use by which the water is not returned undiminished in quantity at or near the point from which it was taken.

- **RE: "Safe yield":** It was suggested that the term "safe yield" should be defined by VDH in their water works regulation. The term is currently used in the regulation but it is not defined. Staff Response: DEQ proposed back in 2004 and 2005, because our regulations always had the term included, to define the term "safe yield". But VDH preferred not to have it defined in the DEQ regulations. Now they prefer that it be defined by DEQ in their regulations because their lawyer has told them they can't allocate water. If the facility limiting factor is the safe yield of the source, which is what this proposed definition is about, then that is the purview of DEQ.

That is why this is being proposed. We have been coordinating this with VDH. The original VDH definition of "safe yield" always had a proviso that said that "oh by the way go to DEQ on advice on how to calculate your safe yield". We have been doing that since 1992/1993. This is an effort to better define the roles of the two agencies and what their statutory authorities are.

- **RE: Removal of the term "domestic use":** Instead of replacing the term "domestic use" with the term "human consumption" should both terms be included? Are we leaving something out by replacing the term? Are there other uses that could be classified as "domestic use" that are not covered by "human consumption"?

ACTION ITEM: Staff will reexamine the replacement of the term "domestic use" with the term "human consumption" to determine if we would be missing any uses that might be considered "domestic use" by this replacement.

- **RE: Definition of "Surface water withdrawal" and the terms "instream flow" and "hydrologic regime".** It was noted that the term "instream flow" is a defined term while "hydrologic regime" is not. Why is "hydrologic regime" not defined? Does it need to be defined? Or can it be stricken? What is the difference between the two? *Staff Response: We may be able to strike the term "hydrologic regime". Typically, "hydrologic regime" is going to be a particular instream flow pattern for a particular body of water.*

ACTION ITEM: Staff will look at the use of the terms "hydrologic regime" and "instream flow" to see if there is a way to clarify the definition and the use of these terms.

- Does a nonconsumptive use ever alter the instream flow? *Staff Response: Yes, for a stretch between the intake and the outfall – it alters the instream flow of that section of the water body.*
- **RE: Definition of "surface water withdrawal" and "sole purpose is flood control":** It was suggested that there may be other purposes other than "flood control" that might need to be included or considered that could alter instream flow or hydrologic regime. *Staff Response: This is existing language that is just being moved within the regulations.* It was noted that there is no desire to expand on these two exclusions in the definition.
- **RE: Definition of "Variance":** Is this a new definition? *Staff Response: Yes.* Does this reflect new practice since the original regulations? *Staff Response: The concept of a "variance" was included in the 2007 Regulation changes for surface water withdrawals. This came about because of the drought of 2002 – in a number of jurisdictions they were within 60 days of running out of water – they requested that their flow-by be reduced or released for a small period of time. That became an institutionalized practice by DEQ when those types of conditions were present. The language that is being proposed was added into the Emergency Water Supply Withdrawal Permit and was added into the Code in 2003. There was some language about emergency water withdrawals during drought that was added in 2007. We are proposing the add language related to a "variance", because that is what DEQA has always called it. It has been used to address drought conditions and also to meet human consumptive needs during a drought when a drought gets to a certain point. In addition, we sometimes get*

requests by law enforcement personnel to adjust the release from an impoundment to for search and rescue operations – these types of requests are handled as a short term variance.

- A concern was noted that by including the term and definition of "variance" here that it might imply that there are more than "emergency conditions" that staff has described. Should we consider adding the term "emergency" or a similar concept to this definition?

ACTION ITEM: Staff will look at the definition of "variance" to determine whether the concept can be clarified. They will consider the inclusion of the term "emergency" or a similar concept in order to clarify the definition.

8. Review and Discussion of Proposed Clarifications Specific to Surface Water Withdrawals – Coordinated Review with VMRC (Sarah Marsala):

Sarah Marsala, Surface Water Withdrawal Project Manager, with DEQ's Office of Water introduced the proposed clarifications specific to surface water withdrawals in the coordinated review with VMRC section. The proposed revisions include the following:

9VAC25-210-(TBD). Coordinated review with the Virginia Marine Resources Commission on applications for surface water withdrawals [previously -140.A]

- A. The Department of Environmental Quality (DEQ) shall coordinate the review of applications for surface water withdrawals that also requires a Virginia Marine Resources Commission permit under § 28.2-1205 of the Code of Virginia with the Virginia Marine Resources Commission (VMRC) in accordance with § 62.1-44.15:5.01 of the Code of Virginia.
- B. The initial application for surface water withdrawals that requires both an individual Virginia Water Protection Permit and a Virginia Marine Resources permit under § 28.2-1205 of the Code of Virginia shall be advertised concurrently by the DEQ and the VMRC. Such advertising shall be paid for by the applicant.

She noted the following:

- Part of the proposed language is existing language.
- The proposal is to bring in a reference to the Code requirements.
- There is some proposed wordsmithing to the existing language that is being moved.

9. LUNCH BREAK – 11:50 – 1:05

10. Status of Regulatory Process – Melanie Davenport:

Melanie Davenport provided a brief status report on the current regulatory process. She noted that she wanted to explain something to the Advisory Group members and the members of the Interested Public here today. We have had a constant challenge with this regulation because it is a fair amount of

information and reorganization and when looked at in a "track-changes" mode can prove to be very confusing. One of the issues that have come up repeatedly in the context of the advisory group meetings is the 180-day time frame that the Governor's Executive Order imposes on the agency to actually move from one stage of the regulatory process to another. She noted that she had promised to the advisory group that she would talk to Dave Paylor about whether or not we had any latitude to go past that 180-day limit. This is a potentially important consideration because we are not going to have a final cover-to-cover copy of a revised regulation with complete changes until probably after the October 15th meeting. So folks are concerned about their ability to get through a bunch of information in a very short period of time. The position that Dave Paylor has taken is that he will not force us to take a regulation to the State Water Control Board in December if we are not ready, but he has also asked that we keep working towards that goal. Because the Governor has said that we have 180-days to get this work done. In the previous administration the Executive Order related to regulatory process had a variance opportunity for agencies to ask for some more time – that mechanism is not included in the current Executive Order. We do not know what the consequences of not meeting the deadline are, but Dave has asked for the group and staff to do as much as they can to meet the deadline, but if the group has not had a chance to read through everything and the work is not done and we are not comfortable with what is going to the Board in December, we will talk about extending the process. We are trying to keep things moving and we will reevaluate things in terms of how much more work is needed after the October 15th meeting. Another point that some of the Advisory Group members have made is that as representative members of organizations that they have obligations to inform their member organizations of what is being proposed and that there needs to be time to allow for their review and that input. We understand that there needs to be time for folks to share the final draft of the proposed revised regulation with other folks. So we are going to play it by ear, but please don't feel like we are going to force this in December. We will just see where we are following the October 15th meeting of the Advisory Group. One of the challenges today in looking at the proposed revisions in sections rather than as a whole complete document that it is sometimes hard to keep track of what is new language and what is existing language that is being relocated. We hope to be able to give everyone time needed to review the proposal in its entirety when we have a final draft later this month.

11. Public Input Time/Public Comment Time:

Mike Murphy noted that this is a little bit of a departure from the norm for folks that are sitting at the table as members of the Advisory Group. Up until now, we have been interacting with folks in the audience throughout the course of the meetings in a very informal setting. Because of the large attendance today, we were unable to do that. In recognition of folks who have made the effort to be here and some folks traveled a long way to get here, we thought that we would add an informal comment period. He noted that if someone makes comments today that they are not held to those comments and they will be eligible as other members of the public and committee members are to make official public comments during any "official comment period" held for the proposed regulations. He noted that we had 5 individuals sign-up to make informal comments at this time. He suggested that the commenters be limited to a no more than 5-minute time limit each. The following comments were made during this informal public input/public comment period:

- **Steve Edgemon – Fairfax Water:** We have been, with the assistance of Greg Prelewicz participating in this process throughout. At the last meeting, we really got to the point of seeing that we were going to have to let other members of our other varied associations that we are involved with in the water industry see what was being proposed and to know about where we

were in this process. Certainly appreciate the comments made by staff on timing. That is our number one issue at this point. The engagement of members of the water industry at this point is really fairly new compared to where they thought they were after the advertisement for this process came out. At that point we really thought that based on the advertisement that there weren't going to be major changes. The grandfathering topic being off the table has certainly helped meet some of our concerns. But would appreciate further explanation of what we will be seeing next time. We are looking at the timing issue as one of having the ability to get the number of water organization across the state to be involved in this process and to understand what the "definitional changes" are. We need to have time to be able to understand how all of this is going to affect us and the other water organizations across the state.

- **Dean Dickey – Prince William Service Authority:** Want to echo Steve Edgemon's comments. I thought that this was just an administrative exercise and type of change and wasn't really paying that much attention to the process. Most of the water folks out in the state are kind of in that same realm. It is really important to slow down the process and make sure that there are no unintended consequences and that we get comments from everyone that is in this industry on the changes that are being proposed. The impression out that is that these are strictly administrative changes, but I have seen enough and heard enough today in this meeting that there are the potential for some unintended consequences that nobody here wants. I would recommend that we extend the time for the process, at least for the water withdrawal portions of the regulations.
- **Tom Broderick – Loudoun Water:** Appreciate the changes and comments related to the grandfathering clause. It was interesting to hear the discussions on the proposed definitions. Maybe this process is not as simple as it first seems. Hope that DEQ does consider possible extending the time period for the process if we can't get to a consensus within the group. Thank you for your work here.
- **Steve Herzog – Hanover County Department of Public Utilities:** Could just say "ditto" to all the other comments that have been made. Thank you for the clarification that "grandfathering" is off the table. When we first saw the NOIRA, we felt it was just going to be some administrative changes, so let's not worry about it. When we heard about the possibility of changes to the grandfathering, we became more interested in the process. Seeing some of the proposed changes appear to be more significant that we had originally anticipated. We are becoming involved late in the process, but we are involved now and would like to stay involved in the process. Hopefully there will be more time to allow for adequate review and input into the process. We don't want to be out there saying that we think we have a bad proposed regulation when it is out there for public comment. We prefer not to be in that position later.
- **Chris Gill – Christian and Barton – City of Norfolk:** Would like to add another "ditto" to the comments that have been made previously. We were mainly concerned about any proposed revisions to the grandfathering clause. Really liked the discussions on the definitions. A lot of good work is being done. One definition that I am still unclear on is the one for "safe yield". The question is whether we are really talking about the safe yield to protect a water source of a VDH permit safe yield, because that is reference to specific operational conditions. Are we

talking about a VDH permit or a DEQ permit? How does that apply to grandfathered withdrawals? This needs to be clarified.

Mike Murphy asked whether there were any others that wanted to make comments at this time. There were no additional comments made, but Mike noted that there appeared to be a general agreement among those present that additional time was needed.

12. Review and Discussion of Proposed Clarifications Specific to Surface Water Withdrawals (Continued) – Preapplication Requirements (Sarah Marsala):

Sarah Marsala introduced the proposed changes specific to surface water withdrawals in the preapplication procedures section. The proposed revisions included the following:

9VAC25-210-(TBD). Preapplication procedures for a new or expanded surface water withdrawals. [previously -75]

- A. Preapplication review panel. At the request of a potential applicant for a surface water withdrawal proposing to the Department of Environmental Quality (DEQ) to withdrawal 90 million gallons a month or greater, a preapplication review panel shall be convened prior to submission of a VWP application. The preapplication review panel shall assist potential applicants that are proposing surface water withdrawals 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 U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. 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 practicable 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. Preapplication public notice. For new or expanded surface water withdrawals requiring an individual VWP permit and proposing to withdrawal 90 million gallons a month or greater, 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.
1. Except as provided in this subsection, the potential 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 withdrawal is proposed to be located.
 2. If requested by any person, the potential applicant shall hold at least one public information meeting. Notice of any public information meeting held pursuant to this subsection shall be provided at least 14 days prior to the public information meeting date and shall be published in the same manner as required in subdivision 1 of this subsection. A potential 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 potential applicant's intent to apply for a VWP permit for a surface water withdrawal;
 - b. The proposed location of the surface water withdrawal;
 - c. Information on how the public may request a public information meeting or in the alternative, the date, time and location of the public information meeting;
 - d. The name, address and telephone number of the potential applicant, or an authorized representative who can answer questions or receive comments on the proposed surface water withdrawal; and
 - e. A statement of how any oral or written public comments will be used.
3. In accordance with the provisions of 9VAC25-780-50 C 11 and 9VAC25-780-150, 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 two 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.
 4. The potential applicant shall maintain a list of persons and their addresses making comment and shall make a good faith effort to notify commenters, at the address provided by the commenter, when the public notice for the draft VWP individual permit is available.
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She noted the following:

- The proposed revisions are existing language that is being pulled from the current regulations with some wordsmithing throughout for clarity.
- Nothing substantial is being proposed – some for just readability – others to reflect revisions to the definitions – just changes to terminology.

13. Review and Discussion of Proposed Clarifications Specific to Surface Water Withdrawals (Continued) – Complete Application Requirements (Sarah Marsala):

Sarah Marsala introduced the proposed clarifications specific to surface water withdrawals in the complete application section. The proposed revisions included the following:

9VAC25-210-(TBD). Application requirements for surface water withdrawals [portions of -80]

A. Persons proposing to initiate a new surface water withdrawal not excluded from requirements of this chapter by 9VAC25-210-[TBD-withdrawal exclusions section], proposing to reapply for a current permitted withdrawal or a Federal Energy Regulatory Commission (FERC) license or re-license associated with a surface water withdrawal, shall apply for a VWP permit.

B. In addition to requirements of 9VAC25-210-80, applications for surface water withdrawals or a Federal Energy Regulatory Commission (FERC) license or re-license associated with a surface water withdrawal, shall include:

1. As part of identifying the project purpose, the applicant shall provide a narrative describing the water supply issues that form the basis of the proposed project purpose.
2. The drainage area, the average annual flow and the median monthly flows at the withdrawal point, and historical low flows if available;
3. The average daily withdrawal, the maximum daily, monthly, annual and instantaneous withdrawals and information on the variability of the demand by season. If the project has multiple intakes, provide for each individual intake and the cumulative volumes for the entire system.
4. The monthly consumptive use volume (in million gallons) and the average daily return flow (in million gallons per day) of the proposed project and the location of the return flow, including the latitude and longitude and the drainage area (in square miles) at the discharge point.
5. Information regarding the following along the affected stream reach. For projects that propose a transfer of water resources from a major river basin to another major river basin, this analysis should include both the source and receiving basins.
 - a. Evaluation of the flow dependent instream and offshore beneficial uses. Instream beneficial uses include, but are not limited to: the protection of fish and wildlife habitat; maintenance of waste assimilation; recreation; navigation; and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to: domestic (including public water supply); agricultural; electric power generation; and commercial and industrial uses.
 - b. The aquatic life, including species and habitat requirements.
 - c. How the proposed withdrawal will alter flows.
6. 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 9VAC25-210-[TBD-withdrawal avoidance and minimization section]. The board shall deem such a submittal as meeting the requirements of this subsection. For public surface water supply withdrawal projects see also 9VAC25-780-100 and 9VAC25-780-130.
7. Information describing the intake, to include intake screen mesh size and intake velocity,
8. For withdrawals proposed from an impoundment, provide the following:
 - a. Description of the flow or release control structures, including the minimum rate of flow (in cubic feet per second), size and capacity of the structure and the mechanism to control the release.

b. Surface area (in acres), maximum depth (in feet), normal pool elevation, total storage capacity and unusable storage volume (in acre-feet).

c. The stage-storage relationship.

9. Provide information and discuss any discrepancies with the water supply plan that covers the area in which the surface water withdrawal is located, including information pertaining to projected demand, analysis of alternatives, and water conservation measures. If all or a portion of the withdrawn water will be transferred to an area not covered by the plan, information should also be provided from the water supply plan for the area of the receiving watershed.

10. An alternative analysis for the proposed surface water withdrawal, including at a minimum, the criteria in 9VAC25-210-[TBD-withdrawal avoidance and minimization section].

11. For new or expanded surface withdrawals proposing to withdraw 90 million gallons a month or greater, a summary of the steps taken to seek public input as required by 9VAC25-210-[TBD-withdrawal pre-application section] and an identification of the issues raised during the course of the public information meeting process.

12. For new or expanded surface water withdrawals that involve a transfer of water between major river basins that may impact a river basin in another state, a plan describing procedures to notify potentially affected persons, both in and outside of Virginia, of the proposed project.

13. For surface water withdrawals, other than public water supplies, information to demonstrate that alternate sources of water supply are available to support the operation of the facility during times of reduced instream flow.

C. Applications for an Emergency Virginia Water Protection Permit to address a public water supply emergency:

1. Applications for an Emergency Virginia Water Protection Permit shall include the information noted below in subdivisions a through o. The JPA may be used for emergency applications purposes, provided that all of the information below is included:

a. Name, mailing address, telephone number, and if applicable, fax number and electronic mail address of applicant;

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

c. If applicable, name of authorized agent, mailing address, telephone number, and if applicable, fax number and electronic mail address;

d. Name of waterbody or waterbodies, or receiving waters, as applicable;

e. Name of the city or county where the project occurs;

f. Signed and dated signature page (electronic submittals containing the original-signature page, such as that contained in a scanned document file are acceptable);

g. Application processing fee in accordance with 9VAC25-20;

- h. The drainage area, the average annual flow and the median monthly flows at the withdrawal point, and historical low flows if available;
 - i. Information on the aquatic life along the affected stream reach, including species and habitat requirements;
 - j. Recent and current water use including monthly water use in the previous calendar year and weekly water use in the previous six months prior to the application. The application shall identify the sources of such water and also identify any water purchased from other water suppliers;
 - k. A description of the severity of the public water supply emergency, including for reservoirs, an estimate of days of remaining supply at current rates of use and replenishment; for wells, current production; for intakes, current streamflow;
 - l. A description of mandatory water conservation measures taken or imposed by the applicant and the dates when the measures were implemented; for the purposes of obtaining an Emergency Virginia Water Protection Permit, mandatory water conservation measures shall include, but not be limited to, the prohibition of lawn and landscape watering, vehicle washing, the watering of recreation fields, refilling of swimming pools, the washing of paved surfaces;
 - m. An estimate of water savings realized by implementing mandatory water conservation measures;
 - n. Documentation that the applicant has exhausted all management actions that would minimize the threat to public welfare, safety and health and will avoid the need to obtain an emergency permit, and that are consistent with existing permit limitations; and
 - o. Any other information that demonstrates that the condition is a substantial threat to public health or safety.
2. 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.
-

She noted the following:

- Staff is proposing to do away with the regulatory distinction between a minor surface water withdrawal and a major surface water withdrawal. That distinction is purely regulatory and has no bearing on how staff reviews surface water withdrawals – it is the same level of review whether you are a minor or a major surface water withdrawal. The same level of information is needed in either case. The distinction comes down to whether you need a preapplication notification for that particular project.
- What staff has found in its review of the regulation and since 2007 is that when we are reviewing a surface water withdrawal, we need the same amount of information whether or not they qualify for the regulatory distinction. The amount of impacts that a particular withdrawal may have on a system varies upon the size of the system they are in. For example, if you have a 2 million gallon per day max withdrawal from the James River getting close to tidal, it will

have less of an impact than if you were going to have that size withdrawal from a smaller system. The scale of that impact would be different. The same level of information is needed.

- The proposed Section A is new language to clarify "who needs to apply".
- The proposed Section B is existing language – it is from the project alternatives section. The new part of B is new language to bring in a 2012 Code change into the regulation.
- B 1 is new language to provide a tie-in back to the water supply planning effort.
- B 3 is proposed new language on the last sentence as clarification of informational requirements.
- The proposed changes to B 4 related to consumptive use bring it into line with the Joint Permit Application and the information that is requested.
- The language in B 5 and B 5 a; b; and c is all existing language that is being proposed to be reorganized slightly. The language in 5 a is straight from the statute. This was added to the Code in 2014.
- B 6 is an updating of a reference.
- B 7 is a proposed addition to reflect information requested in the Joint Permit Application.
- B 8 is requesting impoundment information – this is also in the Joint Permit Application.
- B 9 is related to water supply plans and discrepancies and is currently required in the Joint Permit Application and addresses recent changes in the Code related to water supply plans.
- B 10 is to pull in alternative analysis discussions.
- B 11 is basically an effort to update terminology related to the public input components.
- B 12 pulls into the regulation the requirements related to interbasin transfer from the Code. This is a cut-and-paste from the Code.
- B 13 is a renumbering only.
- Staff is proposing to delete the existing "minor surface water withdrawal section" because staff is proposing to do away with the distinction between minor and major withdrawals since the same information is required for both.
- Staff is not proposing any changes to the "Applications for an Emergency Virginia Water Protection Permit" section.

Group Discussions included the following:

- A question was raised regarding inclusion of the language related to "FERC license". *Staff Response: A clarification that these projects are associated with "a surface water withdrawal" was added.*
- Can information already compiled for a water supply plan serve as the narrative requested in proposed B1? *Staff Response: Yes, the Water Supply Plan can support your application. If the Regional Water Supply Plan is applicable to the project proposed to be permitted and is part of the application then portions of the plan could support the application. If the project is not included as a component of a Water Supply Plan then the information would need to be*

tailored to fit the informational requirements of the application. The response would need to be tailored to support the proposed project.

- **RE: "B 3" and the use of the term "instantaneous":** A concern was noted over the use of the term "instantaneous". What does that mean? What are the units of time involved? *Staff Response: Usually it is in "feet per second" – what the pump is actually or proposed to be operating at. This is existing language.*
- **RE: B 7:** What about screen sizes? *Staff Response: No screen sizes are asked for here only the information. Screen size information/units is requested in the application but not here.*
- **RE: B 9:** It was noted that from a manufacturers perspective that the information requested relative to any discrepancies with the water supply plan could be a very time consuming effort. *Staff Response: It is not anticipated that this would be time consuming – if the withdrawal is not in the water supply plan than a simple – it is not in the water supply plan would be a sufficient notation. In addition, staff can also provide this information (the water supply plan) to the applicant – this refers to the Regional Water Supply Plans. The Water Supply Plan is a planning tool. This proposed language provides a mechanism to meet the requirement in the Code for DEQ to review the water supply plans – it is an informational tool for us to use.*
- **RE: B 9 and "not being in the plan":** The group discussed the implications and concerns about what was meant by "not being in a water supply plan". *Staff Response: There are two categories of "not being in the plan" and this proposed language was thought to address both but maybe some rewording is necessary. The first type of "not being in the plan" is that we are an industry or an agricultural user and the locality didn't talk to us in the development of their plan so we are not accounted for in the plan – if you are not accounted for in the plan then you don't need to do any of these things – the other class of people is – okay, I'm accounted for in the plan and I've given four alternatives for how I'm going to meet my demand over the period covered by the plan but I'm coming in for a permit for an alternative that was not included in the plan – those people in that category need to provide the information that is requested in B 9. It was noted that the 2nd category is very clear but there may be some wordsmithing needed to clarify how the 1st category is handled. There is clarification needed. Staff Response: Maybe it can be addressed similar to B 5 and use a "B 9 a" and a "B 9 b" to cover the different scenarios. It was suggested that staff might want to consider adding the phrase "if applicable" to the requirements identified in this section. Staff Response: The overall intent is to have the discussion in the application regarding whether you are included in a water supply plan or not and if you are then you considered it.*

ACTION ITEM: Staff will look at the proposed language in B 9 and try to identify some clarifying language that could be inserted. Staff will consider revision and clarification of this informational requirement.

- **B 10 – alternative analysis:** What does this mean? This could be very simple or very complex. It could also be an expensive and time consuming study as well. *Staff Response: It is quite clear in the regulations as to what is requested for an "alternatives analysis" and is explained in the "Alternatives Section". Basically it is an analysis that looks at whether you just looked at*

this one resource for a withdrawal, especially if you are a new withdrawal, or did you look at other water supply source. The specific requirements are addressed in the "Alternatives section". This section is here to identify the information needs for the applications. Are there any identified thresholds? Staff Response: No, there are no thresholds – they are all Individual Permits – so staff does the full evaluation for every surface water withdrawal request that comes in. The defacto threshold is 300,000 per month, which is whether or not you need a permit or not. An alternative analysis is an important part of every application and evaluation of any proposed impacts. It was noted that this requirement is in existing law. Staff Response: Every water withdrawal must to an alternatives analysis. This is existing language. The intent of the inclusion of the requirement here is to make it clear that the potential applicant has to go to this other section of the regulations that specify the requirements for an alternatives analysis.

- **RE: The section on Minor withdrawals being proposed for deletion:** What weren't you getting on those minor withdrawal applications that you are getting now? What is the major difference between the two categories? It seems like a lot of information that they are being asked to submit. What are the differences? *Staff Response: Under the minor application all they are required to submit is information about the location about where the withdrawal is located and how much they propose to do. This appears to be a significant change – this is a significant amount of information that is now being requested. Staff Response: In the existing regulation, the information that was just reviewed is required any project that would have an instream flow requirement – that pretty much applies to all withdrawals. You really don't know if a project has an instream flow requirement until you do the analysis. How does that work right now? Staff Response: Staff would request that additional information for a minor surface water withdrawal after they come in with the application. DEQ does its own in-house modeling so some of the information that may be difficult for some applicants to do or obtain could be provided by DEQ. The concern is that with future cutbacks that the option of the agency assisting and providing that kind of information might not be available in the future. This is a huge change in what could be required in an application. Staff Response: It may appear that way regulatorily, but when you start looking at the requirements it is nothing that isn't already required and needed. The information is what is needed to do an assessment of the application. The only real difference is the number of words – as far as what is actually in the application at the time it is deemed complete there is no change – there is no difference in the information requirements for a minor and a major surface water withdrawal. The minor water withdrawal section was a place holder anticipating that we were going to have a general permit for minor surface water withdrawals – but that effort failed. An alternatives analysis is required under the 401 process and statutorily our VWP permit is that 401 Certification. Anything that requires a 404 permit needs a 401 – so an alternative analysis is going to have to be done regardless because the federal agencies will require it. Because this is a Joint Permit Application that serves not only DEQ's informational needs but also the informational needs of VMRC; the Corps; Fish and Wildlife; and DGIF – the information requirements in the applications are all the same. It still appears to be a major change from the existing language.*

Staff Response: What we are trying to be clear about is what we are going to be asking for. We ask for it anyway so why not ask for it upfront so everyone is clear as to what ultimately is needed.

ACTION ITEM: Staff recognizes that there is a lot of anxiety about the proposed changes and will review the proposed text to see if there is a way to clarify what is needed and see if there is a better way to explain what staff is trying to do.

- **RE: C 5 and C 10 which are proposed to be deleted:** The section C is what original exists for minor surface water withdrawals and this is the documentation that was requested with regard to the withdrawal. You could put this text back into the regulation as written. A proposal was made to reinsert C 5 and C 10 back into the regulations as written.

5. Documentation of all withdrawals associated with the application, including, but not limited to, the amount of the requested surface water withdrawal, a description of the proposed intake structure, and a schedule of the proposed withdrawal that describes any seasonal variations in withdrawal patterns;

10. Any application for a minor surface water withdrawal for a public surface water supply withdrawal project shall provide an evaluation of project alternatives as required in 9VAC25-210-115.

ACTION ITEM: Staff will take the proposal to reinsert C 5 and C 10 back into the regulations into consideration.

- It was noted that if the words don't change then to the public nothing changed. *Staff Response: The process doesn't change so there is no clarity – would rather be upfront and clear as to what we are going to require instead of saying "now that you are in the door, we now need this additional information."*
- The concern was noted that this still appears to be a significant change. Lots of the same information identified in B 1-13 is included in C 1-10. *Staff Response: We feel like we are doing a disservice if someone has to go to multiple sections to identify what is needed in an application.*
- The feeling was that this is a huge shift in the requirements. *Staff Response: The bottom line is that staff reviews all of the applications the same.*

ACTION ITEM: Staff will review this section to see if there is any clarifying language that could be added.

14. Review and Discussion of Proposed Clarifications Specific to Surface Water Withdrawals (Continued) – Evaluation of Project Alternatives (Sarah Marsala):

Sarah provided an overview of the proposed revisions to the "evaluation of project alternatives" which

included the following:

9VAC25-210-(TBD). Evaluation of project alternatives for surface water withdrawals [previously -115.A, B, and C. 2 and 3]

- A. The applicant shall demonstrate to the satisfaction of the board that the project meets an established local water supply need. In establishing local need, the applicant shall provide the following information:
1. Existing supply sources, yields and demands, including:
 - a. Peak day and average daily withdrawal;
 - b. The safe yield and lowest daily flow of record;
 - c. Types of water uses; and
 - d. Existing water conservation measures and drought response plan, including what conditions trigger their implementation.
 2. Projected demands over a minimum 30-year planning period, including the following:
 - a. Projected demand contained in the local or regional water supply plan developed in accordance with 9VAC25-780 or for the project service area, if such area is smaller than the planning area; or
 - b. Statistical population (growth) trends; and
 - c. Projected demands by use type; and
 - d. Projected demand without water conservation measures; and
 - e. Projected demands with long-term water conservation measures.
 3. Any alternatives analysis conducted specifically withdrawals for public surface water supply 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 9VAC25-780;
 - (2) Alternatives that are practicable or feasible from both a technical and economic standpoint that had not been identified in the local or regional water supply plan developed in accordance with 9VAC25-780;
 - (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 project purpose and project demonstrated need as documented pursuant to subsections A and B of this section;
 - (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, including:
 - (a) Land use within a watershed where the type of land use may impact the water quality of the source;
 - (b) The presence of impaired streams and the type of impairment;
 - (c) The location of point source discharges; and
 - (d) Potential threats to water quality other than those listed in subdivisions 2 c (9) (a) through (c) of this subsection.
4. Any alternatives analysis conducted for surface water withdrawals other than for public surface water supply, shall include all applicable items included in subdivision 2 of this subsection.
-

She noted the following:

- All of the black text is current requirements.
- A 3 refers to "alternative analysis. This section should be revised to read:

3. Any alternatives analysis conducted specifically for withdrawals for public surface water supply shall include:

- A 4 is proposed to be wordsmithing for clarity and to address proposed definition revisions.
- These are all existing requirements with some wordsmithing for clarity.

15. Review and Discussion of Proposed Clarifications Specific to Surface Water Withdrawals (Continued) – Duty to Reapply (Sarah Marsala):

Sarah reviewed the proposed clarifications specific to surface water withdrawals in the duty to reapply section which included the following:

9VAC25-210-(TBD). Duty to Reapply for a Permit for the Continuation of a Surface Water Withdrawal (new)

A. Any permittee with an effective permit for a surface water withdrawal shall submit a new permit application in accordance with 9VAC25-210-[VWP reauthorization section] at least 270 days before the expiration date of an effective permit unless permission for a later date has been granted by the board. If a complete application for a new permit has been filed in a timely manner, and the board is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit, the permit may be administratively continued.

B. The applicant shall provide all information described in 9VAC25-210-[TBD-withdrawal application requirements] and applicable portions of 9VAC25-210-80 for any reapplication. The information may be provided by referencing information previously submitted to the department that remains accurate and relevant to the permit application. The board may waive any requirement of 9VAC25-210-[TBD-withdrawal application requirements] and the applicable portions of 9VAC25-210-80.B, if it has access to substantially identical information.

She noted the following:

- Staff is proposing to add this section – it is similar to what is in the Groundwater Permitting section.
 - The intent is to clarify for anyone that has to come in for a permit that to be able to continue to operation over time what is needed to resubmit an application – currently the regulations are silent on reapplication requirements.
 - We want to address the fact that surface water withdrawals are ongoing activities.
 - Section B is the informational requirements.
-

Group Discussions included the following:

- Why is the time limit set at 270 days? *Staff Response: It is the same amount of time that is currently given for a groundwater withdrawal permit. This would provide consistence between the two withdrawal programs. Typically it takes DEQ approximately 9 to 12 months to issue because of the review and analysis – a reissue with change should be a much quicker process.*

The other default time limit is 180 days for VWP is generally not enough time to do the public comment period and meet the other requirements of the regulations.

- The thought to include some wording regarding "if not applicable" or "if applicable" to add flexibility was raised. *Staff Response: The terms "accurate" and "relevant" should address that concern.*

16. Review and Discussion of Proposed Clarifications Specific to Surface Water Withdrawals (Continued) – VWP permit conditions applicable to surface water withdrawals (Sarah Marsala):

Sarah provided an overview of the proposed revisions related to "VWP permit conditions applicable to surface water withdrawals" which included the following:

9VAC25-210-(TBD). VWP permit conditions applicable to surface water withdrawals [previously 110.A]

- A. In addition to the conditions established in 9VAC25-210-90 and 9VAC25-210-100, each VWP permit shall include conditions meeting the conditions in this section, where applicable.
- B. 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, the safe yield, 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 combined effect on the hydrologic regime within an affected stream reach due to consumptive water uses associated with:
 - a. All existing permitted withdrawals;
 - b. The total amount of withdrawals excluded from VWP permit requirements; and
 - c. Any other existing lawful withdrawals.
 4. VWP Permits for surface water withdrawals, other than for public water supply, shall identify how alternate sources of water supply will be made available to support the operation of the permitted facility during times when surface water withdrawals will be curtailed due to instream flow requirements or shall provide for modification of the operation of the facility to assure compliance with permit conditions. Such modifications may include, but are not limited to, termination or reduction of activities at the facility that are dependent on the

permitted withdrawal, increase capacity to capture and store higher flows or implementation of other potential management options.

- C. WWP permits issued for surface water withdrawals from the Potomac River between the Shenandoah River confluence and Little Falls shall contain a condition that requires the permittee to reduce withdrawals when the restriction or emergency stage is declared in the Washington Metropolitan Area under the provisions of the Potomac River Low Flow Allocation Agreement; or when the operating rules outlined by the Drought-Related Operations Manual for the Washington Metropolitan Area Water Suppliers, an attachment to the Water Supply Coordination Agreement, are in effect. The department, after consultation with the Section for Cooperative Water Supply Operations on the Potomac (CO-OP) shall direct the permittee as to when , by what quantity and for what duration withdrawals shall be reduced.
- D. The board may issue permits for new or expanded surface water withdrawals, which are not excluded from the requirements of this chapter by 9VAC25-210-60, based on the following criteria:
1. The amount of the surface water withdrawal is limited to the amount of water that can be put to beneficial use.
 2. Based on the size and location of the surface water withdrawal, the withdrawal is not likely to have a detrimental impact on existing instream or off-stream uses.
 3. Based on an assessment by the board, this withdrawal, whether individually or in combination with other existing or proposed projects, does not cause or contribute to, or may not reasonably be expected to cause or contribute to:
 - a. A significant impairment of the state waters or fish and wildlife resources;
 - b. Adverse impacts on other existing beneficial uses; or
 - c. A violation of water quality standards.
 4. In cases where the board's assessment indicates that criteria contained subdivision 3 b or c of this subsection are not met, the board may issue a permit with any special conditions necessary to assure these criteria are met.

She noted the following:

- "A" deals with the linkage language.
- "B" – the word "safe yield" is proposed to be added.
- "B 4" has some proposed wordsmithing.
- "D" has some proposed revisions so that all withdrawals are addressed.
- "D 4" has proposed deletions because there is no other applicable permitting process for surface water withdrawals.

Group Discussions included the following:

- It was suggested that Subsection A needed some tweaking – there were one too many "conditions" in the section:

A. In addition to the conditions established in 9VAC25-210-90 and 9VAC25-210-100, each VWP permit shall include ~~conditions meeting the~~ conditions in this section, where applicable.

- **RE: B and "safe yield":** Does this mean that "safe yield" is an instream flow condition? *Staff Response: Safe yield is one of the things that is reviewed relative to a public water supply. Staff has encountered a significant number of safe yields that people either say they were given by the Health Department or had from old permits that basically they calculated the safe yield of an impoundment by bringing the entire volume down to "0". The safe yield under current law is based on the worst drought since the 1930's. So if we had a drought that was worse than the 1930's drought you are going to run dry. We don't think that is "safe". By definition we do not think that is a safe yield. So DEQ's proposal here is to make sure that you have 60 days left in your reservoir during the 1930's drought of record in case we have a worse drought. So that was the thinking behind that. The same works for a run of the river intake – the VDH concept of a safe yield for a run of the river intake is that you can take all of the 1Q30 – well, No you can't. The reason is that every time that there is a new user above or below the intake or there is a fisheries flow or there is some other flow that is identified by a commenting agency, which we have to consider, you can't take all of the 1Q30.*

17. Review and Discussion of Proposed Clarifications Specific to Surface Water Withdrawals (Continued) – Modifications of Permits (Sarah Marsala):

Sarah introduced the proposed clarifications specific to surface water withdrawals in the modifications of permits section which included the following:

9VAC25-210-(TBD). Modifications to surface water withdrawal permits [new and portion from -180-D.6]

- A. In addition to the requirements of 9VAC25-210-180-B, VWP permits for surface water withdrawals may be modified when any of the following developments occur:
1. When the board determines that minimum instream flow levels resulting directly from the permittee's withdrawal of surface water are detrimental to the instream beneficial use, existing at the time of permit issuance, and the withdrawal of surface water should be subject to further net limitations or when an area is declared a surface water management area pursuant to §§ 62.1-242 through 62.1-253 of the Code of Virginia, during the term of the VWP permit.
 2. Significant changes to the location of the withdrawal system are proposed such that DEQ determines a new review is warranted due to the potential affect of the surface water withdrawal to existing beneficial uses of the new location.

3. Changes to the surface water withdrawal or the operations of that withdrawal, including increasing the storage capacity for the surface water withdrawal, that propose an increase in the maximum permitted withdrawal volumes or rate of withdrawal or a change to the instream flow requirements.
 4. A revision to the purpose of the surface water withdrawal that proposes to include a new use or modify the existing authorized use.
- B. Minor modifications may be made in the VWP permit for surface water withdrawals without following the public involvement requirements of 9VAC 25-210-140, 9VAC 25-210-160, or 9VAC 25-210-170. Minor modifications may only occur in accordance with 9VAC25-210-180.E and the following items specific to surface water withdrawals:
1. Minor changes to the location of the withdrawal system, as determined by the DEQ, and thus not warranting a new review of the affect of the surface water withdrawal to existing beneficial uses.
 2. Allow for temporary changes to instream flow requirements or operational requirements to address situations such as withdrawal system improvements, environmental studies, or as otherwise determined appropriate by DEQ.
 3. Changes to operations of the surface water withdrawal that will result in no change or a decrease in the permitted withdrawal volumes or rates or minimal change to the instream flow requirements.
 4. Changes to the monitoring methods or locations of monitoring sites for instream flow requirements or surface water withdrawal requirements.

She noted the following:

- This is proposed to address those modifications specific to surface water withdrawal permits.
- "A" has the linkage language.
- This section deals with both major and minor modifications.
- "A 1" is existing language for modifications for withdrawals.
- "A 2" through "A 4" are new provisions for a major modification.
- "B" addresses minor modifications of a surface water withdrawal – four provisions are proposed under this section.

Group Discussions included the following:

- It was noted that the term "affect" used in "A 2" should be changed to "effect". It was also noted that there were other instances where this change may need to be made. (Also found in "B 1".)

ACTION ITEM: Staff will examine the use of the terms "affect" versus "effect" and make the

necessary changes throughout the regulations, if applicable.

- What is meant by "increasing the storage capacity for the surface water withdrawal"? *Staff Response: This is in case someone wanted to increase the size of a reservoir such as raising the dam. Any increase in storage capacity would affect instream flow. Staff reviewed examples of changes in storage capacity and potential changes in dam structure and heights under the guise of meeting the new dam safety requirements.*
- The group discussed the current allocation requirements.
- The group discussed the "obligation" to modify. *Staff Response: A minor modification "may" be used to address the provision noted in B 1; 2; 3; and 4.*
- **RE: B 3 and the term "minimal":** What is meant by "minimal change to the instream flow requirements"? *Staff Response: It is up to DEQ's review – minimal means that it will not have an effect or impact on beneficial instream flow.*

ACTION ITEM: Staff will look at the use of the term "minimal" and see if there is a clearer way to make this statement and to identify this provision.

- How are changes in ownership addressed? *Staff Response: Those are covered under the regular VWP requirements. There is linkage back to those requirements noted in B.*
- The group discussed changes to instream flow requirements and the topic being included as both a major modification and a minor modification. *Staff Response: What staff is looking at is which instream flow changes result in a modification such that there is change in instream beneficial use with a need to go back out for review by other state agencies for comments and for public comments.*
- How is the discretionary nature of the items under B handled? *Staff Response: If you already have a permit and you choose to do something different – if you are doing something less than that is your choice – we are trying to say that if you are doing something less than we are going to use a certain administrative process to address those changes and activities.*
- The group discussed the use of the term "may" and the discretionary nature of the use of the minor modification mechanism. *Staff Response: The reason behind the incorporation of this language related to minor modifications is to lock down those things that can occur or may occur under this mechanism – if it does fall into the minor modification category then it has to be handled as a major modification.*
- The group discussed the possible need to incorporate a "catch-all" category under minor modifications. *Staff Response: "B 3" was an attempt to provide that "catch-all" mechanism.*

ACTION ITEM: Staff will look at the proposed language to address "minor modifications" and see if there is a way to make the requirements clearer. They will take into consideration any comments and suggestions made by the Advisory Group. The possible addition of a "catch-all" category will also be considered. Suggestions from the Group were requested.

- The group discussed instream flow and the impacts of additional storage.
- It was suggested that "B 3" might need to be wordsmithed to clarify it.

ACTION ITEM: Staff will look at the wording of "B 3" to clarify what "changes" actually mean.

- It was suggested that staff may want to look at the wording of what is now proposed as A 1 (old #6) for possible wording to address the concerns noted by the group in "B".

18. Review and Discussion of Proposed Clarifications Specific to Surface Water Withdrawals (Continued) – Variances (Sarah Marsala):

Sarah introduced the proposed clarifications specific to surface water withdrawals in the variance section which included the following:

9VAC25-210-(TBD). Variance from surface water withdrawal permit conditions [previously -175]

- A. For public water supplies. The board may grant a temporary variance to any condition of a VWP permit for a surface water withdrawal for public water supply to address a public water supply emergency during a drought. A permittee requesting such variance must provide all information required in the application for an Emergency Virginia Water Protection Permit identified in 9VAC25-210-[TBD-withdrawal emergency VWP application section].
- B. For all other water supplies. The board may grant a temporary variance to any condition of a VWP permit for a surface water withdrawal during a drought. A permittee requesting such variance must affirmatively demonstrate;
 - 1. Public health and safety interests are served by the issuance of such variance; and
 - 2. All management actions consistent with existing permits have been exhausted.
- C. As a condition of any variance granted, the permittee shall:
 - 1. Modify operations or facilities to comply with existing VWP permit conditions as soon as practicable; or
 - 2. Provide new information to the board that alternate permit conditions are appropriate and either apply for a new VWP permit or a modification to their existing VWP permit. The board shall review any such application consistent with other sections of this regulation.
- D. In addition, the board may require the permittee to take any other appropriate action to minimize adverse impacts to other beneficial uses.
- E. Any variances issued by the board shall be of the shortest duration necessary for the permittee to gain compliance with existing permit conditions, apply for a new VWP permit, or request modification of existing permit conditions.

F. Public notice of any variance issued by the board shall be given as required for draft permits in 9VAC25-210-140 B, C, and D. Such notice shall be given concurrently with the 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.

She noted the following:

- There are no changes proposed for this section only some wordsmithing to support changes in the definitions and updating of references.

19. Final Comments:

- **RE: Exclusions and Grandfathering:** There are no proposed changes to section "A 1" relative to "grandfathering" or to "A 2".

ACTION ITEM: Katie Frazier offered to provide draft revisions to the language related to consumption and nonconsumptive use addressed in A 3 – 15. Staff will look at the wording of these sections to try to incorporate the concerns voiced by the group.

- **RE: Correction of Typos:** These are addressed under the regular VWP requirements.
- **RE: Request for More Time:** Melanie Davenport noted the following regarding the status of the request for additional time: Here is what we are thinking. There is a significant press on Sarah and the rest of the staff to digest everything that has been discussed today and to come up with something that incorporates the discussions for the next version. We have a cycle of getting comments from the group and promised language. We will give you a deadline for when we expect stuff from you (Thursday COB). This is the deadline for suggested changes. Some of the unknown is when we will be able to take all of this material from all of these scheduled meetings and turn it into some proposed final language – into one final document that shows the final proposed language. And then to determine how much time is fair to give everybody to share with your individual groups and organizations and to get those comments and suggestions back to us. If we don't get anything out to you until late October and you say you need at least 6 weeks then we know we will probably miss the December Board meeting – at which point I go back to Dave and tell him it doesn't look good. Don't know exactly how that time frame is going to work or unfold but we should know by the October 15th meeting.
- **RE: Concept of safe yield and the current VDH regulatory process:** Some concerns were noted over making sure that the current VDH process and their concepts related to the handling of safe yield were fully considered in the process – time is needed to make sure the status of that process.
- **RE: The regulatory process and General Permits:** The concept of proceeding with the reissuance of the General Permits under the existing regulation was discussed as an option if worse comes to worse and the process is bogged down through timing or length of time in Executive Review or for whatever reasons. The General Permits could be reissued as they currently exist as a last resort if needed.

- **RE: Homework Assignments and Incorporation of Comments and Suggestions into a Draft Document:** It was noted that it was important for members of the advisory group to be prompt in returning the homework assignments in a timely manner so that staff can consider the comments. The homework submittals and comments have been incorporated into the main regulation – to the extent possible we will try to provide a fairly complete draft regulation to review by the next meeting.
- **RE: Timing of Additional Comments:** It was noted that there needs to be time to incorporate additional comments but there needs to be additional time or an additional meeting to consider changes to the surface water withdrawal changes. An additional meeting may be needed.
- **RE: A complete version of the changes:** A complete document incorporating all of the proposed changes needs to be provided with sufficient time for review and consideration by the group as well as their associated organizations.
- **RE: Proposed Changes related to Surface Water Withdrawals:** There was some suggestion that the surface water withdrawal proposed changes might be better handled separately from the rest of the proposed changes to the VWP.

20. Public Comment (Bill Norris):

Bill Norris asked for Public Comment. No public comment was offered.

21. Next Meetings (Bill Norris)

The next meeting of the VWP Citizen Advisory Group is scheduled for Wednesday, October 15, 2014 –DEQ Piedmont Regional Office – Training Room – Sign-In: 9:15 A.M. – Meeting Start Time: 9:30 A.M.

22. Meeting Adjournment:

The meeting was adjourned at approximately 3:10 P.M.