

**VWPP – WATER SUPPLY PERMITTING WORK GROUP TAC
WP5 – GENERAL PERMIT FOR MINOR SURFACE WATER
WITHDRAWALS TAC**

JOINT MEETING

**AMENDMENTS TO THE
VIRGINIA WATER PROTECTION PERMIT REGULATIONS TO
INCORPORATE THE MAIN CONCEPTS AND KEY ISSUES
ORIGINALLY PROPOSED FOR INCLUSION IN THE GENERAL
PERMIT (WP5) FOR MINOR SURFACE WATER WITHDRAWALS**

**DEQ Piedmont Regional Office
Thursday, October 26, 2006**

Meeting Notes - Final

Meeting Attendees	
VWPP Water Supply Work Group	WP5 TAC
Bos, Bob (Stafford)	Boyd, Ron (WEG)
Carlock, John (HRPDC)	Brooks, John (Resource International)
Dunscomb, Judy (TNC)*	Dunscomb, Judy (TNC)*
Foster, Larry (James City County)	Frazier, Katie (VA Agribusiness Council)
Imhoff, Ed	Hollins, Sam (VTCA)
Jennings, Ann (CBF)	Kauffman, John (DGIF)*
Kauffman, John (DGIF)*	Pattie, Dudley (Rapidan)
Konchuba, Nick (ACOE)	Watkinson, Tony (VMRC)
Murray, Chuck (Fairfax Water)	Interested Parties
Petrini, Art (Henrico)	Harmon, Tracey (VDOT)
Stoneman, Wilmer (VFBF)	Hauger, Curt (Norfolk)
Taylor, Cathy (Dominion)	Hedges, Jaime Bain (Fairfax Water)
Staff	Nottingham, Butch (VDACS)
Gilinsky, Ellen (DEQ)	Ochsenhifft, Lisa (City of Richmond)
Hassell, Joseph (DEQ)	Phenister, David (TNC)
Kudlas, Scott (DEQ)	Ramaley, Brian (Newport News & VA AWWA)
Norris, William (DEQ)	Waylett, Darin (McGuire Woods LLP)
Wagner, Terry (DEQ)	
Winn, Brenda (DEQ)	*Served on Both TACs

- 1. Welcome/Introductions/Plan for the Day:** Terry Wagner opened the meeting and welcomed the members of the VWP and the WP5 Technical Advisory Committees to the meeting. He asked for brief introductions from the meeting attendees. He noted that the plan for the rest of the day would be to have a brief introduction from Ellen Gilinsky on the process that lead to the need for today’s meeting and then to go through each of the proposed additions/changes to the VWP Amendments and discuss any issues that the TAC members or other meeting attendees might have and arrive at the end of the day with something that the members of the Joint TAC can live with.

2. Introduction to the Process: Ellen Gilinsky provided a brief historical perspective of how we arrived at this Joint VWP – WP5 TAC meeting. She noted that:

- The VWP and the WP5 TAC processes were conducted concurrently.
- This had been a 2 ½ year process of trying to develop a means to streamline the permit process to address smaller withdrawals while taking into account the potential for environmental impacts.
- An attempt was made to develop standard conditions to make the process easier for smaller withdrawals while providing environmental protection.
- It was a very good TAC with lots of detailed discussions, but it was hard to come of with standard conditions that addressed every contingency.
- So many requirements were proposed for inclusion in the General Permit that it became more complicated than getting an individual permit.
- Deliberations regarding the status of the General Permit discussions lead to the conclusion that it would be better to table the GP and make changes to the proposed VWP Amendments to incorporate the key concepts from the WP5.
- It was decided to focus on trying to clarify who needs a permit and to identify and streamline the process for obtaining a permit and to provide a process for smaller withdrawals for having a simplified process similar to the current Simplified Joint Permit Process with VMRC.
- Proposed language has been incorporated into the proposed VWP Amendments which is why the Joint TACs are meeting today.

Terry Wagner added the following comments:

- The VWP Regulation effort was completed on April 21, 2006. This was the end of the comment period for the original Draft VWP Amendments that had been discussed and agreed to by the VWP TAC.
- Issues related to Minor Surface Water Withdrawals were specifically not addressed in the VWP TAC discussions because the WP5 TAC was working on a parallel track at the same time addressing those issues.
- When the WP5 TAC got to the end of its process, it was determined that the General Permit for Minor Surface Water Withdrawals had become too complicated and cumbersome and essential died of its own weight.
- The result of doing nothing at that stage would have been the requirement for Individual Permits for every existing withdrawal in the Commonwealth.
- The decision was made to attempt to incorporate the major concepts out of the GP into the proposed VWP Amendments.
- The proposed VWP Amendments had been through the required comment period and comments had been received and addressed where appropriate. The proposed amendments were ready to go to the Board in June. Due to the controversy regarding the General Permit, the VWP Amendments were rescheduled for presentation to the Board in December.
- The focus of the current effort has been to address changes proposed for the VWP which would incorporate the key minor withdrawal issues.

3. Changes proposed to the VWP Amendments to Incorporate the Key WP5

Concepts: Terry Wagner noted that the versions of the VWP Regulations that had been distributed to the Joint TAC included changes based on comments received on the original proposed amendments; changes to incorporate the key concepts from the WP5 deliberations; and, changes due to errors noted by staff in a review of the documents (majority of which are numbering changes, resulting from the WP5 additions). He noted that the framework for today's discussions would be the 8-page Summary document that had been distributed to the TACs which identifies the proposed WP5 additions. He also noted that we had received several comments from the TAC members prior to today's meeting (draft staff responses had also been distributed) that would be included in today's discussions. Proposed changes will be addressed section by section:

- a. **9 VAC 25-210-10. Definitions:** Six new definitions are being proposed for inclusion in the VWP Regulation to incorporate the key concepts from the WP5 discussions. Questions raised included:
 - “Public water supply emergency” – Why is the phrase “caused by a drought” included? – It was noted that the legislation specifically refers to drought as the reason to issue an “Emergency Water Withdrawal Permit”. There are no provisions in the law for providing an emergency water withdrawal permit other than for “insufficient public drinking water supplies caused by drought”.
 - Why do you have to distinguish between “major” and “minor” surface water withdrawals? – This is to identify the break point between the VWP discussions and the WP5 discussions. Without this distinction all withdrawals would have to be treated the same.
 - Why is the break point 90 million gallons per month instead of 3 million gallons per day? This is basically a straight conversion of the per day usage into a monthly figure and provides a logical break point for public water supplies. A withdrawal of less than 90 million gallons per month figure automatically qualifies the user to apply for a Minor Surface Water Withdrawal Permit, it does not mean that they automatically receive the permit. Staff will utilize guidance based on the materials developed during the WP5 process to look at the daily use estimate and the potential environmental impacts. They will use criteria based on stream flow characteristics and total withdrawal amounts that was to be included in the WP5 as a part of guidance.
 - **A question regarding the consideration of historic use in the guidance document was raised.**
 - **A concern was raised about including the less than 3 million gallons per day limits only in guidance and using only the monthly figure in the text of the regulation. It was noted that this might be better addressed in the discussions on Section 110.**

- b. **9 VAC 25-210-60. Exclusions:** This section has been reorganized and additional exclusions have been added.

It was noted that B4-B15 included the exemptions that had been discussed in the WP5 process in large part and may be included in the general categories of B1 and B2, but they were specifically spelled out during the WP5 process as being important so have been included as separate exclusions in the VWP Amendments proposed here. Discussions included:

- Where did the “less than 10,000 gallons per day” figure come from in B4? This is directly out of the Water Withdrawal Reporting regulation.
- B5 comes directly from the Water Withdrawal Reporting regulation.
- A concern was raised over the term “non-consumptive use” used in B6. It was noted that “Consumptive water use” was defined in the main VWP Regulation. The definition used in the main VWP Regulation is: “Consumptive water use means the withdrawal of surface waters, without recycle of said waters to their source or basin of origin.” The concern is where the water is put back into the system. It was noted that it is impossible to put it back at the same point that it was withdrawn. Staff noted that with withdrawals for Aquacultural operations that the user needs and tries to get the water back into the system as soon as possible. The issue becomes one of “is there a potential for impact”.

Staff agreed to look at this concern and try to arrive at a solution prior to the conclusion of the meeting.

- A question was raised about B11 regarding what was being looked at in this exclusion. Staff noted that this is to allow an exclusion for pipeline hydrostatic pressure testing which is a temporary need.
- A concern was raised about B13. It was noted that this is an exclusion NOT a permit and is essentially what is done by Trout farmers and would involve ponds in the flood plain next to a stream. The key is that it is less than 50% of the flow and has a small linear reach (not more than 1,000 feet). A question was raised regarding this exclusion and the monitoring of the withdrawal limitations and how staff would determine whether “not more than half of the instantaneous flow is diverted”. Staff noted that this exclusion was developed to accommodate mills, trout runs and aesthetic ponds and that no monitoring is required. The anticipation is that the applicant will submit a request for an exclusion and indicate what they are planning on doing and that they plan on returning the flow within “x” number of feet. Staff also noted that there are two ways to look at this exclusion: 1) this gives a strong place to stand if we have a problem site, and 2) don’t look at this as encouraging these activities but at a minimum as defining what is acceptable or not. It was noted that the level of specificity is good but the lack of staff’s ability (monitoring) to determine whether the withdrawer is meeting the regulation is still a concern.

- It was noted that the exclusion in B14 allows for the pumping from a quarry pit into a reservoir, but doesn't allow pumping from a stream into the quarry. Staff noted that if a quarry was hydrostatically connected to a stream that the drawdown of the quarry might affect the stream level and may require a permit. The intent is to maintain the ability to consider the need for a permit if there are potential adverse impacts. It was noted that this exclusion was developed primarily to cover the need for water for dust control around an operating quarry.
- It was noted that B15 excludes the withdrawal; NOT the construction of structures or facilities. The use of the term "stream bed" was questioned. How does that relate to "intermittent", "perennial" and "ephemeral" streams? Staff noted that it applies to all three types.
- Staff noted that the exclusions listed are probable not needed since they fall under the general exclusions, but there was a desire to attempt to spell out as many possible exclusions so that there would be not question.

The discussions were directed back to Section 60.B.3. Terry noted that there had been a lot of comments and discussions during the WP5 TAC process regarding excluding existing withdrawals in a similar fashion to those pre-July 1, 1989 withdrawals.

- This section was added to provide some level of regulatory control for those existing withdrawals initiated between July 1, 1989 and the effective date of these amendments, which have no adverse environmental impacts.
- This would "grandfather" those withdrawals up to the amount that they have been using. This would help to identify that suite of currently unpermitted withdrawals and allow them a mechanism where they would NOT require a permit. The assumption is that any negative impacts from those withdrawals should have already been identified and dealt with.
- Staff noted that this is a conditional exclusion, since the owner/operator of the withdrawal would also have to meet the requirements identified in subsection 3a – 3d.
- Staff also noted that they recognize that we have put very little effort upfront on water withdrawal reporting and we have to assume that there are a number of withdrawals who should have been reporting under the water withdrawal reporting regulation but for some reason or another have not been or were unaware of the reporting requirement.
- It was noted that some of the language for this section of the proposed additions was captured from the Ground Water Withdrawal Regulations. Note that a "ten-year" window is allowed for determining/estimating the largest 12 consecutive months of water use.
- It was noted that a commitment has been made to get the agricultural community to report their withdrawals. The concern is over the availability of records regarding their withdrawals. It was noted that the regulation allows for the development of reasonable estimates for this use if the actual data is not available and that examples of several estimation techniques are included.

The use of data and estimates from the VA Cooperative Extension Service and the Natural Resource Conservation Service was discussed. Staff noted that the intent is to accept all reasonable estimates.

- Staff noted that the reporting of the withdrawal amounts establishes an exclusion amount. To maintain that exclusion, the withdrawer will have to report annually their withdrawal amount and whether they withdrew their excluded amount or not. (9 VAC 25-210-60.B.3.c.)
- Staff noted that if the “excluded” amount was exceeded that DEQ “may” require a permit (9 VAC 25-210-60.B.3.d.)
- A question regarding exclusions and withdrawals was raised. Staff noted that the exclusion would be granted per withdrawal. If an operator had multiple withdrawals, an exclusion for each withdrawal would have to be applied for. These multiple withdrawals could be included in one exclusion document. If the operator anticipates a need to increase the withdrawal in one of the excluded withdrawals, they would be required to apply for a permit for only those withdrawals needing to exceed their allowed exclusion amount.
- The intent is to grant an exclusion based on historic maximum use of the withdrawal so that there would be no reason to exceed that amount. If this amount is exceeded, the operator would need to apply for a permit.
- A question on a one time occurrence of an exceeding the exclusion amount was raised. Staff responded that the worst case regulatory response would require a permit. This is a case where “agency enforcement discretion” would play a role and the circumstances surrounding the overage would have to be examined. The intent of providing the mechanism for use of an estimate is that an operator would pick the largest consecutive 12-month period where they used the most water they could. It is anticipated that the only time that the excluded amount would normally be exceeded and a permit would be needed is if the operator changed the beneficial use to a more water intensive one from that reported and included as part of the exclusion.
- Staff noted that the allowance for the use of estimates for reporting the withdrawals provided a great level of tolerance.
- Staff noted that through this mechanism we are issuing an exclusion, if the operator cannot live with the excluded amount then they would need to apply for a permit.

Following a brief break the discussions on the Exclusions section continued.

- A question was raised over the length of the granted exclusion. Staff responded that the term was unlimited as long as the operator meets the reporting requirements as identified in this section and does not exceed the granted excluded amount.
- Staff noted that Section 9 VAC 25-210-60.B.3.d contains a “recapture clause” which provides a mechanism for consideration of the requirement for the application of a permit for those withdrawals where there is a potential environmental impact. A question was raised over the use of the phrase “may require” instead of “shall require”. Staff noted that this allows the Board’s

discretion where there is a “temporary” impact and in those cases where the impact is the result of multiple existing or proposed projects, where only one project may need to be singled out for their impacts. It was suggested that staff should reconsider the use of “may” in this section.

Staff agreed to look at this language again in the light of the “may” versus “shall” discussions.

- A question was raised regarding the potential for multiple projects/withdrawals causing a potential impact and which project would get priority. Staff noted that the only priority in the law is for “human consumption”.
 - The question was raised as to how DEQ would address multiple withdrawals. Staff noted that multiple withdrawals are allowed and logically all withdrawals along a given stream reach would have to be examined to determine the existence of any potential environmental impacts.
 - Staff noted that the intent is to consider the existing withdrawals and historic use when considering any additional withdrawal requests for potential environmental impacts.
- c. **9 VAC 25-210-75. Preapplication procedures...** The only change to this section was the addition of the concept of “major surface water withdrawal”. Staff noted that the major difference between the application for a major surface water withdrawal and a minor surface water withdrawal was there was no requirement for pre-application procedures.
- d. **9 VAC 25-210-80. Application for a VWP Permit.** The major changes to this section included the addition of the concepts of “minor surface water withdrawals” and “new or expanded surface water withdrawals”. Terry noted that Sections A and B clarify the application requirements for a “major surface water withdrawal”, while Section C establishes the requirements and procedures for application for “new or expanded minor surface water withdrawals”.
- It was noted that the intent of the WP5 process was to develop a streamlined process for “minor surface water withdrawals”. The question was raised as to whether this section provides that streamlined process. Staff noted that there will be a more simplified application and that no pre-application procedures are required. However, the time associated with “public comment” requirements will not be abbreviated. Staff noted that this “public comment” requirement was a major difference from the GP Process contemplated in the WP5 process.
 - A question regarding the documentation requirements noted in Section C.5 was raised. The suggestion was made that consideration be given to the inclusion of “time-of-year”/seasonality documentation be included and that information about the withdrawal structure also be required.

Staff agreed to look at this section and the proposed streamlined application to provide more specifics on the information that would be required.

- A question was raised regarding the evaluation of the cumulative impact of multiple withdrawals. Staff noted that there had been an effort by DEQ to hire a surface water modeler to assist with the evaluation of the potential adverse impacts associated with withdrawals, but that the process has been going on for a year, without a person being hired. It was noted that cumulative impacts would be evaluated, but at this time the actual methodology has not been determined.
- A concern was raised over the processing fee referenced in Section C.9. The current fee structure was briefly discussed. Staff noted that the current fees were in the 15 to 25 thousand dollar range. The fees anticipated in the WP5 process for a General Permit would have been around \$2,200. Staff also noted that the fee structure was set by a different regulation (9 VAC 25-20-10 et seq.) and any change in the fee structure would have to come through a revision of that regulation.

Staff noted the concern and will look into the review schedule for the Fee Regulation.

- e. **9 VAC 25-210-110. Establishing applicable standards.** This section was reorganized; “conditions applicable to surface water withdrawals” were clarified and a section addressing “new or expanded minor surface water withdrawals” was added. Terry noted that this section establishes conceptually how we will evaluate “minor surface water withdrawals”. He also noted that the assessment criteria to determine “detrimental impact” contained in Section 110.A.3.d is the same as included in Section 60.B.3.d. This section provides that if a “minor surface water withdrawal” fails to meet the requirements of 110.A.3.a, b, or c that there are two options. The board can either issue a permit with special conditions to address the concerns or require the applicant to apply for a VWP permit using the full JPA form instead of the proposed “streamlined” JPA for Minor Surface Water Withdrawals.
- A question regarding the board making this determination was raised. Staff noted that in this case that DEQ staff would be making that determination through a “delegation of authority”.
 - Staff noted that a special condition could be added to 110.A.3.d which would indicate that a request for a “Public Hearing” would go to the board.
 - It was noted that the Guidance would contain the reference tables that had been developed in the WP5 process and would be used in the assessment process.
 - Staff noted that what we would be looking for is the level of withdrawal with NO adverse impacts.

- A question regarding what happens to the exclusion if a permit is issued. Staff responded that once a permit is issued that the “exclusion” goes away. Staff noted that should an applicant apply for a permit requesting a withdrawal of 40 mgm when your excluded amount is 35 mgm, but a permit could only be issued for 30 based on an assessment by the board then the appropriate course of action by the applicant would be to NOT accept the permit and to withdraw their application and live with their excluded amount.
- A question was raised regarding the extent of the permits. Staff noted that permits were issued for up to 15 years.
- Staff noted that the intent of the regulation is to protect “permitted” as well as “excluded” withdrawal amounts in the course of any cumulative impact analysis.
- Staff noted that the “special conditions” noted in 110.A.3.d would be site specific and therefore could not be enumerated in a regulation.
- Staff noted that for a “Minor surface water withdrawal” that DEQ staff would do most of the work associated with the application. The exclusions noted in 80.C.4-15 will cover a lot of withdrawals and should result in a small universe of minor withdrawals that would fall under the streamlined permit process.
- Concerns were again raised over the fees for the minor surface water withdrawal permits. Staff noted that the “fee structure” was a separate regulation (9VAC 25-20-10) and would likely be reevaluated during the agency’s triennial review of regulations. Staff also noted that at this time that we do not have any experience with these types of permits, so it would be hard to say at this time what the fee should be.
- Concerns were also raised again about the use of the 90 million gallons per month figure instead of a limitation of 3 million gallons per day. It was suggested that the 3 million gallons per day figure should be the guiding limitation. Staff noted that the monthly limitation creates the threshold for consideration for a “minor surface water withdrawal permit” and that the guidance used by staff will consider the 3 million gallons per day limitation as well as seasonality to determine the eligibility for this type of permit and the conditions place on the permit. Staff also noted that the figures used in the guidance tables (which were the result of the WP5 deliberations) are based on evaluation of daily withdrawal amounts.
- The question was raised regarding whether the proposed changes were less protective of the environment. It was noted that the exclusions looked good and the opportunity to get the reporting structure in place for these withdrawals was appropriate but does it also provide loop holes that would result in less protection to the resource. Staff noted that the proposed changes provided a break for the applicant for these small withdrawals but were not less protective of the resource. It was agreed that the tables planned for use in the guidance were a good effort to motivate the application for minor surface water withdrawals and to get the withdrawal

amounts reported. It was also agreed that the proposed regulation changes were in fact protective of the resource.

- It was noted that it was not clear that we are where we wanted to be at this stage of the regulation development.

Staff agreed that we are not at the place where our goal (through the WP5 process) was to be; but we had 3 options: 1) We could have continued along the General Permit route and tried to continue the daunting task of developing language to cover all site specific conditions for minor surface water withdrawals. 2) We could have dropped the General Permit efforts all together and made everyone apply for a permit. Or 3) Take the middle approach and take the key concepts from the GP effort and incorporate them into the proposed VWP Amendments by delaying the submittal of those recommendations to the board.

- f. **9 VAC 25-210-115. Evaluation of project alternatives.** This section was revised to add the concepts of “major surface water withdrawals” and “public surface water supply withdrawal projects”.

Staff noted that this section helps to identify and spell out the specific requirements for the evaluation of project alternatives for all major surface water withdrawals and public surface water supply withdrawal projects.

- It was suggested that the requirements for conducting an alternatives analysis might need to be included under the requirements for public water supply withdrawals noted in Section 80.
- Staff noted that there was always a short list of applications were staff had to go back to the applicant to request additional information and it could be as simple as receiving an application and noting that it was for a public surface water withdrawal and requesting the needed “alternative analysis”.
- It was suggested that this language made it more difficult and restrictive for public water supply withdrawals than for withdrawals of similar size. Staff noted that this is not a change in process; this type of analysis is already required under the water supply planning regulation for public surface water withdrawals.

Staff agreed to look at the language in Section 80 related to information requirements for minor surface water withdrawals and evaluate the need to insert language to make it clear to “public water supply” withdrawals that an alternatives analysis is needed.

- g. **9 VAC 25-210-170. Public notice of hearing.** This section was revised to include a requirement to include a “description of the nature of the withdrawal and the amount of the withdrawal” in the public notice.

- No comments.

h. 9 VAC 25-210-175. Variance from VWP permit conditions. Wording was revised in this section from “public drinking water withdrawal” to “public surface water supply withdrawal”.

- No comments.

i. Forms: A new proposed application form for “new or expanded minor surface water withdrawals was added.

- No comments.

4. Additional Comments:

- It was suggested that there might be some confusion in the proposed regulation amendments with the use of the two phrases “permitting” and “permit requirements” (Section 60.B.3.b).

Staff agreed to look at this wording for possible clarification.

- The process for the development of the final guidance for these amendments was questioned. Staff noted that there were three distinct sets of documents that were being dealt with. They included Laws; Regulations; and Guidance. Guidance is issued by a program to people in the field as “general operating guidance”. These materials are not developed in a vacuum and would be distributed to the TAC members for their input prior to finalization.

5. Staff asked if the group could “Live with the Changes”:

- It was noted that Newport News could live with the changes; however the Virginia Section of the AWWA may have some concerns over the impact on smaller water utilities. It was noted that smaller water utilities would have a tougher time; i.e., more to do, than similar sized withdrawals. It was noted that these changes still have the appearance of a net result of creating a process where the group with the most hoops to jump through will be municipalities. Staff noted that the major difference is the requirement for an alternative analysis, which is already required under the water supply planning regulation.
- There was a discussion that the regulation wording resulted in a minor local government withdrawal not being able to use the process outlined for “minor surface water withdrawals”, but had to use the full VWP Process. It was noted that in essence human consumption has precedence yet a minor withdrawal for an aquaculture use can be permitted easier than an equivalent withdrawal for a public water supply. It was suggested that language be added to note that “if a minor withdrawal for human consumption/public

water use is included in a Water Supply Plan the public water supplier can apply for the withdrawal following the minor withdrawal requirements”.

Staff agreed to look at this recommended wording for possible clarification.

- Objections to the “fee structure” were noted.
- The issue of “ephemeral” streams was raised. It was suggested that Exclusion #15 in Section 60.B be reworded to deal with the issue of streambeds; intermittent and perennial streams and ephemeral streams and possible wetland impacts and water withdrawal from a live stream issues.
- Several questions were raised over the individual exclusions and whether all had to apply. Staff noted that it would be really tough to look at just individual exclusions; they had to be looked at in recognition of the amount of the withdrawal; whether it was pre-1989; or whether it is after 1989 but before the effective date of the regulation. Staff noted that the list of exclusion should be looked at as not “and” but an “or” listing of exclusions.
- The issue of the “90 million gallons per month” versus the 3 million gallons per day” was raised. It was noted that it was recognized that the “90 million gallons per month” was an administrative break which allowed the consideration for a permit for a “Minor Surface Water Withdrawal”. The concern was raised however, over having all of the daily limits imbedded only in guidance. The question was raised over how strictly would the guidance be adhered to?

Staff noted that each regional office was usually responsible for addressing the guidance as they dealt with each application. However, in the case of these regulations that these types of permits would likely to be dealt with from the Central Office so that the number of people interpreting the guidance would be a limited number. Staff also noted that guidance is not always followed to the letter. Staff noted again that the guidance would not be developed in a vacuum and there would be public input to the process. The draft guidance is normally posted on the DEQ Program website for review and input from the public.

- A question was raised over the application of the language of Section 60.B.3.d to only exclusion 3 and not all of the exclusions listed. It was noted that if there were any detrimental impacts that the exclusion should not apply.

Staff noted that this language is included in the text of the regulation, but that a possible language change to make it clear that it applies to all of the exclusions will be examined. (The general restriction language is included in Section 50.)

- The lack of a definition of “nonconsumptive use” was questioned. The concept of returning water as close as possible to the withdrawal point to qualify as “nonconsumptive use” was raised.

Staff noted that the way to handle this might be to revise the existing definition of “consumptive use” to delete reference to the “basin of origin”. Staff will look at revising the definition.

6. Summary:

Items to be addressed by staff included:

- Work on the definition of “consumptive use”. The issue is non-consumptive use in tidal waters and the return point of the water withdrawn (esp. in tidal fresh-water systems).
- The use of the terms “may” versus “shall” in Section 60.B.3.d.
- Consider lowering the fee amounts for “minor surface water withdrawals. Will have to be noted for consideration in evaluation of the Fee Regulation.
- The possible addition of an item to Section 80.C which notes the requirement for alternative analysis for all public surface water supply withdrawal projects. (As noted in Section 115.A.)
- Need to look at the use of the term “stream bed” in Section 60.B.15 as it relates to intermittent; perennial and ephemeral streams.
- Need to check language regarding environmental impacts to see if it needs to be changed to reflect that it applies to all of the exclusions noted, not just Section 60.B.3. (Need to see whether the reference in Section 50 is sufficient.)
- Need to look at the specific information required in Section 80 to determine whether additional language regarding “time of year”; “seasonality”; “withdrawal structure details”; etc., should be added to the list.
- Need to look at the use of the two phrases “permitting” and “permit requirements” and revise to eliminate any apparent confusion. (Section 60.B.3.b)
- Need to look at the suggested language addition to deal with the concerns raised regarding minor surface water withdrawals for human consumption/public water use.

Terry Wagner thanked the members of the VWP and the WP5 TACs and the Interested Parties for their comments and input in review of these proposed amendments. He noted that the current plan is to take the proposed amendments to the SWCB in December as a final regulation. The position of the Agency is that:

- a.** There were 2 Concurrent Processes (VWP & WP5)
- b.** There were two parallel tracks that met the Administrative Processes Act
- c.** The comments received from both processes have been addressed with the current outstanding big issue being the ‘fee structure’.
- d.** The position is that the resulting amendments are not significantly different than those originally proposed so the approach of the agency is to try to get the SWCB to adopt the proposed amendments in December.

- e. The purpose of convening the joint TAC meeting was to identify and address any comments and concerns without having to take the proposed amendments back out for public comment.
- f. The proposed VWP Amendments incorporating the key concepts from the WP5 process as reviewed by the Joint TAC will be sent to the Board for consideration at their December 14th meeting.

He adjourned the meeting at 12:45 and noted that this was the first VWP or WP TAC meeting that had adjourned early.