

Waterworks Advisory Committee Meeting Minutes
Electronic Meeting via WebEx
Wednesday, June 12, 2024, 10:00 a.m.

Members Present: David Van Gelder (Chair), Water Operator; Skip Harper, Virginia Plumbing & Mechanical Inspectors Association; Michelle Caruthers, VWEA; Ignatius Mutoti, VSPE; Tom Fauber; VA ABPA; Mark Estes, VRWA, Joey Hiner, VA SERCAP; Anthony Morris, DEQ; Shane Wyatt, DCLS; Jesse Royall, Sydnor Hydro; Geneva Hudgins, VA AWWA; Whitney S. Katchmark, PE, Principal Water Resources Engineer

Members Absent: Christopher D. Pomeroy, Virginia Municipal Drinking Water Association; Andrea Wortzel, Troutman Pepper; Russ Navratil, VA AWWA; Kathleen Banfield, Virginia Health Catalyst; Caleb Taylor, Virginia Municipal League

Stakeholders and Public: Steven Herzog, Callie Guy, Ivy Ozmon, T.J. Gordon, Mac Suskind, John Kingsbury, Barbara Walsh, Charlie Paullin, Astrika Adams, Joe DiNardo, Jessica Edwards Brandt, Tanya Pettus, Pat Calvert, Alexa Sinha, Anjali Jarral, Pat Calvert, Richard Watson

Office of Drinking Water (ODW) Staff: Dwayne Roadcap, Robert Edelman, Barry Matthews, Grant Kronenberg, Dan Horne, Jeremy Hull, James Reynolds, Steve Kvech, Ray Weiland, Julie Floyd, Keith Kornegay, Jessica Coughlin, Jane Nunn

Introductory Remarks

The Waterworks Advisory Committee (WAC) met electronically via WebEx on June 12, 2024. The meeting began at approximately 10:00 a.m. In addition to the WAC members in attendance, ODW stakeholders, ODW staff, and the public also joined. WAC Chair David Van Gelder presided at the meeting.

Dwayne Roadcap recognized three new members of the WAC: Michelle Caruthers, Shane Wyatt, and Kathleen Banfield. Ms. Caruthers and Mr. Wyatt introduced themselves. Mr. Roadcap thanked Steve Herzog for his 10 years of service on the WAC.

Chair David Van Gelder covered the meeting agenda in brief.

Review and Adopt Minutes of Meeting

The WAC unanimously approved the December meeting minutes and the March meeting minutes on a voice vote.

Waterwork Regulations

Jane Nunn presented an update on the draft proposed amendments to the Waterworks Regulations. The WAC members present provided feedback on the draft proposals. The slides presented by Ms. Nunn as to each item can be found with the WAC meeting materials.

Ms. Nunn gave an overview of her presentation, including that there are four old proposed amendments remaining for discussion, three new amendments based on the new Code of Virginia § 32.1-172.1, and there are two new or revised federal rules in PFAS Rule and the Consumer Confidence Report (CCR) Rule Revisions.

Item 1 – 12VAC5-590-200 and -260

Ms. Nunn discussed proposed substantive changes to these sections concerning construction permits and operation permits related to the Waterworks Business Operation Plan (WBOP) requirement.

Ms. Nunn discussed language regarding the ability to waive requiring a WBOP with a permit application. The proposed language adds language requiring that an owner apply for an additional or amended construction permit if the owner plans to make changes, alterations, or improvements to a waterworks for which a construction permit has been granted. Ms. Nunn discussed that the proposed regulation allows an owner to use a WBOP that is on file so long as the owner confirms the information in that WBOP is current. The proposed regulation allows ODW to grant a waiver to the WBOP requirement for applicants who have demonstrated a three-year history of acceptable compliance. Ms. Nunn clarified that the three-year period begins at the time of application and looks back for three years from then.

Mr. Royall stated that when the statutory requirement for a comprehensive business plan, which is reflected by the WBOP in the Waterworks Regulations, was put into place, it was to respond to situations where there was no history of the applicant in the waterworks business, such as a developer. Mr. Royall stated that he would like the waiver to be automatically granted for an existing waterworks that meets the acceptable compliance history requirement.

Ms. Nunn discussed input from the Office of the Attorney General and that the statute reflects that a WBOP is required for all applications for a construction permit. Ms. Nunn stated that ODW does not believe it can change the waiver to a requirement on the agency rather than a “may.” Ms. Nunn noted that the proposed regulation attempts to make the requirement less burdensome by allowing reliance on an existing WBOP and a waiver request.

Mr. Kronenberg discussed a situation where there is a good compliance history but the owner is applying for a construction permit that would dramatically alter the technical, managerial, and financial needs to safely operate the waterworks.

Ms. Caruthers asked about a situation about history of good compliance where we would still want a WBOP.

Ms. Nunn stated we have discussed a situation where the owner owns one waterworks but wants to build a second one. This would be a significant increase in business and there is a concern whether the owner can show the necessary capacity.

Mr. Van Gelder asked if there will be guidance on this. Ms. Nunn replied that ODW is planning on a guidance document.

Mr. Royall stated the concern is a vast majority of construction permits are probably relatively minor changes in the capacity of the system and those could be covered in a guidance document.

Mr. Royall asked whether this requirement applies to municipal owned systems. Ms. Nunn confirmed that it does.

Mr. Van Gelder said the WAC would like to participate in creating a guidance document. Ms. Nunn said ODW will include the WAC in that process.

Mr. Royall raised a concern with this requirement increasing the complexity of the process and causing an issue for small utilities.

Ms. Nunn discussed adding a general phrase, such as “on a case-by-case basis,” for waiving the WBOP requirement. Ms. Nunn stated a guidance document would be developed to address when the WBOP can be waived. Mr. Matthews noted that ODW cannot anticipate every situation in a guidance document and cannot address every case-by-case situation.

Mr. Mutoti asked whether the guidance document would exclude emergency situations where modifications to the waterworks are needed to ensure compliance. Mr. Matthews stated this is a good point and ODW is not trying to prevent someone from doing emergency work where the customers are at risk of losing service because ODW is waiting on a WBOP. Mr. Royall stated that situation should be covered in a guidance document. This sentiment was supported by Mr. Van Gelder, Mr. Hiner, and Ms. Caruthers.

Ms. Nunn discussed language on Slide 7 adding a WBOP requirement to the operation permit regulation. Ms. Nunn discussed the proposed changes including rearranging the order of the current regulation to make it more logical. Ms. Nunn discussed the proposal to allow submission of as-built drawings/specifications. Ms. Nunn also discussed allowing an existing WBOP to meet the requirement for inclusion of a WBPO in the permit application, as well as additional language added in subsections D, regarding a waiver of the WBOP requirement and E, which mirrors statutory language and clarifies that a new owner must apply for an operation permit. Ms. Caruthers asked whether “potable water” is defined. Mr. Kronenberg stated that “potable water” and “pure water” are both defined in the regulations to be synonymous.

In response to a question from Mr. Horne about the issuance of an amended permit due to an ownership change, Ms. Nunn said she would look into the question.

Item 2 – 24-hour rule for repeat bacti samples in 12VAC5-590-380(D)(1)

Ms. Nunn discussed the 24-hour rule and fielded questions about its implementation. Ms. Nunn stated that ODW has talked to EPA about handling a situation like the positive result comes in at 4:00 p.m. on a Friday and normally the repeat sample would be taken on Monday. Ms. Nunn stated that EPA pointed to the section saying there must be a logistical problem and ODW can make a determination on a case-by-case basis. Ms. Nunn stated the field office considers the 24 hours to begin when it notifies the waterworks of the positive result.

Further discussion with the WAC included Ms. Nunn stating that the ODW field office needs to be able to document the extension is granted and, per the federal government, ODW must set a new deadline if ODW grants an extension.

Mr. Van Gelder stated there is a slippery slope if ODW tries to provide too many examples of what would qualify.

Mr. Royall stated he would state whatever EPA says, and mention in accordance with EPA regulations.

Item 3 – 12VAC5-590-475 B

Ms. Nunn stated that at the December meeting of the WAC, someone mentioned the private well regulations, which are not as burdensome. ODW also discussed with DEQ what they would recommend regarding well abandonment. The proposed amendment deletes some current requirements and requires compliance with the remaining requirements in the regulation and the Private Well Regulations.

Ms. Nunn discussed proposed regulatory language regarding emergency wells. Ms. Nunn stated that Mr. Royall had raised situations with clay slurry in other states and WAC members expressed concerns about reducing requirements with unintended consequences because of the greater threat from public wells. Ms. Nunn stated she asked VDH's Office of Environmental Health Services (OEHS) about the definition of clay slurry or any guidance on clay slurry from the Private Well Regulations. OEHS did not have any information. At its March meeting, the WAC decided to defer discussion until June so Mr. Royall could be in attendance.

Mr. Royall stated that they had significant problems in Michigan with well grout disappearing. Mr. Royall also discussed clay slurry.

Mr. Matthews stated agreement with Mr. Royall and said that the term "clay slurry" should not be used. He stated that the regulations should be specific where if we are going to allow clay slurry, we should specify bentonite slurry as bentonite has the correct hydrophilic properties to seal voids.

Mr. Royall stated he would pull some information and send it to Ms. Nunn. He believes he can find something that defines grout with at least 20% solids as probably okay and we can cover it then.

Ms. Nunn stated we will table this until September.

Mr. Royall stated that VDH has in the past required a licensed water system provider to abandon the well. OEHS, however, has now determined the Private Well Regulations do not require someone to be a licensed well driller to abandon a well and OEHS is allowing anyone to get a license to abandon a well. Mr. Royall stated he does not know if we want a requirement for abandonment of public water wells to be done by licensed water system providers.

Ms. Nunn stated that the existing language references water systems and the new language requires abandonment in accordance with this regulation and the Private Well Regulations.]

Mr. Royall stated the interpretation of the Private Well Regulations has changed but he doesn't know if the regulation has changed. He said that needs to be covered.

Item 4 – 12VAC5-590-476

Ms. Nunn stated that the proposed amendment defines what is an emergency well. ODW had a lot of internal discussion about this language, including with Bob Edelman and the field offices and they had similar concerns about the existing language not being clear. The proposed revised language describes an emergency well, addresses safety, and if part of a community system then additional testing is required to ensure it is safe. Ms. Nunn asked whether this resolves some of the issues.

Mr. Van Gelder stated this looks pretty reasonable on first glance.

Ms. Nunn clarified in response to a comment by Mr. Estes that this is for waterworks only.

Mr. Royall stated that if the hospital turns on its well supply, then it becomes a waterworks.

Mr. Mutoti stated a concern about different treatment of wells and trying to clarify between an emergency well and a back-up well or a redundant well.

Mr. Edelman said there are no back-up wells or redundant wells in the Waterworks Regulations.

Mr. Van Gelder said perhaps it is defined as a well being inactive for one or more years.

Mr. Mutoti stated that he thinks somewhere in the regulations we do not need as much storage capacity if there is a back0up or redundant well than if there is a single well. He stated that some systems may leave a well unused for several years, but they can activate it.

Item 5 – Code of Virginia § 32.1-172.1, Attendance by licensed operator

Ms. Nunn stated that the next few slides are about the new law that goes into effect on July 1. ODW knows regulations will be needed for at least part B of the section. ODW is discussing possible regulatory language. ODW plans to work with Chris Pomeroy on that language, but he is not in attendance today.

Ms. Nunn stated that Section A allows for a temporary waiver for the unexpected vacancy of the licensed operator. Section B is an opportunity for remote monitoring for systems rather than having the properly classed operator on-site. Section C allows VDH to modify the operator requirements for waterworks Classes 1 through 6, which is an easy change from the current regulations which say Classes 3 through 6, which ODW will make.

Ms. Nunn stated that if you have an unexpected vacancy the statute provides some examples. She went through the statutory requirements. Ms. Nunn stated that the waiver can be revoked for failure to fulfill the statutory requirements or if VDH finds continued operation is a public health threat.

Ms. Nunn discussed the remote monitoring credit. ODW hopes to soon have a draft policy to present to the WAC for review and comment in September. Ms. Nunn will be working with Chris Pomeroy on regulations to present in September. Ms. Nunn stated it is important for the WAC members to look at the statutory language, think about what important items are needed for a remote monitoring plan, and be prepared to provide that input by September so we can move quickly on this.

Mr. Van Gelder said the WAC would be happy to assist with this effort.

Item 6 – New Federal Rules/Revisions

Ms. Nunn stated that a new PFAS rule was issued in May. ODW will promulgate regulations. There is also a new CCR Rule. ODW does not plan on making any changes from the federal regulatory language.

ODW Staffing and Budget Update

Dwayne Roadcap provided the update.

ODW has a new business manager, new accountant and new financial analyst who started with in April. Part of their role is to keep a close eye on the ODW budget. In the past, ODW had a significant budget shortfall and part of the issue was lack of connection between the program and the budget. One corrective action on that was bringing business administration unit in-house and they report to Mr. Roadcap. ODW expects to roll out new budgets pretty soon. ODW is in the process of trying to hire field directors for Danville and Abingdon. There is still an open field director position for Lexington that ODW is trying to find additional funding for. ODW has four positions on hold for lack of funding.

The ODW Richmond Field Office is looking at a new organizational structure as a pilot program. It would pull engineers into one work unit and have environmental and inspector positions in another work unit so engineers can focus on engineering.

ODW has had good organizational change in moving construction permit review to the central office. A permit transparency project will likely be going online in August so people can review the status of permit applications. ODW has managed to get quarterly permit and plan review done in about 30 days with the central office, but there are still some backlogs from the field offices. James Reynolds and Bailey Davis are leading the effort on the RFO pilot program.

In total, ODW has 120 full-time employees and of those there are around 15 vacancies. ODW has a 14% vacancy rate and 11% turnover rate. Due to the new federal rules coming down, there is lots of additional work for staff with new the rules.

Mr. Roadcap discussed the funding cliff that is on the horizon for 2026. At that point, ODW will see significantly reduced federal funding for staffing. All but 10 of ODW's 120 positions are federally funded. Congressionally directed spending has resulted in ODW receiving \$6.9 million of funding for the state revolving fund program, which is a decrease from the \$17.9 to \$18.1 million that ODW had traditionally received. The Bilateral Infrastructure Law has served as a separate revenue source allowing ODW to cover the gap, but that ends in 2026. Starting in 2027, ODW will have significant issues with funding staff positions if there is not a federal change or the state allows for additional revenue for the program.

Mr. Royall asked, if the funding is not replaced then would ODW have significant staffing changes.

Mr. Roadcap responded that unless there are additional state funding sources, the federal funding will be significantly pinched. It would impact about 48 positions. On staffing, EPA had CADMUS do a third-party analysis, which found that for ODW to implement the minimum federal requirements, ODW needs an additional 42 full-time equivalents. Currently, ODW has 120 positions funded and the federal report said ODW needs 42 more.

Mr. Royall asked about Virginia's ability to maintain primacy if positions have to be eliminated. Mr. Roadcap responded that was part of the reason for the workload analysis EPA had performed. Mr. Roadcap noted that EPA does not have control over the federal funding, as that is Congress's responsibility. Mr. Roadcap stated every state is facing this problem.

Ms. Caruthers stated she has been involved with discussions with five or six congressional offices about this issue.

Mr. Royall stated the WAC needs to think about what recommendations it wishes to provide to the Commissioner and to take back to the WAC's constituents. Mr. Royall noted there is probably not a lot the WAC can do about federal funding, but the other issue is the fee structure and whether we want to modify the fee structure.

Mr. Van Gelder said we need to be active on this issue.

It was agreed that discussion of budget issues will be on the agenda for the September WAC meeting.

Compliance, Enforcement and Policy Update

Grant Kronenberg provided an update on compliance and enforcement efforts by ODW. The slides presented by Mr. Kronenberg can be found with the meeting agenda packet.

Mr. Kronenberg reported that the April EPA Enforcement Targeting Tool (ETT) report showed nine "serious violators," which is an ETT score of 11 or more. This was the same number as in the last ETT report in January. Three of the serious violators in the April report were holdovers from the January report. Of the six new serious violators, one is under a consent order, one has

connected to a public service authority, one contends it does not meet the definition of the waterworks and ODW is assessing that claim, one resolved its violations, and two others have been actively working to address the violations.

Mr. Kronenberg reported that ODW sent 26 warning letters to waterworks in April, which is over a 50% increase from January. ODW held its first informal conference in over two years. The informal conference concerned a claim of operation of a waterworks without a permit. The matter is decision is pending. ODW has two court actions pending. One involves enforcement of a court order where the court order, entered in 2020, was necessary to enforce a 2017 administrative order. The other court action seeks enforcement against a waterworks owner for failure to comply with an administrative order and for violations of the Waterworks Regulations that resulted in a major distribution system failure. ODW has resolved two enforcement matters through consent orders so far this year and five proposed consent orders have been sent or will soon be sent.

Mr. Kronenberg stated that ODW is working on developing policies for the implementation of the remote monitoring operator attendance credit and licensed operator temporary waiver contained in the new law that goes into effect on July 1, which Ms. Nunn discussed in her presentation. Mr. Kronenberg stated that ODW would be seeking feedback from the WAC regarding the two policies, which are currently being developed by ODW.

PFAS Rule, Lead and Copper Rule, and Consumer Confidence Report Rule

Bob Edelman provided the update. The slides presented by Mr. Edelman can be found with the WAC meeting materials.

Mr. Edelman stated that the EPA announced the final PFAS rule in April. It includes maximum contaminant levels (MCLs) for five chemicals and a hazard index for mixes of chemicals. The deadline for compliance with the MCLs is five years from the date of publication of the rule. This will allow time for testing and planning capital improvements. Waterworks must complete initial monitoring by April 2027. ODW is waiting on additional information and guidance from EPA. Beginning three years from rule promulgation, so from 2027-2029, waterworks need to include the results of initial monitoring in their CCR report. If there is a monitoring or testing violation, then the waterworks must share that with customers.

Mr. Van Gelder asked if a water plant started in 2027, would it have two years to come into compliance. Mr. Edelman responded that is his understanding.

Mr. Edelman stated that the Waterworks Regulations do not currently require a waterworks developing a new source to test for PFAS chemicals so ODW cannot require them to do so, but he highly recommends it so personnel at the waterworks can make appropriate decisions in designing treatment.

Mr. Edelman discussed a chart showing a summary of results of ODW's PFAS sampling.

Mr. Edelman discussed a chart showing the UCMR5 PFAS summary, data release 4. He noted that needing to address PFAS does not necessarily mean a need to install treatment. If there is a detection above the PFAS MCL, then the waterworks would do additional sampling to identify the occurrence of the PFAS and determine if it is truly above the MCL, looking at an annual average. Next steps could include blending, installing treatment, or continuing to sample.

Mr. Edelman stated that ODW is currently planning Phase 3 PFAS sampling for this year. This is focused on small, disadvantaged communities that were not in the UCMR5 sampling plan.

Mr. Edelman stated that under the General Assembly's budget, ODW has been provided with \$500,000 to perform a cost analysis for the implementation of federal PFAS and Lead and Copper Rule Revisions (LCRR) and Lead and Copper Rule Improvements (LCRI) rules on waterworks. The analysis is due to the General Assembly by December 1, 2024.

Mr. Edelman mentioned grants available to address emerging contaminants. The Emerging Contaminants in Small or Disadvantaged Communities grant program targets communities smaller than 10,000 people or disadvantaged criteria can be met. Mr. Edelman said now is the time to apply for this funding if needed and people can contact him about it.

Mr. Edelman discussed the LCRR and LCRI. EPA has said it will promulgate the LCRI, modifying the LCRR, by October 16, 2024, which is when the LCRR's requirements take effect. The LCRI will push back a lot of the LCRR's requirements to 2028. Mr. Edelman pointed to the ODW website as containing information on changes from the LCRR to the LCRI.

Mr. Edelman stated that the initial inventory of lead service lines is due by October 16, 2024. Mr. Edelman discussed related requirements. Mr. Edelman pointed to certain technical bulletins on ODW's website. Mr. Edelman stated that ODW has set up SWIFT Submittals, which is a web portal where waterworks staff can type in or upload their lead service line inventory information. Mr. Edelman recommended that the regulated community obtains their user credentials for that system now. Mr. Edelman recommended uploading information in chunks rather than trying to do it all at once.

Mr. Edelman recommended preparing a lead service line replacement plan now if the inventory shows lines that are lead or galvanized requiring replacement (GRR). He also recommends applying for lead service line replacement funding now. Mr. Edelman stated that waterworks need to think about how they will go about replacing lines on the utility and the customer side and provided some suggestions on the accompanying slide.

Mr. Edelman said that ODW will present a webinar in August on LCRR consumer notification requirements.

Mr. Edelman stated that the EPA also finalized CCR Rule Revisions. They were announced on May 15, and published in the Federal Register on May 24, 2024. There is a compliance date of January 1, 2027, so the CCR delivered in 2027 must meet the new requirements. Among the things that are new in the revision is those waterworks serving 10,000 people or more must deliver the CCR due on July 1, and then send a six-month update for January through June by

December 31. Systems without a violation or action level exceedance may resend the original report to satisfy the December deadline. A certification of delivery is due to ODW no less than 10 days after the distribution deadline. Mr. Edelman discussed other changes reflected on the slides.

Mr. Edelman noted that states must submit compliance monitoring data for all national primary drinking water regulations on an annual basis.

Centralized Plan Review and Data Management Update

Aaron Moses provided the update.

Mr. Moses reported that the current time period for approval of construction permits is 24 days from receipt. The main challenge currently is sufficient staff. ODW recently posted position openings for project engineers with the statewide plan review program and got more interest by not locating the positions in Richmond.

Mr. Moses stated that ODW is nearing completion on joining the Virginia permit transparency system, which will allow applicants to review the status of permit applications. ODW hopes to test it in the next week or two. Staff will need to be trained on data entry procedures.

Mr. Moses stated there is no big news on the data management front. There is a current focus on data clean-up. There are three sizeable projects in the pipeline, with one being implementation of updated tracking software. Next year, ODW will implement a portal for uploading Monthly Operation Reports, which is expected to provide gains in efficiency to ODW. Around 2027, ODW expects to transition from SDWIS to DW-SFTIES, which EPA has been working on for a sometime. It is expected this new system will be similar to SDWIS but with a modern interface and a cloud-based structure.

Financial and Construction Assistance Program (FCAP) Update

Keith Kornegay provided the update. The slides presented by Mr. Kornegay can be found with the WAC meeting materials.

Mr. Kornegay reported that the Drinking Water State Revolving Fund (DWSRF) base grant has gone from \$18 million in the past to \$6.5 million due to congressional earmarks. EPA has said to budget that amount for 2025 too. There is a 20% state match required. ODW has received approximately \$15 million in loan repayments. These amounts result in approximately \$22.8 million being available this year.

Mr. Kornegay stated that ODW has about \$99.7 million in Bipartisan Infrastructure Law (BIL) funding available, of which the BIL Supplemental fund has the most flexibility when it comes to what it can be used for. More information is provided on the accompanying slide.

Mr. Kornegay stated that the due date for FCAP construction applications was May 3, 2024. ODW received 35 applications seeking DWSRF or BIL Supplemental funding of \$176 million,

while ODW has \$61.8 million available to provide. ODW also received four applications for \$74 million from the Emerging Contaminants fund, for which \$10.7 million is available; and nine applications for \$67 million for lead service line replacement, for which \$50 million is available.

Mr. Kornegay stated that ODW continues to prioritize public health in scoring and ranking applications. EPA has told Virginia, and other states, to move the money quickly. EPA wants FCAP to prioritize closing loans within 12 months and completing construction within three years. FCAP needs to prioritize “shovel-ready” projects and EPA may push FCAP to bypass projects that are lagging when it comes to moving the project forward.

Mr. Kornegay identified a challenge for FCAP in dealing with reduced federal funding from congressional earmarks. There is Bipartisan Infrastructure Law funding through fiscal year 2026, but ODW has to commit its 2026 funding in 2025 because it takes a year to go through the FCAP process for money. This creates the fiscal cliff. There are also other federal requirements that must be accounted for.

Public Comment

Pat Calvert asked about the cost for addressing PFAS, which Mr. Mutoti had mentioned in the electronic WebEx chat. Mr. Roadcap responded that the \$500,000 budget line item is intended for VDH to look into the cost question.

Conclusion

The 2024 WAC meetings are scheduled for September 18, 2024 (in person) and December 11, 2024 (all virtual).

The meeting adjourned at approximately 12:33 p.m.