

Waterworks Advisory Committee Meeting Minutes

In Person: Fairfield Library, 1402 Laburnum Ave, Richmond VA 23223

10:00 am, Wednesday, March 13, 2024

Members Present: David Van Gelder (Chair), Water Operator; Skip Harper, Virginia Plumbing & Mechanical Inspectors Association; Steven Herzog, PE, VWEA; Chris Pomeroy, Virginia Municipal Drinking Water Association; Ignatius Mutoti, VSPE; Tom Fauber; VA ABPA; Mark Estes, VRWA, Joey Hiner, VA SERCAP

Members Absent: Geneva Hudgins, VA AWWA; Russ Navratil, VA AWWA; Ben Barber, Virginia Health Catalyst; Whitney S. Katchmark, PE, Principal Water Resources Engineer; Caleb Taylor, VA Municipal League; Anthony Morris, DEQ; Jesse Royall, Sydnor Hydro; Andrea Wortzel, Troutman Pepper

Stakeholders: Christopher Gill, William J. Mann, Jr., MD, Chris Harbin, Ivy Ozman, John Kingsbury

Office of Drinking Water (ODW) Staff: Dwayne Roadcap, Aaron Moses, Christine Latino, Grant Kronenberg, Robert Edelman, Jane Nunn, Steve Kvech, Jeremy Hull, Dan Horne, Jack Hinshelwood, James Reynolds, David Dawson, Julie Floyd, Bailey Davis

Meeting Overview

The Waterworks Advisory Committee (WAC) met in person at the Fairfield Library, 1401 N. Laburnum Avenue, Richmond, VA. Stakeholders, ODW staff, and the public also joined in person and by electronic communication means via WebEx. Grant Kronenberg called the meeting to order at 10:05 a.m. and the agenda was reviewed.

It was established that there were not enough members in person to establish a quorum.

Review and Adopt Minutes of Meeting

Since there were not enough members to establish a quorum, the WAC could not take any official action to adopt the minutes from the WAC's December meeting.

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.

There are now 13 substantive changes, 3 technical changes, and a new item #12 being presented for the WAC's consideration. Ms. Nunn presented the proposed amendments to the WAC, noting that the WAC will determine whether to approve the proposed changes and decide whether it needs to establish subcommittees to discuss any of the proposed changes.

Item 1 – 12VAC5-590-10

Ms. Nunn discussed a proposed substantive change to the definitions section of the Waterworks Regulations – 12VAC5-590-10. The proposal is to amend the definition of "operator" in 12VAC5-590-10 to clarify it is someone who has a license "with a classification equal to or higher than the classification of the waterworks or water treatment plant being operated" found in -590-461 B and C. Proposed language: "Operator" means any individual with a valid license as a Waterworks Operator issued by the Virginia Department of Professional and Occupational Regulation with the requisite classification and skills employed or appointed by any owner, who is designated by the owner to be the person having full responsibility for the waterworks operations and any subordinate operating staff. The individual may be a supervisor, a shift operator, or a substitute in charge, and have duties including testing or evaluation to control waterworks operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks. Ms. Nunn stated there is no cost associated with this proposed amendment.

Ms. Nunn stated that DPOR will not be changing its regulations regarding the definition of "operator." The WAC members did not express any questions or concerns.

Item 2 – 12VAC5-590-200 and -260

Ms. Nunn discussed proposed substantive changes to 12VAC5-590-200 and 12VAC5-590-260 of the Waterworks Regulations. Code of Virginia § 32.1-172 requires a comprehensive business plan as part of the application for a permit to "establish, construct or operate any waterworks or water supply in the Commonwealth..." The comprehensive business plan in the Waterworks Regulations is the Waterworks Business Operation Plan (WBOP). The WBOP is identified as a requirement to obtain a construction permit under 12VAC5-590-200.A. The WBOP is not identified as a requirement to obtain an operation permit under 12VAC5-590-260. Va. Code §32.1-172.B includes an option for ODW to waive the requirement to submit a WBOP for "applicants who have demonstrated a history of acceptable compliance with waterworks regulations." Va. Code §32.1-172.F prohibits the assignment or transfer of a construction or operation permit.

Ms. Nunn went through the proposed amendments to these sections of the Waterworks Regulations. The proposed amendments were highlighted in red in the slides that accompanied her presentation.

Ms. Nunn explained that ODW had received feedback from WAC members Jesse Royall and Chris Pomeroy since the last WAC meeting. Their feedback was discussed, including setting a

default standard for waiving the WBOP requirement and/or a brightline rule for waiving the WBOP requirement. Ms. Nunn addressed concerns with those approaches. The group discussed historical information related to WBOP requirements. Mr. Herzog stated that there has been no history of requiring a WBOP when one is already on file with ODW. Mr. Estes stated that small systems would like to know the standard to be applied. Mr. Mutoti asked how do you ensure the same approach in all circumstances. Ms. Nunn stated that we are working on procedures to standardize the approach. Mr. Roadcap said ODW could develop some examples of scenarios and how things might change if the regulation is amended in an effort to make the impact more concrete for the WAC members. In sum, the WAC members still had questions regarding the WBOP. Consequently, ODW will continue analyzing the issue and the proposed amendments.

Item 3 – 12VAC5-590-461 E

Ms. Nunn discussed a proposed substantive change to 12VAC5-590-461 of the Waterworks Regulations by adding a subsection E. The amendment would add requirement a for waterworks to notify ODW when a new “operator-in-charge” has been hired.

The WAC membership had suggested a 30-day time period and removal of redundant language.

Ms. Nunn presented proposed language as follows: 12VAC5-590-461.E, Change in owner’s designation of operator. When an owner has changed the operator (as defined in 12VAC5-590-10) designated as having responsibility for waterworks operations, the owner shall notify the department within 30 days of such designation and will provide the operator’s name, classification, and DPOR certification number.

Mr. Van Gelder clarified that this is a one-person contact that is contemplated. Mr. Mutoti noted that in some cases the owner may not be directly involved with the system. Mr. Kronenberg stated that the owner is ultimately responsible for the system, but someone else affiliated with the system can be the person that informs ODW of a change.

Item 4 – 12VAC5-590-461 A 1(a)

Ms. Nunn stated this is a technical change. 12VAC5-590-461.A.1(a) has a misplaced comma. Without moving the comma, this causes consecutive waterworks serving more than 50,000 people to be classified as Class 1, which is not ODW's intent. The WAC had suggested adding numbers for clarity.

Ms. Nunn presented the following proposed language: A waterworks or a water treatment plant: (i) serving 50,000 or more persons, or having a water treatment plant capacity of 5.0 MGD or more, and (ii) employing conventional filtration or chemical coagulation in combination with membrane filtration.

The proposed amendment addresses the misplaced comma and adds (i) and (ii). The WAC members did not provide any comments.

Item 5 – 12VAC5-590-475 B

Ms. Nunn stated this is a substantive change. Ms. Nunn states that comments had been received that well abandonment standards are too burdensome and there was a suggestion to amend the regulation to match the Private Well Regulations' requirements. The VDH Office of Environmental Health Services' response was that private well regulations are based on the cost that a homeowner could be expected to afford. Ms. Nunn discussed feedback from DEQ to retain the existing text in subsections in B 1, B 2, B 3, B 5, and B 10 of 12VAC5-590-475. Ms. Nunn stated that ODW recommends retaining subsection B 5 and replacing subsections B 4 and B 6 through B 9 with a single provision to the effect that, "Permanent abandonment of a well shall be in accordance with both this subsection and subsection C of 12VAC-630-450." Ms. Nunn noted this change would reduce costs.

The WAC members did not have any comments or questions about the proposed amendment.

Item 6 – 12VAC5-590-630

Ms. Nunn states this is a technical change to remove references to the regulatory requirement "starting January 1, 2023," since that date is now past.

The WAC members did not have any comment on this proposed amendment.

Item 6 – 12VAC5-590-830

Ms. Nunn stated that following discussions with DEQ, ODW is proposing to amend 12VAC5-590-830 as set forth in the accompanying presentation slide, which she discussed. During the WAC's discussion, it was stated by Mr. Pomeroy that DEQ plans to explore grandfather intake rules and that discussion will begin this summer. Mr. Pomeroy suggested removing this piece for now. Ms. Nunn stated that ODW will defer further action on this item.

Item 7 – 12VAC5-590-882 G

Ms. Nunn stated this is a substantive update to reflect a requirement for inline laser-type turbidimeters. This performance standard is already contained in ODW Working Memo 880, so waterworks are already asked to meet it.

Mr. Mutoti stated that he supports this change because the last version mentioned specific technology and he likes this change.

Item 8 – New Regulation

Ms. Nunn stated that this proposed amendment is a substantive change that would move the flood risk management standard from the Drinking Water State Revolving Fund into the Waterworks Regulations.

Ms. Nunn stated that ODW has decided to table this proposal because part of what it would require is an environmental assessment by another agency that ODW cannot control and the Safe Drinking Water Act does not authorize ODW to take this action.

Item 9 – 12VAC5-590-540 A 1(l)

Ms. Nunn stated that this a new substantive item for the public notice requirement. The suggested amendment provides an example of what would qualify as a violation or other situation with a significant potential to have adverse health effects requiring Tier 1 public notice. The suggested language is as follows: “An example would be a loss of water pressure that results in the potential for contaminants to enter the depressurized area of a distribution system, such as a water main break, loss of water supply, demand exceeding supply, or closed valve.”

Mr. Edelman stated that the proposed language supports current guidance and noted that questions have been raised to ODW field offices about the consistency of implementation. Mr. Roadcap stated that ODW would discuss this issue further and how the policy is being implemented. Several WAC members raised concerns with the proposed language, including believing the proposed amendment may cause confusion and is unnecessary.

Item 10 – 12VADC5-590-505

Ms. Nunn stated this is a new substantive amendment proposal. Ms. Nunn stated the proposal came from ODW’s emergency management coordinator to extend emergency management plan requirements to cover water system outages in addition to extended power outages.

The consensus of the WAC was that this amendment is not necessary.

Item 11 – 12VAC5-590-476

Ms. Nunn stated this is new substantive language. Ms. Nunn stated that emergency wells are a type of inactive well, but they need to be treated differently than a well that is being reactivated due to necessary equipment repairs. Ms. Nunn noted that the existing regulation does not include language that is specific to emergency wells.

There was significant discussion among the WAC members and ODW staff about the proposed language. Issues differentiating between emergency wells and inactive wells were discussed. Mr. Roadcap stated that ODW can look at tightening up the language.

Item 12 – HB220, Water and Wastewater Facility Licensed Operator Staffing

Ms. Nunn stated this is a new substantive item. HB220 has passed both houses of the General Assembly. Ms. Nunn stated that regulations would be needed if the bill becomes law. ODW is discussing possible regulatory language and is looking for the WAC’s input. It was noted that HB220 will help waterworks with a vacancy in the licensed operator position by allowing the waterworks to designate another operator to help manage the system while trying to hire someone to fill the vacancy.

Mr. Pomeroy stated he can work with the Virginia Municipal Drinking Water Association and consider regulatory language. Ms. Nunn noted that WAC members may need to discuss this topic in a subcommittee.

Item 13 – All affected regulations

Ms. Nunn discussed a planned technical change to the regulations to replace uses of “shall” with “must.” She stated that it is expected that the Office of the Registrar will decide in the near future that instances of “shall” should instead be “must,” “will,” or other similar language. Ms. Nunn noted that this expected change is due to multiple courts finding that in some cases “shall” means “may.” Ms. Nunn stated that ODW will not ask the WAC to review these changes, as there will be more than 2,600 replacements of “shall.”

Item 14 – All regulations

Ms. Nunn stated that the Governor has mandated that agencies reduce discretionary regulatory requirements by 25%. The Waterworks Regulations have approximately 1,400 discretionary requirements. ODW is looking at what can be reduced without risking public health. ODW plans to have further internal discussions and provide findings at the next WAC meeting.

Compliance, Enforcement & Policy Update

Grant Kronenberg presented the Compliance, Enforcement & Policy Update.

The most recent EPA Enforcement Targeting Tool report was issued in January. That report showed 9 systems that are considered serious violators by EPA, which is down from 13 on the prior quarterly report. Three of the 13 systems were already under an administrative order and one of them had their order terminated because they have fully complied with it. One other system is back in full compliance and two others are nearly back to full compliance.

Two recent consent orders have been terminated because all requirements have been fulfilled.

The proposed amendments to the Waterworks Operation Fee Regulations are undergoing review at the Secretary of Health and Human Resources’ office.

The proposed amendments to the Enforcement Manual are currently undergoing review at the Office of Regulatory Management.

Staff update

Dwayne Roadcap provided the update.

ODW currently has a 14% vacancy rate with 16 vacancies. Tony Singh’s old position title has been changed to the Chief of Field Office Operations and is now held by Bailey Davis. Mr. Davis was a previous member of the WAC through DCLS. He will be working with Bob Edelman on the PFAS initiatives.

Budget

Dwayne Roadcap provided the update.

Due to lack of funding, the Office of Drinking Water had been holding 7 positions with 3 positions unfunded. Now, ODW will soon be hiring 4 positions that were previously held open. The General Assembly gave ODW's Sampling Verification Program \$1 million for its first year and \$1.5 million for its second year. Unfortunately, the Office of Drinking Water remains in a situation where the overall level of staffing remains under funded. A report by Cadmus, commissioned by EPA, stated that for the Office of Drinking Water to effectively maintain the rules, it needs an additional 42 full-time staff members.

PFAS

Bob Edelman provided the update.

The EPA should issue a final PFAS rule soon. The Office of Drinking Water is anticipating that the final rule will call for initial monitoring in the three-year period between the publication dated and the rule compliance date, which is unusual. Initial monitoring for surface water sources will consist of 4 quarterly samples; initial monitoring for ground water sources will consist of 2 samples within a 12-month period.

The Virginia PFAS Sampling Program summary has identified the numbers of waterworks with confirmed PFAS levels above the proposed EPA PFAS maximum contaminant levels (MCLs). The Office of Drinking Water has observed most of the issues are with PFOS and PFOA. Only two systems exceeded the proposed MCL for the Hazard Index. One system exceeded for GenX and one system exceeded due to PFHxS. The Office of Drinking Water has tested 274 waterworks out of approximately 1,100 community waterworks and 500 nontransient noncommunity waterworks. The samples results are available on our ODW PFAS Sampling Dashboard. Refer to the slides for more details.

EPA is overseeing the Unregulated Contaminant Monitoring Rule 5 (UCMR5) monitoring and are monitoring 150 waterworks serving 3,300 persons and more plus 19 small waterworks serving less than 3,300 persons in Virginia for 29 PFAS compounds plus lithium. Refer to the slides for a summary of the UCMR.

This year, ODW plan to proceed with Phase 3 PFAS monitoring, which will focus on sampling small waterworks, disadvantaged communities, and systems not covered by UCMR5. The Office of Drinking Water will use funding from the EPA PWSS Grant – Emerging Contaminants and the EPA Emerging Contaminants in Small or Disadvantaged Communities Grant. The field office staff will complete the sampling.

Lead and Copper Revisions

Bob Edelman provided the update.

Waterworks are completing their service line inventories. To assist, ODW has contracted with TruePani to provide technical assistance to waterworks. ODW has placed a link on ODW's Lead and Copper Rule Revisions (LCRR) guidance webpage to request technical assistance. TruePani is holding office hours on Wednesdays at noon for community waterworks and office hours for NTNC waterworks on Tuesdays.

ODW has rolled out the SWIFT submittals and delivered training to the regulated community in February. The recordings are available on the LCRR guidance webpage.

Currently, 17 water systems have put their inventory through SWIFT submittals with 11 in progress. The Lead and Copper Rule Committee will establish a review process for the inventories. ODW will deploy a webinar in summer 2024 to focus on the new LCRR public notification, public education, and consumer notification requirements. See the slides for more details.

The proposed Lead and Copper Rule Improvement (LCRI) proposed to roll back many but not all changes in the LCRR back to the 2020 version of the Code of Federal Regulations. Under the LCRR, modified by the LCRI, the following are required beginning October 16, 2024:

- Complete and submit the Service Line Inventory to the State.
- Public Notifications and Consumer Notifications due thereafter.
- Tier 1 Public notice upon lead 90th percentile exceeding the action level.

Centralized Plan Review Program

Aaron Moses provided the update.

The Office of Drinking Water is currently caught up on the centralized plan reviews. The Office of Drinking Water has made changes allowing it to catch up and is now incorporating the tracking system. It shows the permits and will allow us to view the status.

Drinking Water Viewer implementation

Aaron Moses provided the update.

The online Drinking Water Viewer is fully operational. ODW had intended to implement a new module to generate and download the data tables for a Consumer Confidence Report (CCR); however, this module is not ready, the developer is still working on it, and it likely will not be ready for this CCR season.

Legislative Update

Dwyane Roadcap provided the update.

HB220 is currently at the Governor's office. It allows the agency to provide options for remote monitoring. The Office of Drinking Water has received a variance request from one waterworks so far related to remote monitoring. The Office of Drinking Water is receptive to the idea and trying to figure out the appropriate guard rails. The bill also creates a licensed operator requirement in statute and allows for a waiver of that requirement in the event of a sudden vacancy if certain requirements are met. The Governor has not yet signed the bill.

SB243 is a PFAS bill resulting when the results show an exceedance of the hazard index. The Office of Drinking Water will share its results with DEQ and then DEQ would prioritize this data. Based on this information, DEQ will try to look upstream to try to find the source of the PFAS. The bill has had support from various groups and a significant amount of effort was put into it by those stakeholders. The Governor has not yet signed the bill.

There is a budget amendment that would provide \$500,000 to evaluate the cost of compliance to the PFAS rule. A lot will depend on the budget negotiations process. The Office of Drinking Water may have that money to access the impacts and costs on the anticipated PFAS changes.

Public Comment

None

Conclusion

The 2024 WAC meetings are scheduled for June 12, 2024 (all virtual), September 18, 2024 (in person), December 11, 2024 (all virtual).

The meeting adjourned at approximately 12:45 p.m.