

## **PFAS Policy and Regulations Subgroup**

### **Meeting Minutes**

By WebEx

**11:00 am to 12:00 pm, September 20, 2021**

Hosted by the Virginia Department of Health Office of Drinking Water

- 1. Welcome and meeting overview:** ODW Policy Director, Nelson Daniel called the meeting to order at 11:00 am. The meeting was conducted by electronic communication means (WebEx) due to continued concerns about the rapid spread of the coronavirus in Virginia. The meeting was recorded.
- 2. Meeting Participants:**
  - a. Subgroup Members
    - Wendy Eikenberry (Augusta County Service Authority)
    - Jamie Hedges (Fairfax Water)
    - Jessica Edwards (Loudoun Water)
    - Mike McEvoy (Western Virginia Authority)
    - Phillip Musegaas (Potomac Riverkeeper Network)
    - Paul Nyffeler (Chem Law)
    - Nelson Daniel (ODW)
  - b. Guests
    - Ellen Egen, AquaLaw
    - Amanda Waters, AquaLaw
    - Bob Angelotti, Upper Occoquan Service Authority
  - c. ODW
    - Dwayne Roadcap
    - Tony Singh
    - Robert Edelman
    - Kris Latino
- 3. Minutes from the August 16, 2021 meeting (Town Hall):** Subgroup members did not have any comments or corrections to the minutes from the August 16 meeting. They have been marked as final on Town Hall.
- 4. State Updates and Summaries:** Nelson did not have any updates on state or federal regulatory action related to PFAS since the last subgroup meeting. Members did not have any other updates. However, one member recommended that we re-organize the table of state and federal MCLs so they are grouped as MCLs, health advisories, notification levels.

- 5. Review Recommendations from the Subgroup:** Nelson raised the question of what the summary from the Subgroup should be, noting the diagrams with state MCLs / advisory levels are summary of what we have learned and the work the Subgroup did to develop the PFAS Communications Toolkit and outline for the Workgroup report.

As an alternative, or in addition to the work the Subgroup has done, Nelson presented several recommendations for the Subgroup to consider:

**Additional Sampling and Monitoring for PFAS is needed to broaden the scope of the sampling dataset and ensure that a broader cross section of drinking water sources in Virginia will be monitored for the presence of PFAS chemicals.**

- Members supported this and the following recommendation. They also suggested sampling at more groundwater systems, particularly in areas where there is a possibility of contamination. They also suggested more repeat samples, possibly raw and finished water at some facilities to see how effective existing treatment is.
- They noted that the amount of funding/time will dictate scope of additional sampling.
- A member posed a slightly different question – other states have done studies, follow-up – do we expect that we will learn a lot more from follow-up? If we start testing groundwater, have other states found unexpected sources of contamination? Everyone is on a budget – would spending be allocated to helping identify sources of contamination? What is incremental benefit of doing more testing? Additional testing in specific areas v. widespread testing. Broad testing may be good but, with limited resources is it the best alternative?

**Virginia should collect more PFAS occurrence data. While the current study provided a snapshot of a significant portion of the population, there are large data gaps for small and groundwater systems.**

- DEQ is doing source testing following a survey to identify potential sources of contamination.
- Members noted the U.S. Environmental Protection Agency’s (EPA) Fifth Unregulated Contaminant Monitoring Rule (UCMR 5) will provide more occurrence data for PFAS at waterworks.

**VDH should initiate the regulatory process to develop health-based limits on PFAS compounds in drinking water**

*EPA’s progress regarding PFAS has been repeatedly delayed until now, and may be delayed again. Further delay would leave Virginians unprotected.*

*VDH should not wait for EPA to develop MCLs for PFAS compounds, given the uncertainty of the timing and outcome of any EPA rulemaking on PFAS*

- Nelson presented this and the next recommendation (below) and asked the Subgroup if there was a preference for one versus the other.
- Members felt the recommendations (this and the next recommendation) are valid, but said that the Subgroup has not mentioned / discussed the fact that all of the concerns could be equally true for VDH, i.e., there are a number of considerations associated with either approach. They suggested going forward acknowledging both approaches, noting Virginia's Administrative Process Act provides some flexibility in the rulemaking process, allowing VDH to change course if there is action by EPA or other source.
- Members also felt that if this recommendation (above) is put forward, resources need to be dedicated to do this effectively – to set MCLs takes significant resources (time, money, people). It needs to be more than what was provided for PFAS Workgroup because there is a lot to consider, such as toxicology, impacts from moving PFAS from one media to another, incremental costs, downstream effects, etc.
- Rulemaking needs to focus more on small waterworks, including treatment options, costs, and how to pay when treatment is / would be required. UCMR5 will provide data from selected small waterworks in Virginia. Sampling will occur from January 2023 through December 2025.

**Virginia does not have the resources or a history/process for establishing a drinking water MCL. Diverging from EPA presents a number of risks and challenges.**

*EPA could issue a lower MCL, which Virginia would then have to adopt*

*The ability to weigh the costs and benefits of a PFAS MCL is particularly challenging given the numerous exposure routes and issues with residuals disposal*

- Subgroup members recommended the Virginia Department of Health (VDH) should develop a needs assessment to develop MCLs – hiring toxicologist, perform additional sampling, etc. to ensure there is a have worthwhile process.
- They also noted treatment costs will be site-specific, depending on PFAS concentration, site characteristics, etc. Each waterworks will need to go through pilot testing to develop removal curves for one compound, v. multiple PFAS v. PFAS + other compounds in water (limited data in literature review). Waterworks will need to assess the impact and effectiveness for treatment at each site.
- Recommend General Assembly set aside funding for pilot testing and conduct pilot testing while EPA develops its MCLs for PFOA/PFOS.

**VDH could move forward to develop MCLs, possibly before EPA, given what other states have done, develop MCLs only for PFOA and PFOS – there is sufficient data for these two compounds. [Recommendation from the Subgroup, added during the meeting]**

*Start with panel of toxicologists to follow the process of other states to arrive at maximum contaminant level goal (MCLG). Look at the data, make a recommendation. (Pennsylvania hired Drexel University as one model.)*

*Once you have the MCLG, you can look at treatment capability, success/failure from other states, to set the MCL.*

*This creates a process that can be applied to other PFAS if there is concern/need.*

- Subgroup members generally agreed with this recommended approach and asked if this possible through the RAP? Or, does VDH need a budget amendment to hire toxicologists?
- Defer to toxicologists to determine whether or not to regulate other PFAS (instead of just PFOA & PFOS). The sample study found other PFAS outside of the 6 named in HB586.
- Subgroup members pointed out that states have not come up with the same number and suggested VDH needs toxicologists to come up with their own number based on their professional judgement. A problem is that existing data will show a range of numbers is reasonable; 70 ppt is too high; and something in the range of 8-20 ppt is probably ok. VDH and stakeholders may not ever agree with the “right” number, but VDH can come up with something that is defensible and protective of public health.
- We should spend resources on finding sources – noting the number of non-detects in our limited study. We’ve done a good job of saying where PFAS aren’t. Let EPA toxicologists establish limits instead of spending those resources in Virginia. States that adopted limits had areas of significant contamination – because production and disposal facilities are/were located in those states.

**If VDH includes an analysis of environmental justice impacts that may flow from the promulgation of a MCL for PFAS compounds, the agency should also carefully assess whether and to what extent a MCL would improve protection of public health in communities already burdened by water, air and industrial pollution.**

- To consider environmental justice impacts, there needs to be evidence or understanding of where the potential sources are – to know which areas are impacted. This also goes back to the affordability issue – small waterworks will not have resources to add treatment. Consequently, if VDH implements MCLs, there needs to be some way to make treatment affordable when small waterworks need it, otherwise it could lead to doubling or tripling rates for consumers.

**It appears that there is insufficient data relating to toxicology/health effects on any of the PFAS compounds other than PFOA and PFOS.**

**There remain a number of questions about PFAS contaminated residuals that will factor into the analysis, particularly when a source for the PFAS contamination is**

**suspected or known and removal at the source can be accomplished and funded by the appropriate party (the polluter).**

**Additionally, the regulatory landscape for PFAS in solid waste and other media continues to evolve. This has to be factored in when the treatment technologies available do not destroy the contaminant but rather move it from one media to another.**

- The third recommendation above relates to cost – waterworks cannot dispose of PFAS-contaminated spent carbon, or can only do so at a very high cost – point is that there are a number of considerations in setting a MCL.
- To the extent sources can be identified, they should have a role in offsetting costs for treatment, meeting MCLs. If DEQ is going to do more work to ID sources, there should be funding to support DEQ’s work; view this issue in a holistic manner (source, treatment, disposal, etc.).

**6. Public Comment:** There were not any public comments.

**7. Next meeting:** Nelson did not anticipate the Subgroup would meet again based on the date of the next PFAS Workgroup meeting (October 8, 2021) and timeline to complete the draft report for HB586 (by October 15, 2021).

Nelson concluded the meeting at 12:10.