

Waterworks Advisory Committee (WAC)  
**DRAFT Meeting Summary**  
October 30, 2018

Members Present: Dwayne Roadcap, VDH (chair); David Van Gelder, Hanover Public Utilities (vice-chair); Skip Harper, DHCD; Mark Estes, VRWA; Jesse Royall, Sydnor Hydro; Roger Cronin, ACEC; Jay Armstrong, DCLS; Jutta Schneider, DEQ; Tim Mitchell, VA AWWA; Andy Crocker, SERCAP

Guests in Attendance: Louis Martinez, Newport News Waterworks; Whitney Katchmark, Hampton Roads Planning District Commission; Robb Bohannon, Hunton Andrews Kurth, Director of Government Affairs; Chris Harbin, City of Norfolk; Gregory Prelewicz, Fairfax Water; Laura Bauer, Virginia American Water Company; Kelly Ryan, Virginia American Water Company; Tom Fauber, VA ABPA; Steven Edgemon, Fairfax Water; Ryan Green, DEQ; Bryan Wade, VDH; Nelson Daniel, VDH; Robert D. Edelman, VDH; Jeff Wells, VDH; Jeremy Hull, VDH; Steven Pelli, VDH; Christopher Gill, Christian & Barton (City of Norfolk); Ross Phillips, City of Richmond; Rosemary H. Green, City of Richmond; Scott Morris, Chesterfield County; George Hayes, Chesterfield County; Barry Matthews, VDH; Kristen Lentz, City of Norfolk Utilities; Jennifer Tolley, DHCD, Ron Harris, NNWW; Harry M. Johnson, Hunton Andrews Kurth (Fairfax Water); Bennett Ragnauth, VDH; Dan Horne, VDH; Theresa O'Quinn, Prince William County Service Authority; Sherri Sullivan, VDH; Parham Jaber, MD, VDH; Andrea Wortzel, Troutman Sanders (Mission H2O); Paul Nyffeler, AquaLaw PLC

**VCU Performance Management Group** 9:00 – 10:20 AM

The VCU Performance Management Group is completing a review of the Office of Drinking Water's (ODW) organization structure, how ODW delivers services to customers, and how ODW can improve, including efficiency. The VCU Performance Management Group interviewed the WAC to get their input for the review.

**Call to Order: Introduction**– Dwayne Roadcap

Dan Horne announced on October 30, 1912, the federal government established the very first national drinking water regulation that banned the use of the common cup aboard interstate train carriers. (Common Drinking Cups 1912)

Dwayne Roadcap introduced Dr. Parham Jaber, MD, MPH. Members of the WAC and guests introduced themselves.

Dwayne reviewed the rules for participation.

No changes were made to the agenda.

**Adoption of minutes from the 9/5/18 meeting** – Dwayne Roadcap

Roger Cronin moved to approve the minutes; Jesse Royall seconded and the motion was approved unanimously.

**Public Comment Period**

No one came forward to make public comments.

**Emergency Preparedness and Response: Hurricane Michael** – Bryan Wade

ODW and VDH are in charge of Emergency Support Function Area 3 (ESF-3, Public Works & Engineering) at the State Emergency Operations Center. The US Army Corps of Engineers (USACE) is in charge of ESF-3 at the Federal Level.

The USACE has introduced the Emergency Power Facility Assessment Tool (EPFAT). This is an online database intended to collect emergency generator engineering data. Bryan encouraged owners of waterworks to use EPFAT to document emergency power requirements for pumping and water treatment plant facilities in this database. In the event of loss of power, the USACE can more quickly supply emergency generators from their inventory.

Bryan described a new situational awareness viewer using ARCGIS online. This shows flood zones, intakes, water treatment plants, wells, and superimposes weather radar and other weather information. This tool can show areas of weather impact and help to identify waterworks and healthcare facilities that may be affected. This viewer also has inundation mapping from dams and can help to assess potential impacts from dam breaks.

Bryan explained that these tools would allow ODW to be more proactive rather than reactive. During the preparation for/response to Hurricane Florence, ODW was able to add federal data to our tools. Next steps are to upload generator data and to collect information from water utilities such as distributions system maps and the locations of remote water towers.

Bryan presented a vision to have waterworks communicate boil water notices directly to ESF-3, rather than through the ODW's field offices. This will remove some burden from the field offices and help disseminate information. Bryan pointed out that some waterworks issued boil water notices without notifying ODW.

#### **Upcoming General Assembly Session** – Dwayne Roadcap

Session starts January 9, 2019. Possible significant topics affecting the drinking water industry include:

- HJ 94 for Delegate Lopez – Report on the Commonwealth's drinking water infrastructure and oversight of the drinking water – VDH is scheduled to finalize the report in December. Some bills may develop from this topic.
- Lead in Schools - EPA just updated their 3Ts guidance document. The revised document no longer has the 20 ppb action level, so expect VDH to work with schools to discuss how to use the guidance. VDH will reach out to the Board of Education to see if collaboration is possible.
- Follow-up on the Revised Total Coliform Rule (RTCR) – This topic is important to Delegate Hugo. The draft text of the *Waterworks Regulations* updates the RTCR to allow reduced bacteriological sampling for qualified transient noncommunity waterworks. This may be a topic of legislation.

#### **Status of VDH Review of the Proposed Amendments to the Waterworks - Bob Edelman**

- See PowerPoint slides for recap of history of RAC and WAC involvement.
- In summary, the following has happened since last meeting: entry into the Regulatory Information System (RIS), development of the agency background document and detail of changes (Form TH-02), Memo from Office of Attorney General and submittal to commissioner's office. VDH submitted the RIS version of the proposed amendments to the *Regulations* to the Registrar's Office for concurrent review.
- Next steps:
  - November 9 – Deputy Commissioner approval to send to the board of health
  - November 13 – Submit Action Package for Board of Health
  - December 13 – Board of Health Meeting

## Revision to Cross Connection Control Program Sections 600 and 610 – Bob Edelman

ODW received the following comment about Section 600:

**Is there a way to allow community waterworks to substitute public education for inspection of high-hazard devices in homes or residences? This would be approved on a case-by-case basis by the department.**

As drafted, annual assessments and operational tests are required for homeowners with high hazard devices.

### Section 600: New Proposal Concepts

- Homes and commercial facilities with no known high hazards can be addressed with public education.
- For all other homes, the department may approve public education as part of the CCCP.
  - Waterworks owner records of testing and inventory not required for above facilities.

VDH Staff took the draft of 12VAC5-590-600 - CCCP responsibilities and modified as follows (new text is red):

D. Instead of annual operational tests (12VAC5-590-600 C) and the related records and inventory of backflow prevention assemblies, backflow elimination methods, and backflow prevention devices (12VAC5-590-600 G), the owner may provide a public education program to residential and commercial consumers whose premise plumbing is not complex and where there are no known or suspected high hazards as identified in Table 630.1. For all other residential consumers, the department may approve a public education program provided by the owner as part of the CCCP.

WAC members recommended the following change to the last sentence:

**For residential consumers with lawn sprinkler or irrigation systems, the department may approve a public education program provided by the owner as part of the CCCP.**

### Section 610: New Proposal Concepts

- Section in question is the containment policy
- List of facilities that need a backflow assembly or method
- Mention of operational testing and inventory recordkeeping is not appropriate here.
- Consistency with previous change.
- Remove operational testing and inventory recordkeeping requirements.

VDH Staff took the draft 12VAC5-590-610 C. Containment of backflow and modified as follows (new text is red):

C. A backflow prevention assembly or backflow elimination method shall be installed where the following conditions exist: ...

5. There are fire protection systems, lawn sprinkler systems, or irrigation systems.; ~~These systems may have the required approved backflow prevention assembly installed at their downstream connection or takeoff point, but under this scenario the owner shall ensure that the operational testing required by these regulations are completed (see 12VAC5-590-600 C) and the inventory and recordkeeping as required for a containment device (see 12VAC5-590-600 G);~~

Purpose of the language marked for deletion is to prevent the need to install containment in some situations, such as where a containment device is installed on a lawn irrigation system connected to the home internal plumbing. **Several WAC members did not support the suggested change.**

### **Surface water sources: Report from 10/18/18 Subcommittee meeting - Andrea Wortzel**

See the Mission H20 PowerPoint slides for the complete presentation. Major points are:

- A conceptual agreement on wording for Section 830 was reached in the September 5, 2018 WAC meeting.
- VDH and Mission H20 agreed that the language presented was conceptual and would continue to develop the language.
- Separately VDH and Mission H20 worked on regulatory language to flesh out the conceptual agreement.
- At the October 18, 2018 Subcommittee meeting, Mission H20 presented their proposal.
- At the same meeting, VDH presented a proposal that differed from the conceptual agreement. Mission H20 feels the VDH proposal is unsatisfactory.

Mission H20 recommends VDH retain the language presented in the September 5, 2018 proposal or use the Mission H20 version.

Many of the stakeholders present at the meeting provided comments about the proposed changes to section 830 and their preferred way to amend the section. Most expressed concerns about requirements that could have an impact on surface water withdrawals established prior to July 1, 1989 and supported the proposed language that Mission H20 presented at the October 2018 Subcommittee meeting. The WAC and stakeholders also discussed the role of VDH and DEQ in the process to permit a waterworks.

Tim Mitchell: Motion to move forward with the proposal from Mission H20. Mark Estes from VRWA seconded. Vote: 6 Yes; 2 No.

Dwayne Roadcap: This may not be a workable alternative. Hypothetically, if the Mission H20 proposal is not workable, can VDH move forward with the revisions to the *Waterworks Regulations* and leave Section 830 as-is, unchanged?

Following some discussion, Jesse Royall provided an amendment to the earlier motion: if VDH staff feels the Mission H20 option is not viable, leave Section 830 as-is and move forward with rest of the regulatory action. Vote: 7 Yes; 0 No; 1 Abstain.

Next steps - VDH will continue with conversations with the Commissioner's office. The Commissioner's office decides whether to put the proposed regulatory action on the Board of Health agenda. Assuming VDH moves forward, and the Commissioner is in support, proceed with a 30-day review by the Board of Health, followed by a Board of Health meeting. The Board has a public comment period during each meeting. The Board will vote in the meeting. A vote in support of the regulatory action allows VDH to submit the proposed amendments for Executive Branch review. Following executive branch review, if approved, the proposed amendments will be published in the Virginia Register for a 60-day public comment period. At the close of the public comment period, VDH will have 180 days to respond to the comments. The agency may or may not make changes to the regulations based on public comments. The regulations then go back to the Commissioner's office and Board of Health for approval in their final form. If approved by the Board of Health, they go to the Executive Branch for review, then a 30-day public comment period. The proposed amendments become final following the 30-day public comment period (subject to some conditions related to changes with substantial impact between the proposed and final changes and the number of comments received).

VDH will notify the WAC of the final form of section 830 before submitting the proposed amendments to the Board of Health members for review prior to the December 13 meeting. The WAC can schedule the next meeting in November or December. In the mid-January through March period during General Assembly, it will be difficult to meet.

The next meeting does not need to be a full meeting – it could be a conference call.

Dwayne pointed out that we are able to schedule a conference call with 3 days advance notice.

The WAC decided to set up a conference call for a meeting in January, but did not establish a time/date.

The WAC adjourned the meeting by consensus at 2:17 pm.

# Revisions to Virginia's *Waterworks Regulations*

Nelson Daniel

Robert D. Edelman, PE



# Objectives

- What's been accomplished
- Next steps
- Update WAC on revisions to the proposed amendments to the *Waterworks Regulations* since last meeting
- Surface water sources will be addressed separately

# What has been accomplished so far...?

- ❑ Regulatory Advisory Panel (RAP) - Five meetings & 4 Workgroups - 2014
  - ❑ Stopped process 2015-2016 to add RTCR
- ❑ Waterworks Advisory Committee (WAC) meetings
  - ❑ 2017 (January, March, April, May, September)
- ❑ NOIRA published - October 30, 2017
- ❑ Additional WAC meetings
  - ❑ 2018 (April, May, July)
  - ❑ Sept. 5, 2018 (seeking WAC support to go forward)
  - ❑ October 30, 2018



# Since Last WAC Meeting

- Revisions related to Cross Connection Control
- RIS Data Entry and QA/QC
- Prepared regulatory action package for the Commissioner's Office
  - TH-02 - Detail of Changes
  - RIS Regulations
  - Memo from OAG
  - Letter from EPA RE RTCR changes

# Milestones/Schedule

- Completed:
  - ✓ To Registrar for courtesy review
  - ✓ To Commissioner's Office for review
  - ✓ Notify the Commissioner's Office of BOH regulatory action agenda item
- By November 9, 2018
  - Deputy Commissioner approval
- By November 13, 2018
  - Submit Action Package for Board of Health
- December 13, 2018: Board of Health Meeting

# Cross Connection Control

12VAC5-590-600. CCCP responsibilities.

## Comment

Is there a way to allow community waterworks to substitute public education for inspection of high-hazard devices in homes or residences? This would be approved on a case-by-case basis by the department.

# Cross Connection Control

12VAC5-590-600. CCCP responsibilities.

## Existing proposal:

D. Instead of annual assessments and operational tests, the owner may provide a public education program to residential and commercial consumers whose premise plumbing is not complex and where there are no known or suspected high hazards as identified in Table 630.1.

As written, annual assessments and operational tests are required for homeowners with high hazard devices.

# Cross Connection Control

12VAC5-590-600. CCCP responsibilities.

## New Proposal

- Homes and commercial facilities with no known high hazards can be addressed with public education.
- For all other homes, the department may approve public education as part of the CCCP.
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# Cross Connection Control

12VAC5-590-600. CCCP responsibilities.

## New Proposed Text:

D. Instead of annual operational tests (12VAC5-590-600 C) and the related records and inventory of backflow prevention assemblies, backflow elimination methods, and backflow prevention devices (12VAC5-590-600 G), the owner may provide a public education program to residential and commercial consumers whose premise plumbing is not complex and where there are no known or suspected high hazards as identified in Table 630.1. For all other residential consumers, the department may approve a public education program provided by the owner as part of the CCCP.

# Cross Connection Control

## 12VAC5-590-610 C. Containment of backflow.

### Existing proposal:

C. A backflow prevention assembly or backflow elimination method shall be installed where the following conditions exist: ...

5. There are fire protection systems, lawn sprinkler systems, or irrigation systems.; These systems may have the required approved backflow prevention assembly installed at their downstream connection or takeoff point, but under this scenario the owner shall ensure that the operational testing required by these regulations are completed (see 12VAC5-590-600 C) and the inventory and recordkeeping as required for a containment device (see 12VAC5-590-600 G);

# Cross Connection Control

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# Cross Connection Control

12VAC5-590-610. Containment of backflow.

## New Proposal

C. A backflow prevention assembly or backflow elimination method shall be installed where the following conditions exist: ...

5. There are fire protection systems, lawn sprinkler systems, or irrigation systems.

Questions?

# Safe Yield

A Follow Up Presentation to the  
Waterworks Advisory Committee Meeting  
October 30, 2018

By Andrea Wortzel  
On Behalf of Mission H<sub>2</sub>O



# Issue Raised by VDH

- How to address application requirements in 12 VAC 5-590-830 to determine safe yield/source water capacity
- NOTE ALSO: 12 VAC 5-590-200 – Procedure for Obtaining a Construction Permit
  - C.8 – Source of Water Supply

# Original VDH Proposal

- Delete all reference to safe yield
  - No requirement to include analysis in waterworks application
  - Retained requirement to provide a “summary of design criteria” that includes “water supply withdrawal capacity”
    - “Water supply withdrawal capacity” is not defined

# Mission H<sub>2</sub>O Concerns

- Need for Clarity / Certainty
- Need to Protect and Preserve Existing Water Rights and Grandfathered Withdrawals
- Need to Maintain Different Roles and Responsibilities as Between VDH and DEQ
  - Different Missions
  - Different Criteria for Permits

Bottom Line: This is not an environmental regulatory program; cannot use VDH waterworks program to override statutory protections for grandfathered withdrawals.

# VDH Concerns

- VDH Claimed that Term “Safe Yield” No Longer Used
- VDH Claimed That DEQ Has Always Conducted the Safe Yield Analysis
- VDH/DEQ Asserted that Permittees Incorrectly Rely on “Safe Yield” as a Water Right
- VDH Desires for the Commonwealth to Speak with “One Voice”

**But - FOIA Responses Demonstrated These Concerns are not Supported (see July 2018 presentation)**

# VDH Concerns

- VDH Claimed that Term “Safe Yield” No Longer Used – Referenced elsewhere in the Code and remains in current VDH permitting documentation
- VDH Claimed That DEQ Has Always Conducted the Safe Yield Analysis – Typically applicants submit; DEQ serves as VDH resource to review submittals on request
- VDH/DEQ Asserted that Permittees Incorrectly Rely on “Safe Yield” as a Water Right – VDH review in 2006 determined this was not the case
- VDH Desires for the Commonwealth to Speak with “One Voice” – The two agencies have different authorities, goals and objectives; VDH charged with ensuring adequate and safe water is available for human consumption. See VDH 2006 Internal Memo



# Formation of Subcommittee

- Multiple Meetings
- Attempted to develop compromise that would address the stated concerns
- DEQ invited but did not participate

# Conceptual Agreement

- Presented at September 5, 2018 WAC Meeting
  - Maintain safe yield definition and clarify that it applies to facilities that obtained an operating permit before the effective date of the regulation
  - Add a definition of “source water capacity”
  - Where DEQ-issued VWP permit exists, it establishes source water capacity
  - Where VWP permit does not exist, identifies the other information that may be used to demonstrate source water capacity
  - Would contain a statement that the water works permit does not alter water rights/grandfathered status
- WAC endorsed the conceptual agreement

# Development of Regulatory Language

- VDH worked on language to implement conceptual agreement presented on 9/5
- MH2O worked on language to implement conceptual agreement presented on 9/5
  - Involved coordination among membership
  - Briefing of individual member Boards and management

# MH2O Draft Language

- Circulated on October 17 (in preparation for October 18 subcommittee meeting)
- Includes definitions for safe yield and source water capacity
- Acknowledges role of VWP permit
- Outlines other criteria that may be used to determine source water capacity where VWP permit does not exist

# MH2O Draft Language

- Included a statement acknowledging that this provision does not alter water rights, grandfathered status, or the roles of VDH and DEQ
- Similar (but more detailed) to language developed by VDH

# MH2O Draft Language

- Resolves VDH's Originally Stated Issues
- Designed to implement the conceptual agreement
- Surprised by alternative approach presented at October 18 meeting because it does not address the stated concerns
- Given the timeline, recommend that language remain as is or that MH2O language be included





# Concerns with Alternative Proposal

- Elevates DEQ Role in VDH Permitting Process to Equal Status
- Does not Maintain the Status Quo
  - Interjects New Requirements (i.e., DEQ certification that VWP is not required)
  - Change in safe yield definition (minimum vs. maximum)
- Criteria in proposed guidance are more akin to environmental permitting criteria rather than VDH waterworks permitting criteria
- Savings clause does not recognize grandfathered water withdrawals or reflect the differentiation between VDH and DEQ roles



# Concerns with Alternative Proposals

- Ignores the other tools that are already available to DEQ to address instream flow
  - VWP permitting program
  - Surface Water Management Area Act
  - Water Supply Planning
- Inappropriately interjects DEQ's broader policy concerns about water resource management into the VDH drinking water program