

VIRGINIA WATER PROTECTION PERMIT PROGRAM REGULATION AND ASSOCIATED VIRGINIA WATER PROTECTION GENERAL PERMIT REGULATIONS

CITIZEN ADVISORY GROUP

FINAL MEETING NOTES

MEETING THURSDAY, AUGUST 7, 2014

DEQ CENTRAL OFFICE – 2ND FLOOR – CONFERENCE ROOM A

Meeting Attendees

<i>CITIZEN ADVISORY GROUP MEMBERS</i>	<i>INTERESTED PARTIES</i>	<i>SUPPORT STAFF</i>
Steven E. Begg – Virginia Department of Transportation	Tracey Harmon – Virginia Department of Transportation	Melanie Davenport
Nina Butler – Virginia Manufacturers Association/Mission H2O	Sam Hollins – Virginia Transportation Construction Alliance (VTCA)	Dave Davis
Karen Johnson – The Nature Conservancy (TNC)	Adrienne Kotula – James River Association (JRA)	Mike Murphy
Greg Prelewicz – Fairfax Water	Dan Lucey - Virginia Homebuilders Association/Virginia Association for Commercial Real Estate (VACRE)	Bill Norris
Mike Rolband – Virginia Homebuilders Association/Virginia Association for Commercial Real Estate (VACRE)		Ann Regn
Margaret L. (Peggy) Sanner – Chesapeake Bay Foundation (CBF)		Brenda Winn
Oula Shehab-Dandan – Dominion Resources Services, Inc. (Alternate for Jason P. Ericson)		<i>OTHER DEQ STAFF</i>
Beth Silverman Sprenkle – EEE Consulting, Inc.		Trisha Beasley
Skip Stiles – Wetlands Watch		Steve Hardwick
William T. (Tom) Walker – US Army CORPS of Engineers		Bert Parolari

NOTE: Citizen Advisory Group Members NOT in attendance: Jason P. Ericson – Dominion Resources Services, Inc.; Katie Frazier – Virginia Agribusiness Council; Bob Kerr – Kerr Environmental

1. Welcome & Introductions (Dave Davis):

Dave Davis, Director of DEQ's Office of Wetlands & Stream Protection, welcome the members of the Citizen's Advisory Group and members of the Interested Parties to the meeting. He noted that we had a real tight time schedule for the group to complete its work the amendments to the VWP General Permits, which have to be reissued, as well as the VWP Permit Regulations, which have not been changed in 15 years. There will be some homework assignments for the group between the meetings with short-turnaround times.

He asked for introductions of those in attendance and asked for the organization that they represented as well as any specific "interests" that they would be representing during this process.

2. Nuggets of Wisdom (Mike Murphy and Melanie Davenport):

Mike Murphy, Director of DEQ's Piedmont Regional Office, welcomed the meeting attendees. He noted that he had been asked to help facilitate the discussions of this group. It is important to give everyone an opportunity to contribute to this process. We are here for two reasons: the General Permits are expiring and we know that there are some fundamental changes in the regulations that need to be made in support of reissuing those General Permits, which is the agency's intention. Second, while we have the base-regulation open that are some other procedural things, as well as definitions and other things that could possibly need improvement that we would like to get your advice on. On behalf of the Director, we appreciate your time and commitment to complete this process.

Melanie Davenport, Director of DEQ's Office of Water, thanked everyone for volunteering for this effort. She noted that program staff has been looking at the regulation because of the needed reissuance of the General Permits and have identified several items in the base-regulation that might be improved based on our years of experience with the program. DEQ has identified things in the regulation that we feel merit further examination. We have also gone as far as to collectively as a program to discuss these possible changes and have tried to examine how changes might affect the program, but we have not made any decisions. We have gotten together and identified several things that we think might improve the program; improve the quality of the permits; and ease of the process. Once we get into the guts of this you will see that we have given this some thought, but that doesn't mean that we have considered everybody's approach – it doesn't mean that we have gotten it right – it just means that from the regulatory and permitting perspective that we have identified things that we think might be a way to improve things. We need your input. We are a regulatory agency and we look at things from that perspective. We don't have the same experience that this group has in practical applications. We don't want you to think that we have made any decisions but we have tried to look thoughtfully at things that we think make sense and that is what we plan on rolling out to you over the course of the next few meetings of the Advisory Group. We hope that you will look at the material with a critical eye and let us know that we are right or wrong or "absolutely crazy".

Dave Davis noted that Mike Murphy had been involved on the original advisory group that worked on the VWP Regulation, so he brings a lot of historical knowledge to the table for this process.

3. Process and Schedule (Bill Norris):

Bill Norris, Regulatory Analyst with DEQ's Office of Regulatory Affairs reviewed the "Process and Schedule" for this Regulatory Action. The following items were briefly reviewed:

- **Purpose/Roles/Expectations of Citizen Advisory Group:**
 - The purpose of this action is to amend, as necessary, the existing Virginia Water Protection Permit Program (VWP) Regulation (9VAC25-210) and to reissue and amend, as necessary, the associated Virginia Water Protection General Permit Regulations which expire in 2016.
 - Based on responses to a request for interested parties to serve on an Advisory Panel that was included with the Notice of Intended Regulatory Action (NOIRA) that was posted on June 2, 2014, a twelve (12) member advisory group has been formed to develop

recommended regulation amendments for DEQ consideration through a collaborative approach of regulatory negotiation and consensus.

- All meetings of the Advisory Group are public meetings.
- Notice of the meetings will be posted in the Virginia Register and the Virginia Regulatory Town Hall – at least 7 days in advance of the meeting.
- Notes from each of the Advisory Group meetings will be developed and posted after review and approval by the Advisory Group members.
- The two-fold function of the Citizen Advisory Group is to develop recommended amendments to the Virginia Water Protection Permit Program Regulation (9VAC25-210) and associated Virginia Water Protection General Permit Regulations.
- This Advisory Group has been formed to help the Department balance the concerns of all those interested in or impacted by the amendments and reissuance of the Virginia Water Protection General Permit Regulations and the amendment of the Virginia Water Protection Permit Program Regulation.
- The role of the Advisory Group is advisory only. The Advisory Group's primary responsibility is to collaboratively contribute to the development of any needed amendments to these regulations that are in the best interest of the Commonwealth as a whole.
- The goal is to reach a **consensus** on proposed regulatory language for these amendments.

§ **Consensus** is defined as a willingness of each member of the Advisory Group to be able to say that he or she can live with the decisions reached and the recommendations made and will not actively work against them outside of the process.

- After the Advisory Group has completed its work and made its recommendations, DEQ staff will summarize the deliberations, outcomes and recommendations to presentation to Department management for review and consideration before the proposed regulations are submitted to the State Water Control Board – The documentation, sent to the Board for their review before the meeting, will also be sent to the Advisory Group members in the same time frame – As with other members of the public, Advisory Group members are free to attend the Board meeting at which the Department staff will present its recommendations, however, note that at this stage in the regulatory process that the Board will not receive comments.

- **Participation by Persons NOT on the Advisory Group:**

- The meetings of the Advisory Group are public meetings – as such any member of the public may attend and observe the proceedings.
- Only Advisory Group members have a seat at the table and may participate actively in the discussions.
- Those persons not on the Advisory Group are encouraged to work with and through the Advisory Group members that have common interests to ensure that their concerns are heard.

- Those persons not in the Advisory Group also have a formal opportunity to be heard during the 60-day public comment period on the proposed regulation.
- As warranted, the Department will provide access for non-Advisory Group members to make their concerns known during the meetings, to ensure full consideration of all issues surrounding the regulation in question, provided it is not disruptive or does not inhibit the advancement of the work of the Advisory Group.
- There will be a specific time established during each meeting for comments from the interested public.
- If during the course of the meeting, a member of the interested public has a concern or comment to make, please either wait until the designated public comment period or talk with a member of the support staff or a member of the Advisory Group during a break to make sure that your concern is noted.
- **Role of DEQ Staff:**
 - **Mike Murphy** will provide oversight over this process as a member of the DEQ Management Team.
 - **Dave Davis** and **Brenda Winn** will present background materials and proposed regulatory amendments to the members of the Advisory Group with support as needed from various program staff members.
 - **Ann Regn** will help facilitate the discussions of the Advisory Group members during the course of the meetings.
 - **Bill Norris** is the point of contact for all members of the Advisory Group; Interested Parties and Program Staff – As a "Public Body" all communication has to be coordinated through this point of contact. All correspondence related to this regulatory action and this Advisory Group need to be routed and coordinated through this point of contact. No more than two members of the Advisory Group can meet or communicate at the same time without such meeting being advertised as a "Public Meeting".
 - Staff will be using a recorder during the course of the meetings to facilitate note-taking and for capturing the key items of discussions and recommendations of the advisory group.
- **Overall Timeline – Per Governor's Executive Order 17:**
 - The Public Notice of Intended Regulatory Action (NOIRA) was posted on June 2, 2014.
 - The public comment period for the NOIRA started on June 2, 2014 and ended on July 2, 2014.
 - The Governor's Executive Order Number Seventeen (EO-17): Development and Review of State Agency Regulations establishes a regulatory timeframe deadline between the close of a public comment period and when the next stage (Proposed) is submitted on Town Hall as "**shall not exceed 180 days**".
 - The meeting schedule for this advisory group has been set so that the Agency can meet this mandated deadline and present the proposed regulations to the State Water Control Board at its meeting in December 2014.

- **Meeting Schedule:**

- Today's meeting will serve as an "Orientation and Introductory" Meeting for the Regulatory Process/Action.
- There are three (3) meetings scheduled for the work of this Advisory Group:
 - § Monday, August 25, 2014 at DEQ's Piedmont Regional Office Training Room;
 - § Tuesday, September 9, 2014 at DEQ's Central Office – 2nd Floor Conference Room A; &
 - § Monday, September 22, 2014 at DEQ's Piedmont Regional Office – Training Room.
- An additional meeting date has been set aside on an "If Needed" basis for Wednesday, October 15, 2014 at DEQ's Piedmont Regional Office – Training Room.
- All of these meetings are scheduled to start with a Sign-In Period at 9:15 A.M. and a Meeting Start-Time of 9:30 A.M. – Are there any issues or problems with this schedule for start of the meetings?

- **Meeting Guidelines:**

- Please put your cell phones on "vibrate" so that the discussions are not disrupted.
- Listen with an open mind.
- Speak one at a time – interruptions and side-discussions can be distracting and disruptive.
- Be concise and try to speak only once on a particular issue.
- Please make sure that you sign-in on the sheets provided – you only need to sign-in on the sheets in the meeting room – they will be copied and shared with the DEQ Office staff for their records.
- As noted on the agenda there will be an opportunity for "Public Comment" at the end of the meeting.

4. Open Forum (Dave Davis & Ann Regn):

Dave Davis noted that staff has been working on the regulation and doing some analysis for close to a year, which has lead us to this point today. Many of you have experience with the program in some form or fashion and we thing that this is a good opportunity to get your overall views. Maybe you have some specific issues you want to bring today or maybe some overall observations of the program. We will have plenty of time to discuss the specific topics that we plan to bring forward but you obviously you all have some perspectives and opinions and there may be other topics that need to be addressed. We wanted to do this “open forum” early in the process so that we can identify any specific areas of concern or of interest to the group so that we can go back and do some research on the topic prior to the next meeting.

Ann Regn, Director of DEQ's Office of Public Information and Outreach and the facilitator for the meetings of the Advisory Group solicited suggestions and comments from the members of the Advisory Group. She noted that we want to hear what brought you to the table? What interest or concern made you volunteer or be volunteered to participate in this effort? She asked for each person to

try to identify their top 3 issues for this regulatory action.

Suggestions and Comments included the following:

- Don't break something that isn't broken – the process is working in Virginia.
- We have a good system – don't break it.
- Limit the changes.
- Need to take a look at the mitigation rule.
- Need to have consistent mitigation ratios.
- Fix the minor modification process.
- Interesting in learning how the permitting process will work.
- Need for business continuity.
- Concern over any changes to “grandfathering” and the treatment of grandfathered withdrawals.
- How can industry comply with the proposed changes?
- What will it take to comply with the proposed changes?
- A question was raised regarding the intent of this process – Is it to make the process better? Or is it to make it more restrictive?
- *Staff Response:*
 - *We are looking at this as a process to identify ways to make things better. We want to improve the General Permits. There are things that we can do better. We could have left the base regulation alone and just addressed the reissuance of the general permits, but through analysis of the existing regulation we see things that could be improved to make the process easier to follow and to understand. Through our years of experience with the program, we have identified some things that may make it easier for the permittee to go through the process and other interested stakeholders to understand the process. One of the major areas that we have looked at is the consolidation of the various requirements for surface water withdrawals, which are scattered throughout the regulations into its own part or section. We think that this would make it easier both on staff and on the public. This effort is able making it more understandable and more helpful to everyone.*
 - *If the process is easier to follow and more understandable, it is probable that we would get “complete applications” – currently we get what we need less than ½ the time.*
 - *If the process is easier and we received more “complete applications” as a result there would be more staff time available to do inspections. We are looking to bring in a higher level of certainty and consistency to the process.*
 - *There are certain language in the current regulations that is a duplicate of what is included in the VPDES regulations – it may not currently make any sense to have that language in the VWP regulation. There may be things that don't currently make sense.*
 - *We are looking to improve – clarity; consistency; and certainty.*
 - *Would like to see more compliance as part of program integrity.*

- *We utilize the same staff to write the permits and to ensure compliance. If we could craft a rule where applications were “complete” 80 to 90% of the time, then more staff would be available to conduct inspections and to work on the compliance end of the process.*
- *We need to utilize our available resources to address compliance – there is nothing being proposed to be changed currently in the regulation that directly addresses compliance.*
- People that comply, who want to fix things are the ones who get in trouble first – the “bad” actors are the ones that need to be addressed. People who comply should not be treated the same way or receive the same penalties as those that do not.
- Want to see a consistent and timely process.
- Virginia’s program is very timely for the most part – Virginia is doing a lot of good things with its current program.
- Need to make sure as much as possible that nothing that is proposed runs afoul of the federal regulations.
- Looking for recommendations for things that will make the process work better.
- Need to have realistic expectations for this process.
- Need to have the text useful and helpful – need to work on clarification of the requirements and the process.
- Anytime that anyone opens up a regulation it is useful to be involved in the process – to be at the table - to see first-hand how the process works.
- Anything that you can do to reduce the time on the front end (have more complete applications) so that there can be increased time and additional resources available to work on compliance.
- It’s not the firms that are the “Name Brands” that are the issue here - that “gum” the system up.
- Need to simplify the process and cut down on the time it takes to get a permit on the front end would be useful.
- It is nice to be able to be involved in the regulatory process so that you are better able to explain the process and the outcomes to your peers.
- The program has a lot of integrity and we are very respectful of DEQ’s role in making this program work.
- Need to look at any changes being proposed from the perspective of whether they further the resource protection goals of the program.
- The existing state program is working well and is working well in conjunction with the CORPs program and is valuable to the state and to its citizens – we want to see that the program continue in this way.
- Interest specifically in how any proposed changes to the surface water withdrawal requirements may impact investors; customers; and infrastructure.
- Need to look are impacts of any changes on resource protection goals.
- Interest in how mitigation is handed with any proposed amendments.
- Would like to see the mitigation requirements sync up with the 2008 rule as much as possible and the time lines married up where possible.

- Concerned with the requirement for the 10-Day Notice period. Can't see a real purpose of the 10-Day Notice Requirement. *Staff Response: This requirement is also problematic for staff. It had a purpose originally but current practice has made it less useful.*
- Want to make sure that the process is monitored.
- The system isn't broken – just trying to make sure that something “crazy” doesn't get done during this process.
- Need to make sure that there are “no unintended consequences” to any actions being proposed through this process.

5. How Did We Get Here? – How Do We Proceed From Here? (Dave Davis/Melanie Davenport):

Dave Davis gave the group a brief overview of “how we got here?” He noted that he had asked the regional managers last summer was to get with their program staff to develop a list of all issues; all of the problems that they see and get them all out on the table. Management looked over that list of concerns and issues and added some more things and identified them as being specific to a region or being resource related or process related and tried to prioritize the list of possible things that needed to be looked at during this process. He noted that as we roll out our various issues – it is okay to say “Are You Crazy”. Because, maybe there is an internal process that we can change to address the concern instead of making a change in the requirements/regulations. We are open to the idea that a proposed change is crazy – don't make that change.

A question was raised over difference in the handling of Jurisdictional Determinations in different parts of the state. In the Southwest portion of the state, jurisdictional determinations are handled differently than in the rest of the state.

ACTION ITEM: Staff will look into the handling of Jurisdictional Determinations to see why they are being treated differently in the Southwest portion of the state.

Melanie Davenport noted that based on our recent experience with the Construction GP process and the things that we proposed that sometimes we as the folks administering the regulation would think that a certain change is just a “minor tweak” that would make something more clear and makes perfect sense to use but we would get slammed with a “Are You Crazy?” reaction. There was something from the stakeholder's/permittee's perspective that we had not considered. We need you as a member of this advisory group to feel free to say “Are You Crazy?” if you see something that we shouldn't consider changing or doing in the regulation. We did need to address the federal mitigation rule changes and to do that we needed to open the main regulation. We felt that while making those changes that we might as well see what else is out there that could be improved or clarified.

Dave Davis noted that the easiest thing that we could have done would be to just deal with the reissuance of the General Permits, but after 15 years of program, we needed to revise the main regulation. The outcome maybe that we don't change anything but we need to look at what those 15 years have shown use and see if any improvements/changes are needed.

The group noted that we need to “Try Not To Break Anything” in the process.

6. BREAK – 10:25 – 10:35

7. Sample of Issues Identified by DEQ Staff (Dave Davis and Brenda Winn):

Dave Davis and Brenda Winn presented a sample of the issues related to the Virginia Water Protection Permit Program Regulation and Associated Virginia Water Protection General Permit Regulations that have been identified by staff. The 5 issues that staff has identified as being the easiest things to get off the table, the “low hanging fruit” included the following:

- Compliance monitoring requirements based on current practice (Impact Site Construction Monitoring) – Bringing regulations up to current practice;
- Required wetland delineation information (Delineations) – What information is required? Since the regulation came into place there have been changes in the federal delineation manual that needs to be incorporated or updated;
- References to stormwater management and/or erosion and sediment control program-related provisions and wording (Erosion, sediment control, and stormwater) – The references are outdated – the question is do we even need the references;
- Requirement for a functional assessment for a complete application (Functional Assessments) – Do we need one for a complete application or not; &
- Surface water withdrawal provisions in new Part in 9VAC25-210 (Surface Water Withdrawal) – Taking all the surface water withdrawal requirements that are currently scattered across 5 or 6 sections of the regulations and moving them into their own section or part for clarity.

Dave Davis noted that this would be the only time during this process that the group would be getting the summary statement information at the meeting – the plan is to provide this type of information to the group prior to the meeting so that they will be able to read the materials before coming to the meeting.

The group discussed whether staff would look at all of the issues raised by the group even if they were not on the current list presented at today’s meeting. *Staff Response: Staff will look at all and any issues raised – the group can set their own priorities as to which topics and in which order they want to discuss them.* It was suggested that the group should at the end of the day establish some priority order of the topics/issues discussed for further work by staff. It was suggested that addressing and dealing with the mitigation rule might be one of those easy ones that could be added to the list and addressed by this group and by staff.

Summary Statements with information on the “Issues Identified”; “Considerations”; and “Examples of Possible Revisions” for each of these issues were distributed to the group. The group was asked to review the information and to decide on the order that they should be addressed during the discussions.

The group's discussion included the following:

- **Issue Number 1 - Surface Water Withdrawal:**

Issues Identified:

- **Surface water withdrawal related language incorporated throughout the regulation (2007) makes hard to navigate;**
- **Use of terminology was different than anticipated; &**
- **Lack of clarity or certainty as to the process and actions that are specific to withdrawal activities versus other Virginia Water Protection (VWP) activities.**

Considerations:

- **Revise existing sections of 9VAC25-210 that pertain to surface water withdrawals, without consolidating that information in a new section;**
- **Consolidate all surface water withdrawal related portions of 9VAC25-210 to provide better consistency, clarity and logic to the information requested,**

Examples of Possible Revisions:

- **Consolidate all water withdrawal related provisions (such as definitions, exclusions, and so forth) to a new part;**
 - **Develop new or revise existing definitions to reflect current use of terminology.**
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Staff noted that the current language is confusing – the provisions/language for surface water withdrawals was just included here and there in the regulation. The process for surface water withdrawals are a lot different from the other provisions related to wetlands and stream impact projects. There is different terminology. It is just difficult to figure out what is required and where it can be found in the regulation. During the last regulatory revision process in 2007, there was a lot of just putting provisions here and there to avoid having to do a major restructuring of the regulation. There is interest at the staff level to try to “un-jumble” the requirements. The thought is to have all of the surface water withdrawal pieces into its own section or part for clarity. The group’s discussions included the following:

- Is there a reason that the surface water withdrawal components were so interwoven throughout the regulation? *Staff Response: There was a change in the statute that had to be addressed and that was handled through a “fast-track” process. This process allowed the changes to be implemented quickly instead of having to open the entire regulation at that time to incorporate the changes.*
- Would there be any issues with statutory authority if the various pieces/requirements related to surface water withdrawals are now moved into its own section or part? *Staff Response: The same statutory authorities; notations; and citations would be given for the relocated materials so there would not be a need for any additional authority.*
- Has the agency starting drafting what this new section or part would look like? *Staff Response – Staff has starting looking at what pieces would need to be moved and an*

idea of what the flow might be – there may already be some track change versions of what they are considering. We didn't want to provide you with a track-change version because at this stage there would be so many variations and possible changes that the "strikethroughs"; "underlines"; multiple color revisions may be very confusing and hard to understand. We wanted to make sure that this group was on-board with the concept of moving these requirements to their own part or section before we spent the staff time developing such a document for your consideration.

- A concern was raised as to how "grandfathering" would be addressed as it relates to construction/modification of an intake structure and the 401 Process and how that relates to the rest of the VWP process. Because of some history of the requirements and other concerns related to the grandfathering provisions it may be appropriate that some of that language not be removed and shifted to a "water withdrawal section". *Staff Response: There may be instances where language may need to be repeated in different sections of the regulations or a notation made to "see section??" in order to eliminate any confusion regarding specific requirements.*
- Has the Attorney General's Office been involved in the review of these proposals? Will they be involved with this "advisory group" process? *Staff Response: No, they typically don't get involved in the "advisory group" process but they will review any proposals for amendments that are developed prior to presentation to the Board.*
- What prompted staff to consider the consolidation of these provisions related to surface water withdrawals into their own section or part? Was the genesis of this concept in handling by DEQ or was it from stated concerns from the regulated community? How did you get to this point in the process? *Staff Response: There have been a lot of questions from both applicants and staff related to the surface water withdrawal provisions and the difficult of locating specific requirements. There have been instances where someone knows that a requirement is in the regulation but it is not clear with the current structure where that provision is located.*
- The idea of making the regulations more understandable through this reorganization of the surface water withdrawal provisions into its own part or section is a good idea but the "devil is in the details". *Staff Response: As we go through this process, there are things that may make sense to us and seem to be a good idea – we are looking to you to tell us "Are You Crazy?" if there are changes that don't make good sense to you or to the regulated community.*
- The current process is very convoluted and complicated. The interactions between different agencies involved with the process can be complicated. Clarification is much needed – if the intent is to clarify and not to also expand jurisdiction. *Staff Response: Some of these proposals are based on DEQ's years of experience with administering the program and our concept of what is needed upfront that will make this process move forward more efficiently. Where we are thinking that this information may be good to have during the application process, you may think that*

no – that is beyond what is needed or beyond the agency’s jurisdiction to require. We will try to work through those instances with your assistance and recommendations. We have one staff person who for the most part deals strictly with the surface water withdrawal provisions and she has indicated that the current organization of the related provisions is confusing and difficult to manage.

Staff noted that we have work to do to flesh out this proposal to shift the surface water withdrawal provisions into its own part or section. The question is whether this is a good concept and should we pursue it? If so then staff will develop a specific proposal and proposed language and sent it out to the group for their review prior to its discussion at a future Advisory Group meeting. The question that was posed to the group was whether they would be supportive of the concept as long as the substance of the program is not changed? Response from the group included:

- § Conceptually it seems to be a good idea.
 - § This is an idea that is worthy of further investigation.
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- The group requested that the materials that would be developed by staff for consideration by the group should show just changes related to this proposal. All track-changes for surface water withdrawal changes should be kept in a single document and not lumped with any other proposals.
 - The document for review by the Advisory Group should clearly identify only the “surface water withdrawal” proposed changes.
 - There appears to be tentative interest in this concept but it doesn’t appear that anyone is willing to commit to it as a priority item.
 - Let’s focus our efforts on topics or proposals that everyone wants to work on or wants to see further developed as a proposal for consideration.
 - Conceptually this is a good idea.
 - The surface water withdrawal provisions/process could use clarification.
 - *Staff Note: There appears to be a great amount of staff time being taken away from permit writing to address issues and confusion over the provisions and requirements for surface water withdrawals that are scattered across and throughout the regulations – from an improvement of the use of agency resources this seems to be an area where there could be some improvements made. At a minimum this section of the regulations should be reorganized and clarified.*
 - The group requested that a “cut & paste” version of proposed changes be provided, so that the group could see what it looks like.
 - The group requested that a “cheat sheet” be developed and provided to identify what has been moved and what has been changed.

- **Issue Number 2 – Impact Site Construction Monitoring:**

Issues Identified:

- **VWP Program changed the construction monitoring method required in new issuances in August 2013, which requires submittal of construction status updates on specific dates and is included in general permits via an authorization note on cover page;**
- **Inconsistency between construction monitoring requirements for general permit authorizations and individual permits - post-August 2013 individual permits require construction-status report, and monthly self-inspections using self-inspection form in individual permits; current general permit regulations do provide an option to require monthly self-inspections**

Considerations:

- **Business practices are needed to accommodate compliance tracking and aide in reducing time spent in the office vs. field by inspectors;**
- **Part II B of each general permit regulation (9VAC25-660-100, 9VAC25-670-100, 9VAC-25-680-100, and 9VAC25-690-100) defines *impact site* construction monitoring and provides for the three options below:**
 - 1. Photographs shall be taken during construction at the end of the first, second and third months after commencing construction, and then every six months thereafter, for the remainder of the construction project. Photos are not required during periods of no activity within impact areas.**
 - 2. An ortho-rectified photograph shall be taken prior to construction, and then annually thereafter until all impacts are taken. All photos shall clearly show the delineated surface waters and authorized impact areas.**
 - 3. In lieu of photographs, and with prior approval from DEQ, the permittee may submit a written narrative that summarizes site construction activities in impact areas. The narrative shall be submitted at the end of the first, second, and third months after commencing construction, and then every six months thereafter, for the remainder of the construction activities. Narratives are not required during periods of no activity within the impact areas;**
- **Use of conditions may be more clear to permittees than use of authorization notes; need for continuing the requirement for regular photo-monitoring reports, as is currently defined in the General Permit regulations;**

Examples of possible revisions:

- **Improve clarity by revising the of the general permit conditions to reflect the currently used authorization note – replace notes with conditions;**
- **Remove various options for construction monitoring from the general permit regulations and revise to require self-inspections (such as use of a DEQ-**

supplied checklist to be maintained on site and available upon request), and to require on-going status updates of construction activities in impact areas

Staff noted that about this time last year, we changed the requirements for the construction monitoring report and we have the discretion in the base regulation to do that but in the general permit regulation it is specified. So we could not implement that change on the general permits projects until there was a regulation change/amendment. The purpose of this is to pull the concept into the General Permits that we are doing for the Individual Permits. Staff noted that what we are really trying to get a handle on and what we are interested in seeing is “what are the unauthorized impacts” of a project, not seeing only those impacts that have already been included in the approved permit as authorized. The group’s discussions included the following:

- What is being asked for is a self-inspection program where the applicant/permittee would tell DEQ when there is an authorized impact.
- This reporting would lead to more directed site inspections by DEQ staff.
- The self-inspection report would be maintained on site.
- Looking for a way to provide more efficiency to the process.
- If the self-inspection reports are maintained on site – would there really be inspections? What would trigger an inspection? *Staff Response: DEQ would receive a “notification of construction” and additional details on where the project is with their “authorized impacts” and whether there have been any “unauthorized impacts”.*
- The decision to inspect would still be subject to available resources – there could be situations where no inspections would occur. *Staff Response: That occurs now. We want to be able to better focus our resources where that may be issues that need to be addressed. The focus is on having the information available related to all impacts on the site and the progress of construction on the site. Want to have as complete information about the site and authorized as well as unauthorized impacts on a site to be able to better manage and direct the available resources.*
- Agree that the current process is a waste of paperwork but would suggest that since there will already be a self-inspection process/mechanism in place as part of the construction permit and that there will be a SWPP on site and that with the self-inspection that there be a note made in the SWPP that they checked any wetlands impacts and if there are any unauthorized impacts – if there is a violation (an unauthorized impact) that DEQ be notified. Trying to do phased reporting might be difficult to implement and manage. *Staff Response: The regulations currently require submittal of documentation/information that is not helpful to staff in managing/administering the program. We have determined that it is not helpful. What we are suggesting is that this is something that could be examined as a way to provide more helpful information in a more efficient way for everybody. Back in August, staff implemented the method that we are proposing now. We believe that*

what we are proposing now is within the realm of the General Permit. The major change that we made back in August to new General Permits was to allow the permittee, instead of taking photos, to write DEQ a letter every 6-months. So given that as a possibility, what we would like to do is to make a change so that we receive a notification at a certain date every year. The current 10-day notice can come anytime. Once the 10-day notice comes for any given permit it then kicks off a monitoring schedule specific to that permit. Staff has no way of knowing who should be reporting or when they should be reporting – we have no way of tracking it. What we implemented with the new General Permits was that everyone was required to report on July 1st of each year that tells us whether they are constructing or not. Then we could have a simple data-base tool to say that all of permittees submitted a notification or not and then be able to better use our resources to address those that did not report and to be able to set inspection schedules for those that did. We want to have a mechanism in place so that they report whether they have impacts or not. The other question is whether we should allow self-inspection in the General Permits. This is a requirement of Individual Permits.

- *How has this new approach worked since its implementation in August? Staff Response: A lot of permittees have started submitting the new one-page status update – it provides a one-page look at a project that has proven to be useful. The photo-monitoring reports would have to be opened up and reviewed and impacts were sometimes missed in that review – the one-pager presents a simple and better understood reporting mechanism.*
- *What about those that are not reporting? Staff Response: Not enough time has passed to get an idea of who is not reporting because use of this reporting mechanism is currently optional. We are tracking who has done it – but there is a large number who are not using this option yet. We are trying to figure out a way to be able to focus on what is under construction now – at any given time. That would give us a better way to prioritize our resources for permit review and site inspections.*
- *For self-inspections there needs to be a certification method to show that someone has actually inspected the site.*
- *Would it be better for the self-inspection report to be submitted to DEQ instead of just being maintained on-site? Staff Response: At this stage this is a topic for discussion to see if there is enough interest in pursuing it and then fleshing out the details of any proposal for further consideration.*
- *If an inspector actually went to a site it would be good if it was noted in the SWPP. In Maryland, when an inspector goes to a site, they inspect Wetlands and Stormwater and E&S. They have a checklist they use to make sure that all of the possible issues are covered and is covered in the SWPP. More important to keep the SWPP/the self-inspection report on site. Trying to get agency staff out to a site is sometimes problematic. It is important to get “boots on the ground”. Staff Response: The idea is to try to make the up-front part of the process as efficient as possible.*

- Makes no sense to have to deliver volumes of paper to DEQ.
- Consistency is important.
- Would not be happy with something that only depended on self-inspection.

Folks generally agree with this concept – there may be some disagreement with the details – try to make the process consistent between the Individual Permits and the General Permits – the details need to further fleshed out – this is something that staff needs to pursue further and bring back to the group for consideration.

- **Issue Number 3 – Erosion, sediment control, and stormwater:**

Issues identified:

- **Outdated references to manuals, regulations, provisions;**
- **Changes in regulatory purview over E&S, stormwater; &**
- **Unclear staff roles**

Considerations:

- **Need for wordsmithing and reference updates;**
- **Concern about duplicating regulatory provisions; &**
- **7 of 12 special conditions apply to E&S**

Examples of possible revisions:

- **Update or delete references to other programs and/or their responsibilities;**
 - **Update or delete manual or document references;**
 - **Clarify need for info necessary for final construction plans;**
 - **Develop better consistency among various regulations; &**
 - **Develop guidance and/or staff training.**
-

Staff noted that the references throughout the regulations are outdated. The question is do we need to reference these other regulations; manuals and/or provisions in the VWP program now that they all part of the Water Division at DEQ? Do we want to update the references or should they be removed. A permittee has to comply with them whether they are specifically included here or not. The group's discussions included the following:

- Seems to be a waste of words to have them duplicated here.
- They should be deleted.
- Leave them in – they don't do any harm being repeated here. They remind folks referring to the regulation what needs to be done.
- *Staff Noted: The bottom-line is even if the references are kept in the regulation – they are outdated and will need to be updated. The references need to be consistent – there should be no confusion as to what is being referred to and to what the requirements for the various programs are. Need to make sure that there are not two*

conflicting requirements. It is an issue that needs to be fixed. If we do update the references – anytime those other regulations change – the resulting changes can be done through a “fast-track” process in order to keep the regulations current and consistent.

- This is an issue that we should consider.
- Under the E&S program control inspections the focus is on those areas that impacted (authorized impacts) – the focus should be on those areas that were not supposed to be impacted.
- The people who are self-reporting unauthorized impacts are currently being penalized and treated in the same manner as those that are not reporting and are later found to have an unauthorized impact. This approach is not encouraging folks to be honest. There should be an incentive for being honest in your reporting. *Staff Response: This is a little off topic but we see some synergy with our inspection staff and efforts now that we are administering those other programs – the goal is to get better in our inspection efforts – we plan on consolidating our inspection staff personnel to make better use of our resources.*
- People who are self-reporting violations should not be penalized to the same degree as those who are not reporting. *Staff Response: If DEQ staff is out inspecting sites then we will be able to better target those permittees who have not been self-reporting their violations.*

The group decided that this topic was worthy of further discussions and development of options by staff.

- **Issue Number 4 – Delineations:**

Issues Identified:

- **Regulatory references to wetland delineation have not been updated to reflect:**
 - § **1) Current status of federal Jurisdiction;**
 - § **2) Supplemental manuals in conducting delineations;**
 - § **3) DEQ or NRCS confirmations of delineations (in certain circumstances); &**
 - § **4) Where a wetland delineation is not required (i.e., open water impacts only)**
- **Application complete without delineation confirmation when required;**
- **USACE does not delineate or confirm the location of wetlands and waters outside of their jurisdiction of CWA 404 and 10;**

Considerations:

- **Develop guidance regarding how we will maintain consistency with USACE procedures; &**

- **Delineation of other surface waters may need to be separated from wetlands;**
- Examples of Possible Revisions:**
- **Clarify delineation language to reflect NRCS/USACE MOU, use of regional supplements, etc.**
 - **Allow for the requirement to be waived when only open water impacts are proposed;**
 - **Establish requirements for non-wetland surface water delineations to be submitted through another process outside of the 1987 manual process; &**
 - **Clarify informational requirements for delineations.**
-

Staff noted that there are references to delineation and delineation requirements and provisions that need to be revised and updated. Clarification is needed. The group's discussions included the following:

- The regulations needs to include the process being followed now – the regulatory references need to be updated.
- The applications need to be “complete”. *Staff Response: The concept is to remove the “when required” part of this statement from the regulation so that “complete applications” are required.*
- *Staff Note: Need to clarify that “preliminary jurisdictional determinations (JDs)” are acceptable.*

The group agreed to move forward with this issue and the development of language and options by staff.

- **Issue Number 5 – Functional Assessments:**

Issues Identified:

- **Typically most useful for site-specific wetlands creation or restoration;**
- **Revisions are warranted to reflect updates to information needed as part of a review of a VWP permit application; &**
- **There is no defined method for developing a “functional values assessment” in the regulation, and there are many acceptable methodologies;**

Considerations:

- **Informational requirements should be consistent with information staff typically needs to evaluate an application;**

Examples of Possible Revisions:

- **Update and clarify information needed to assess proposed surface water impacts;**
- **Allow case-by-case requirement for functional assessment;**

- **Raise threshold for impact prior to requiring the assessment (maybe 5 acres?); &**
 - **Keep need for assessment but use it to trigger higher mitigation ratios for higher value wetlands – analogous to the “sliding scale” in USM for high value streams.**
-

Staff noted that there are some projects that need some sort of assessment for projects less than an acre – there are some projects that don’t need assessment for projects more than an acre. Don’t remember why the acre threshold is there when there are GPs that have 2 acre thresholds. The suggestion is that we eliminate the requirement across all projects and maintain the discretion to require a functional assessment on a case-by-case basis (projects where we have significant concerns about). The group’s discussions included the following:

- The functional assessment methodology process that is available doesn’t work for smaller acreage wetlands.
- Nobody looks at functional assessments for wetland impacts except for several huge wetland impacts.
- There is no such thing as a “functional values assessment” – it is “function and value”.
- *Staff Note: We have standardized compensation to the point that it is a useless thing unless you are looking at a very big project.*
- Maybe we don’t want to give the agency total discretion – more information is needed about this approach. Maybe there needs to be some “bookends” considered for requirement for an assessment. Shouldn’t move toward a single solution without additional information or consideration of other options. *Staff Response: We will try to put some “book-ends” on what “staff discretion” might look like. When considering having staff discretion the issue of the timing of that determination would also need to be considered so that the permittee will know in a timely manner what is expected of him.*

ACTION ITEM: Any thoughts or recommendations on how to “book-end” this concept of “staff discretion” for requiring an assessment should be sent to Bill Norris as soon as possible so that it can be incorporated in proposed language for consideration by the group.

- Have required discretion on the Individual Permits but not in the General Permits.

8. Ranking/Rating of Issue Statements:

The group was asked to rank/rate each of the Issue Statements according to an “ABC” method where:

- “A” = Topic warrants further DEQ and/or Advisory Group consideration/action/discussion;
- “B” = Not sure about further effort on this topic; &
- “C” = Don’t pursue further effort on this topic

The group agreed that these 5 items/topic warrant further DEQ and Advisory Group consideration/action/discussion.

The group discussed additional items/topics that even though no "Issue Statement" was presented today still fall into the "A" category and warrant further consideration. These included:

- Minor Modification; &
- Mitigation Ratios – Compensation

The group requested that any future "Issue Statements" should include a date indicating which meeting it was discussed at.

The group requested that a list of future topics be provided to the group in advance of the next meeting so that the complete list that staff is considering can be looked at by the group so that they can identify any additional topics/issues that need to be considered in this process.

ACTION ITEM: Staff will provide a list of the topics/issues that are being considered.

9. Public Comment (Bill Norris):

Bill Norris asked for public comment. No Public comments were offered.

10. Wrap-Up (Dave Davis/Bill Norris):

Dave Davis and Bill Norris provided a wrap-up to the meeting:

- The Plan is to get materials out to the group no less than a week in advance of the next meeting – The plan is to send out a draft agenda and meeting materials to the group on Monday, August 18th.
- The group was requested to provide any comments or ideas that they have to Bill Norris as soon as possible so that they can be incorporated into the plans for the upcoming meetings.
- They thanked everyone for their attendance; participation and input.
- **Next Meeting:**
 - The next meeting of the Advisory Group is scheduled for Monday, August 25, 2014 at DEQ's Piedmont Regional Office Training Room – Sign-In at 9:15 A.M. – Meeting Start Time – 9:30 A.M.
- **What's Next:**
 - The notes from this meeting will be compiled – reviewed by staff and distributed to the Advisory Group members for their review and consideration at the next Advisory Group meeting.
 - Proposed regulatory amendments discussed today will be distributed to the members of the Advisory Group, their alternates and members of the "Interested Parties" for review prior to the next meeting of the Advisory Group.

- Any member of the Advisory Group who has any comments, questions, recommendations or information that they want to share with the group should send that information to him so that it can be distributed to the group.
- **Assignments:**
 - Members of the Advisory Group were asked to review the materials that they will be receiving following the meeting and be prepared to discuss them and any recommendations that they may have related to those materials at the next meeting of the Advisory Group.

11. Meeting Adjournment:

Mike Murphy thanked everyone for their attendance; participation; and input in today's discussions. He asked for the consensus of the group as to how we are doing with this first meeting in this process. The feeling of the group was that we are doing well and the process is working. The meeting was adjourned at approximately 12:15 P.M.

MEETING HANDOUTS FOR DISCUSSION:

- 1. Surface Water Withdrawal – Summary Statement;**
- 2. Functional Assessments – Summary Statement;**
- 3. Erosion, sediment control, and stormwater – Summary Statement;**
- 4. Delineations – Summary Statement;**
- 5. Impact Site Construction Monitoring – Summary Statement**