

Waterworks Advisory Committee (WAC)
Draft Subcommittee Meeting Summary
August 23, 2018

Members Present: Dwayne Roadcap, Virginia Department of Health (VDH); Nelson Daniel, VDH; Jim Moore, VDH; Jeremy Hull, VDH; Don Pannell, Prince William County Public Service Authority (PWCSA); John DeRosa, PWCSA; Geneva Hudgins, Virginia AWWA; Andrea Wortzel, Mission H20; Louis Martinez, Newport News Waterworks; Chris Harbin Norfolk Utilities; Christopher Gill, Christian & Barton (Norfolk); Greg Prelewicz, Fairfax Water; Harry M. (“Pete”) Johnson, Hunton Andrews Kurth; Whitney Katchmark, Hampton Roads Planning District Commission.

A subcommittee of the Waterworks Advisory Committee (WAC) met at 1 p.m. on August 23, 2018 to discuss options and brainstorm ideas to address the topic of “safe yield,” as that term is currently used and defined in 12VAC5-590-830 of the Waterworks Regulations.

Dwayne Roadcap, Director, Office of Drinking Water (ODW), called the meeting to order and began by briefly summarizing ODW’s efforts to revise section 830 as part of the proposed amendments to the Waterworks Regulations and the timeline for presenting the proposed amendments to the Board of Health for approval. ODW staff originally proposed deleting the part of 12VAC5-590-830 that addresses safe yield; however, based on concerns expressed by WAC members and other stakeholders, staff wanted to develop a more acceptable alternative. At present, the proposed amendments to the Waterworks Regulations are a staff level work product. Roadcap would like to finalize the proposed amendments soon to allow VDH senior leadership to review them and then present them to the Board of Health for approval at its December 13, 2018, meeting.

If the Board of Health approves the staff’s work product, then the proposed regulations would go to the Register of Regulations and begin executive branch review by the Department of Planning and Budget, Office of Attorney General, and Secretary and Governor’s offices. Following executive branch review and approval, the proposed regulations would be published in the Virginia Register and be open for a 60-day public comment period. Following the 60-day public comment period, staff would review the comments, update and amend the proposed regulations as the comments require, then present the proposed regulations to the Board of Health following senior VDH leadership review. If the Board of the Health approved the draft regulations as final regulations, then another executive branch review would occur, followed by publishing into the Virginia Register for a 30-day comment and notice period for regulations. The draft regulations are in an early stage of the regulatory process and there would be ample time to improve the regulatory text going forward. Roadcap wanted to complete draft edits to the Waterworks Regulations by October, 2018, to give sufficient time for agency and Board of Health review. VDH needs ample time to review. VDH was in the process of hiring two deputy commissioners.

One person asked whether ODW could leave the text of 12VAC5-590-830 that is related to safe yield unchanged and move that proposal to the Board of Health for consideration. Roadcap did not have confidence that leaving 12VAC5-590-830 unchanged was a workable option given concerns that the text does not represent current agency permitting procedures. Additionally, the term of art for the industry had shifted to “source water capacity” and “safe yield” is not a term found in textbooks on the topic.

Several persons expressed concern about deleting references to “safe yield” in 12VAC5-590-830. Utilities have made significant financial investments and need assurances that the safe yield as originally intended by the regulations would remain available for use. Some utilities support substantial populations and plan on a 40 to 100-year scale. These facilities have sustainability models and appropriately manage water use to protect the water resources. The utilities have a raw water source that is for beneficial use. Utilities must provide sufficient water for fire flow and have water available for two generations into the future. Water utilities always focus on sustainability and must have confidence the raw water intake (i.e., capacity) given its societal and beneficial uses. For example, fire flow and fire protection may account for as much as 90% of the design flow of a waterworks. Human consumption represents a very low amount for design capacity when fire suppression is considered. Utilities must operate within the framework of laws and regulations and they need assurances regarding the amount of water that is available (safe yield), given the significant planning horizons and investments they make.

Some expressed thoughts that there was a separation of duties between the Department of Environmental Quality (DEQ) and VDH. DEQ focuses on resource and environmental protection while VDH focused on public health and human health protection.

Before 1989, the Virginia Withdrawal Permit (VWP) program did not exist and some persons suggested that DEQ could not require a VWP for surface water withdrawals that existed prior to 1989. Some people thought DEQ and VDH should have different definitions for safe yield based on each agency’s mission; however, the group acknowledged that could create confusion. Another person thought that safe yield needed a very simple definition, such as 1Q30, because it was easily calculated and determined (although the 1Q30 may change if a based on drought severity). This person thought a simple-to-apply definition would add clarity and help address grandfathering needs (withdrawals in existence before 1989 are considered “grandfathered”). Several stakeholders asked VDH to be more clear about its grandfathering provision for safe yield.

VDH staff noted that ODW describes safe yield in its description sheets and there is a difference between the construction permit, the operation permit, and the description sheet. Additionally, the safe yield regulation, 12VAC5-590-830, is associated with new construction and would not apply to existing approvals unless there was an increase in water treatment production.

The group brainstormed ideas to address concerns. Most agreed that leaving the term safe yield in the regulations would be necessary to minimize concerns. A concept to describe how safe yield was historically used, and then to start using the term “source water capacity” at a future date, perhaps on the effective date of the amendments to the regulations, might provide an opportunity to address concerns. The subcommittee developed the following conceptual language to consider with other stakeholders before the Waterworks Advisory Committee meeting scheduled for September 5, 2018:

A. Adequate source water capacity is based on any applicable withdrawal limit in a Virginia Water Protection permit. In the absence of that, source water capacity can be demonstrated in the following ways:

(1) Provide the safe yield from a waterworks operation permit issued prior to [insert effective date of the regulations];

(2) Demonstrate intake capacity for a pre-1989 withdrawal;

(3) Demonstrate grandfathered water withdrawal capacity in accordance with 9 VAC 25-210-310; and

(4) Provide a hydrologic evaluation of source water capacity prepared by a licensed engineer.

B. Nothing herein, including the calculation of safe yield or source water capacity, shall alter existing water rights or the owner’s responsibility to obtain authorizations from other state agencies for water withdrawals and preservation of instream flow from surface water sources in accordance with State Water Control Law, Chapter 3.1 of Title 62.1 of the Code of Virginia and 9 VAC 25-210-310.