

# REGULATORY ADVISORY PANEL (RAP): HB542

April 6, 2022

Bank of America Building, 3<sup>rd</sup> Floor Conference Room,  
1111 East Main Street, Richmond, VA

## MEETING SUMMARY

### Meeting Attendees

HB542 RAP MEMBERS & ALTERNATES	
Chad Neese, Southside PDC	Ross Philips, City of Richmond
Ben Rowe (Alternate) VA Farm Bureau	Whitney Katchmark, Hampton Roads Planning District Commission (HRPDC)
Michael Ward, Henry County	Jon Brindle, Stafford County
Pam Baughman, VA Rural Water Association, Louisa County Water Authority	James Maupin, Virginia Water Well Association (Maupin Drilling)
Erin Reilly, James River Association	Greg Prelewicz, Fairfax Water
Justin Curtis (Alternate – Scott Morris) Virginia Municipal Drinking Water Association	

**NOTE: RAP Members NOT in Attendance:** Kevin Byrd, New River Valley Regional Commission; Anne Doyle, ANPDC; Jay Ford, Chesapeake Bay Foundation; Randy Owen, Virginia Marine Resources Commission; Jessica Phillips (replaced by Leigh Mitchell for any subsequent meetings), Virginia Regional Tribal Operations Committee– Eastern Division; Dwayne Roadcap, Virginia Department of Health Office of Drinking Water; Brett Vassey, Virginia Manufacturers Association; Jay Ford, Chesapeake Bay Foundation; Pam Kenel, Loudoun Water; Eric Lawrence, Frederick Water; Kyle Shreve, VA Agribusiness Council; Amy Martin, Virginia Department of Wildlife Resources; Robert Cornett, Washington County Service Authority; Eldon James, Virginia Chapter American Planning Association, Rappahannock River Basin Commission; Elizabeth Povar, RiverLink

PUBLIC/INTERESTED PARTIES	
Norm Goulet	Clay Kulesza
George Hayes	

DEQ STAFF	
Brandon Bull, Water Policy Manager	Jutta Schneider, Water Planning Division Director
Ryan Green, Water Supply Planning and Analysis Team Lead	Scott Kudlas, Office of Water Supply Director
Bill Norris, Regulatory Analyst	Gouri Mahadwar, Water Supply Planner
Trevor Lawson, Water Supply Planner	

### Proceedings

#### 1) Welcome

- a) The meeting began at 10:00am and was called to order by Scott Kudlas.

#### 2) Goals

- a) Discuss the Strawman document for proposed amendments to the Local and Regional Water Supply Planning Regulation, with focus on revisions made since Meeting #4.

**3) Review and Approve Meeting Summary from RAP Meeting #4**

- a) There were no corrections from the RAP, and the Meeting #4 summary was approved.

**4) Review of Strawman for Proposed Amendments to Local and Regional Water Supply Planning Regulation - Staff reviewed proposed changes throughout the regulation:**

**a) 9VAC25-780-10. Application**

- i) A panel member wanted water authorities added to section A. DEQ responded that the statute applies to local governments. Another panel member suggested adding “with the other local governments *and water authorities*” if that resolves the compliance issue. DEQ noted they would review and consider that suggestion.

**b) 9VAC25-780-20. Purpose of Chapter**

- i) A panel member asked whether desalination, as opposed to other alternative water sources, should be called out. DEQ responded that desalination is explicitly called out in the statute.

**c) 9VAC25-780-30. Definitions**

- i) Regional planning unit - A panel member asked if DEQ would define who must participate. DEQ responded that the locality provided list of identified parties would get invited.
- ii) Regional program – this definition will be removed as is no longer used in the regulation.
- iii) Water authorities – a panel member mentioned that the § 15.2-5102 reference authorizes entities other than water authorities, and suggested adding the Virginia Water and Waste Authorities Act §15.2-5100 et seq. Another panel member suggested deleting water authorities from the stakeholder definition because stakeholders and water authorities have different responsibilities in this regulation. DEQ will review this suggestion.

**d) 9VAC25-780-45. Designation of Regional Planning Areas**

- i) Discussion of subsection C (added in response to HB 1297) - Changes to planning areas would take effect once approved, without the need to resubmit a request at the next planning cycle, and the change would be reflected in the regulation at the next periodic review.

**e) 9VAC25-780-50. Preparation and submission of a program**

- i) A panel member asked whether Section B is too prescriptive, and whether details should be moved to guidance. DEQ responded that the additions were made to balance the requests for DEQ to include more prescriptive language in the regulation and reserving too much for guidance.
- ii) A panel member commented that guidance on what is considered ‘reasonable available data’ would be helpful. Additionally, it would be preferable to have relevant geologic and hydrologic data provided in one place (ex. on the website, or as a GIS layer) instead of having a chapter of those data in the plans. DEQ added that guidance is the place to mention data sources such as Department provided data.

- iii) A panel member commented that sometimes “regional planning unit” is used, and sometimes “locality” is used, and that it should be more clear what localities are expected to do. DEQ noted that locality expectations have been added to this version based on such comments, and requested RAP members identify the areas where additional language is desired.
  - iv) A panel member asked if subsection G 5 applied to localities or regions. DEQ noted that public comments could be packaged together, as the regional plan is not a separate process. The regulation also allows for joint notices.
  - v) A panel member asked if subsection G 6 should say written “public notice” instead of “public comment”. DEQ will check if a change is needed.
  - vi) Discussion of subsection H – Two panel members wanted language specifying whether or not the 5-year plan review needs to be approved by a locality’s governing body. Another noted that approvals require additional time. DEQ’s intention was not to add to the timeline. DEQ answered that if there are no changes during the 5-year plan review, the full plan does not need to be resubmitted. A panel member expressed that if there are substantive changes (more than numeric updates) to the plan, then a public hearing would be desired, and that could be addressed in guidance. DEQ acknowledged that guidance is likely the appropriate place.
- f) 9VAC25-780-55. Public participation in regional water supply plans.**
- i) A panel member noted that for public comments, regulation doesn’t specify how the commenters receive responses, and asked whether plans revised after public comment would be made publicly available. DEQ responded that the revised document, along with comments and responses, and DEQ’s approval, is subject to another public notice process. As a follow up, another member suggested that the requirement for attaching written comments to the plan in Section 50 G 5 could cross reference all written comments in Section 55 E.
- g) 9VAC25-780-60. State role in program preparation**
- i) A panel member noted that the regulation uses “Department” and “Board” terminology interchangeably in a confusing manner (comment applies to another section, and the section number was not identified). DEQ will review.
- h) 9VAC25-780-70. Existing water source information**
- i) A panel member suggested making the limits in Section 50 C apply globally to the regulation, or reference the caveats to locality responsibilities in this section.
  - ii) A panel member asked whether Section B was creating additional requirements for well tags, and DEQ responded that the changes did not create additional requirements, noting that GW2 information is what’s mandated by statutes.
- i) 9VAC25-780-90. Existing resource information**

- i) A panel member asked how instream flows would be handled, as applicable to Section 90 and other sections. DEQ responded that one goal of the original regulation was to create a feedback loop where the regional plans would inform the State Water Resources Plan which would in turn inform the next iteration of the regional plans. The information provided to localities would be useful to anticipating obstacles that could arise in the permitting process or planning supply projects generally.
- ii) Two panel members had concerns with the terminology “limits on water availability”, and one suggested the wording of “potential threats on water availability”. Another panel member clarified that this use of the word “limit” is like the unmet demand scenarios of the State Water Resources Plan. DEQ will review the suggested changes.

**j) 9VAC25-780-100. Projected water demand information**

- i) In reference to subsection H, a panel member asked whether the difference between the Section 100 deficits and Section 125 water supply risks were clear to everyone (ex. long term drought fits the definition of a water risk, but deficit is not a risk). DEQ clarified that Section 100 is to determine if you have a water deficit, and alternatives to address that deficit. The panel member may provide suggested language to improve section clarity.

**k) 9VAC25-780-125. Identification of water supply risks and proposed regional strategies**

- i) A panel member commented that it’s unclear whether the list of risks have to be considered if there is no water supply deficit. DEQ will check the language.
- ii) A panel member commented that the list of risks should be broader for each region. DEQ responded that the definition of ‘risk’ was broadened, and that localities identify the applicable risks. A panel member asked whether items not identified to be risks still needed to be incorporated into the plan. As written localities only need to consider the list of risks; DEQ will check the implication of the existing language, such that compliance issues can still be addressed appropriately.
- iii) A panel member reiterated questions about the connection between Section 100 and Section 125, and another clarified that even if a deficit is not determined in Section 100, an alternatives analysis can still be required. As written, an alternatives analysis can be required if the strategy to address a risk includes a new or expanded source.

**l) 9VAC25-780-140. Review of regional programs**

- i) Two panel members advocated for keeping the original language in items 1-4 and striking the new language for 1-4, keep the newly added item 6, but remove the additions of line 5 and 7. Another panel member clarified that these requirements are for DEQ, and are not additional requirements for localities so the changes are appreciated. DEQ will review the language in light of the comments.

**m) 9VAC25-780-180. Enforcement**

- i) A panel member expressed support for the new language in this section, and asked if cross-jurisdictional solutions would be required. DEQ responded that the legislation promotes evaluating cross-jurisdictional solutions, but doesn't mandate that solutions necessarily be cross-jurisdictional.

**n) 9VAC25-780 - remaining sections**

- ii) No discussion pertaining to Sections 40, 80, 110, 120, 130, 150, 160, 170, and 190.

**5) Public Comment**

**a) Norm Goulet, of the Northern Virginia Regional Commission, offered the following comments:**

- i) Section 9VAC25-780-50 – suggestion of more flexibility on how planning units will convene, such that a planning unit can run its own process if it wants to.
- ii) Section 9VAC25-780-70 – the language related to limits of data availability should be added to this section.
- iii) Section 9VAC25-780-125 B 7 – “water affordability” needs a definition.

**6) Wrap-Up & Next Steps**

- a) DEQ staff will review suggestions from today and provide the updated copy of the regulation for the next meeting on April 12, 2022. The goal of Meeting #6 will be to reach consensus.
- b) The meeting adjourned at 2:00 PM.