

Water Supply Advisory Committee

October 29, 2008

CenterPoint Corporate Park
20809 72nd Avenue South
Kent, Washington 98032

Meeting Notes

Welcome and Introductions – Rich Hoey (Chair)

1. Legislative Studies, Proposals, & Rulemaking (*David Christensen & Denise Clifford*)

Groundwater Rule Update

The State Board of Health gave DOH authority to adopt the federal Groundwater Rule (GWR) in October 2007. The rule increases public health protection against viral and bacterial contamination for water systems that use groundwater.

December 2009 – compliance date for public water systems.

January 2011 – statewide adoption date if EPA grants a two-year extension. EPA Region 10 is considering GWR extension period. DOH workgroup is continuing to meet regarding the rule language.

Group B Rule Update

Earlier in 2008, Office of Drinking Water asked local health agencies to help the office create a framework for making changes to the Group B program.

Rule Development Timeline:
(Tentative Schedule)

September 2008 – Hold public forums around the state to discuss proposed changes.

November 2008 – Brief State Board of Health about public comments.

April – June 2009 – Present draft rule language to stakeholders and interested parties.

July – August 2009 – Revise rule language based on comments received.

August – September 2009 – Brief State Board of Health about rule language.

September – October 2009 – Revise rule language based on comments received.

December 2009 – January 2010 – File CR-102 to announce public hearing.

February – March 2010 – State Board of Health hears public comment and considers rule.

April 2010 – File CR-103 to adopt rule changes.

May 2010 – Rule effective.

Various comments from WSAC about the Group B program:

1. We need better design standards for Group B. PUDs and local health jurisdictions need to support Group B issues.
2. There is a low compliance rate on Group Bs – not enough oversight.
3. Satellite management agency doesn't have much authority to do anything with Group Bs (either it needs to be mandated or not).

4. We need better education and other mechanism (*i.e.*, local health approach).
5. No adequate funding for management of Group Bs.

Operator Certification Legislative Proposal

This Legislative proposal includes modifying provisions regarding the operators of public water systems; amending RCW 70.119.020, 70.119.030, 70.119.110, and 70.119.130; and adding a new section to chapter 70.119 RCW (backflow assembly testers and cross-connection control specialists).

Small Systems Study

The Legislature directed the Department of Health early this year to study small drinking water systems throughout the state. This study is an opportunity for us to take a look at the viability of smaller systems and to think about future needs and resources. The progress report is due on December 1, 2008, and the final report in June 2009. We need to work with stakeholders after the final report.

Key discussion points:

1. What do we do when a water system is failing? What is the definition of water system failure?
2. Proliferation is a big issue with small water systems. Major problem is financial viability.
3. Water quality issues.
4. Regulatory implementation by local health regarding regulatory approach.

Water System Acquisition & Rehabilitation Program Study (WSARP)

The WSARP was established in 2003 through biennial budget appropriations. WSARP grants protect public health by financing the transfer of ownership of failing drinking water systems to municipal systems with a history of sound utility management. It is jointly administered by the Department of Health (DOH), the Public Works Board (PWB), and the Department of Community, Trade and Economic Development (CTED).

The Legislature directed DOH, in consultation with the PWB, to study and prepare a report on the program to include: funding levels and funding sources; the form of assistance provided (grants vs. loans); funding and application cycles; eligibility; and prioritization process. The report must be submitted no later than January 1, 2009. Currently, the report is being reviewed internally within DOH.

2. ODW Business Planning & Fees (*Kristin Bettridge*)

Business Plan Highlights:

- Assessed current workload and funding; looked at future trends.

- Prioritized activities and classified as “core” or “fully capable;” incorporated new or unfunded activities into these categories.
- Identified what activities can be funded with projected 2009-2011 resources.
- Identified activities that fall “below the line” that are subject to cuts or need new funding resources.
- Picked three options that are most viable in the current economic and political climate: Use existing resources only; streamline and increase fees for service; and increase operating permit fees.

Fee-for-Service – 2009 Proposal:

- DOH submitted a request to OFM for 2009 legislative action.
- Streamline by eliminating 175 separate fees and charging one flat hourly rate of \$102.
- Increase the share water systems will pay of the cost of fee-for-service activities from the current 21 percent.
- We will use a time study (underway) to determine typical number of hours to complete each project type/size.

Operating Permit Fee Structure:

- At the July 2008 WSAC meeting, WSAC said DOH needs more stakeholder input; in-depth analysis of options; and change that is both realistic and will make an impact on our resources.
- We listened. DOH did not submit a request for 2009 legislative action.
- Our goal is a proposal ready for 2010 legislative session.

Next Steps:

- WSAC Executive Committee will work with ODW on proposal.
- Timeline:
 - *November 2008 – January 2009* (develop options and gather data).
 - *January 2009 WSAC meeting* (review proposals and select favored proposal to further refine).
 - *February 2009 – April 2009* (finalize proposal).
 - *April 2009 WSAC meeting* (final discussion and buy-off on the proposal).

Concepts:

- All systems should pay an operating permit fee.
- Fees less than \$100 per year are not cost-effective for DOH and don't represent cost to regulate these systems.
- Very large systems support drinking water program and may support a more significant increase than earlier proposal (\$10,000 would only have gone up to \$13,000).

General Comments from WSAC:

1. Need documentation of engineers' and planners' activities for tracking purposes to better estimate cost.
2. Business plan is a living document and should be adjusted as we gather additional information.
3. WSAC Executive Committee will need to work with the proposal (follow-up in January 2009).
4. Get a good sense of where Group B program is going.
5. Structure the process; be realistic about principles.

3. Working Lunch Updates

(Ken Slattery, Jerrod Davis, Gene Taylor, Leslie Gates, and Jim McCauley)

Municipal Water Law Update – Ken Slattery and Jerrod Davis

The King County Superior Court Judge Jim Rogers struck down parts of the Municipal Water Law (MWL) as a result of legal challenges. The ruling directly affects some of the rules and guidance the state agencies (Departments of Health and Ecology) developed. One of the effects of the ruling invalidated the definitions of “municipal water supplier” and “municipal supply purposes.” The ruling also affected a section of the law concerning water rights. The state is appealing the ruling, and has been working with the Attorney General’s Office to interpret the ruling and identify changes both agencies must make to comply with it.

For more information and to track developments, refer to the Department of Health, Office of Drinking Water’s Web site at: www.doh.wa.gov/ehp/dw/mwl-legal.htm and the Department of Ecology, Water Resources Program’s Web site at: www.ecy.wa.gov/programs/wr/rights/muni_wtr.html.

Climate Change Adaptation – Ginny Stern

This topic was not discussed at the meeting; Ginny Stern was not able to attend due to an unexpected change in her schedule.

EPA Update – Gene Taylor

- Total Coliform Rule (TCR) and distribution system revision: Some of the issues under consideration are appropriate triggers for monitoring; sampling frequency; and elimination of the controversial non-acute MCL violation, which currently requires public notice (PN) – nonconfirmed (no to PN); acute (yes to PN).
- EPA proposed rule on Aircraft Drinking Water (ADWR): Aircraft that convey passengers in interstate commerce and board only finished water will be affected by this rule. Aircraft that do not provide water for human consumption or those with water systems that do not regularly serve an average of at least 25 individuals daily do not meet the definition of a public water system. The ADWR only addresses aircraft within U.S. jurisdiction; however, EPA is supporting an international effort led by the World

Health Organization to develop international guidelines for aircraft drinking water. The ADWR applies to the aircraft's onboard water system only. The components include: water service panel, storage tanks, pipes, valves, treatment devices, and plumbing fixtures within the aircraft that supply water to passengers or crew. The Food and Drug Administration is responsible for regulating the watering points that include the water cabinets, trucks, and hoses from which aircraft board water. EPA and the states are responsible for regulating the public water systems that supply drinking water to the airport watering points. (September 2009 – final rule).

- EPA decided that perchlorate should not be regulated at this time because the health effects are not entirely resolved
- Security – more emphasis on infrastructure interdependence.
- Pharmaceuticals in drinking water are a hot topic right now.

NDWAC Update – Leslie Gates

Leslie provided other EPA updates that were shared at the June 2008 National Drinking Water Advisory Council (NDWAC) meeting that Gregg Grunenfelder attended.

Six-Year Review: EPA is required to review and, if appropriate, revise existing National Primary Drinking Water Regulations every six years. During the 2003 review, they decided to revise the Total Coliform Rule (TCR). EPA is currently working on the second Six-Year Review, which will come out next summer. During the review, EPA looks at health effects, analytical methods, new treatment technologies, occurrence, and other regulatory revisions. EPA also works with Association of State Drinking Water Administrators (ASDWA) to determine if states have additional concerns or implementation issues. To help in the review, EPA asked states for monitoring data and received data from most states.

Lead and Copper Rule (LCR) revisions: Short-term revisions to the LCR were finalized in October 2007, and incorporated the NDWAC's recommendations on communication requirements. Work is starting on long-term revisions, which will address more difficult issues, such as revised monitoring sites. EPA plans to hold a public meeting this fall to discuss other issues to be addressed, such as customer involvement.

Groundwater Rule (GWR): EPA has been developing guidance manuals to support the implementation of the GWR. Four manuals have been published, and two more are likely to be published this summer. Utilities have requested triggered and representative monitoring guidance as well.

The next NDWAC meeting is November 19-21, 2008, in Washington, DC. The main portion of the agenda will focus on sustainable infrastructure, Geologic Sequestration rule, the Total Coliform/Distribution System Agreement in Principle, and transition to the new administration.

Reclaimed Water – Jim McCauley (Ecology)

Reclaimed Water Legislation:

2006 – Legislature directed the Departments of Ecology and Health to adopt rules by December 31, 2010, that:

- Address all aspects of reclaimed water use.
- Provide an efficient and streamlined review process.
- Designate a lead agency.

2007 – Legislature directed the Department of Ecology to submit reports by January 1, 2008, and January 1, 2009, regarding progress with various reclaimed water issues:

- Rule development.
- Removing barriers to reclaimed water projects.
- Long-term funding.
- Administration of a \$5.4 million capital funding program to benefit Puget Sound.
- Implementation of reclaimed water in planning documents and harmonizing of several statutes.
- Water rights impairment.
- DOH program areas including fees, greywater use, water plans, and public health risks.
- Capitol campus demonstration project (use of reclaimed water in the Capitol campus).

2008 – Department of Ecology, in coordination with the Department of Health, is introducing agency request legislation to:

- Create clear and specific permitting and regulatory authority for the agencies.
- Authorize one agency to act as the lead for a given permit, while coordinating with the other agency.
- Recover agency costs through permit fees.
- Revise definitions to emphasize the value of reclaimed water.
- Delete reference to GMA and replace with wastewater planning under RCW 90.48 (Water Pollution Control Act).
- Consolidate permitting for all types of use into one section.
- Give the Pollution Control Hearings Board clear jurisdiction over appeals.

Reclaimed Water Rule Process:

- Rule Advisory Committee monthly meetings through the end of 2009.
- Technical Advisory Panel monthly meetings through the end of December 2008.
- Removing Barriers Sub-Task Force monthly meetings, sunset in September 2008.
- Water Rights Impairment Group monthly meetings through mid-2009.

4. OFM Infrastructure Study (*Heather Moss, OFM*)

Heather discussed the infrastructure assistance program review and implementation plan. She also provided a summary of the executive overview of issues and improvements. For more detailed information, please refer to the project Web site at:

www.ofm.wa.gov/study/default.asp.

5. Security Update (*Jim Harksen*)

WA WARN

The Washington Water/Wastewater Agency Response Network (WA WARN) provides the means for water and wastewater systems to quickly respond to emergencies. This program coordinates the sharing of resources between water systems.

WA WARN Mutual Aid Agreement – legal review of contract that would tie everything together (Mutual Aid Agreement will facilitate exchanging resources between states).
October 30, 2008 – first legal review of mutual aid agreement.

Red Flag Rule

A Red Flag is an indicator of identity theft (*e.g.*, billing statements to John Q. Customer are returned “not at this address,” but water is still being used at the residence).

Utilities and water systems must create a program to identify and respond to the threats of customer identity theft. Mandatory compliance begins May 1, 2008.

Statutory Authority:

- Section 114 of the Fair and Accurate Credit Transactions (FACT) Act of 2003:
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_public_laws&docid=publ159.108.pdf
- Red Flag Rule, federal regulation:
<http://ftc.gov/os/fedreg/2007/november/071109redflags.pdf>

What Do Utilities Need to Do?

- Develop a written program: Identify relevant red flags; develop a plan to detect red flags; and identify how you will respond to red flags.
- Train appropriate personnel.
- Obtain initial approval from your Board.
- Review the program periodically.
- Keep all of the above on file.

Note: Nothing needs to be submitted to the state or federal government. There is no certification to obtain. Compliance (on part of the utility) means good faith effort to create and implement the plan.

Financial institutions and creditors with covered accounts must implement the program. Utilities and utility accounts are specifically mentioned in the federal regulation as creditors and covered accounts.

Third-Party Entities: The utility must make sure third-party billing agencies comply with the regulation. Wholesale water customers must be protected. You must protect the utility identity.

Enforcement of Red Flag Rule:

- Administrative enforcement under 12 USC 1818 (FTC).
- No private right of action (customer cannot sue you; they can complain through the government).
- State Attorney General responds to consumer complaints.
- Civil penalties (\$2,500 per violation).

Notices of Address Discrepancy: Utilities who use nationwide consumer reporting agencies (NCRA) must ensure the customer's address is correct (Equifax, Experian, Trans Union). Resolve differences about address discrepancies by May 1, 2008.

Notice of address discrepancy notifies the user of a substantial difference between:

- Address the user provided.
- Address the NCRA has on file.

Regulatory requirement: The user must have reasonable policies and procedures to furnish a confirmed address for the consumer to the NCRA when the user: can form a reasonable belief that the report relates to the customer; establishes a continuing relationship with the consumer; and regularly furnishes information to the NCRA.

Next WSAC meeting is January 27, 2009.

Suggested agenda topic(s):

1. Operating permit fee structure
2. Small systems study
3. WSAC membership criteria and bylaws