

Reclaimed Water  
Rule Advisory Committee Meeting  
February 27, 2008  
9:30 am – 2:30 pm

Welcome and Introductions .....	1
Task 1 Rule Development Concepts.....	1
Task 2 Draft Ecology and Department of Health Memorandum of Understanding.....	3
Task 3 Technical Advisory Panel .....	4
Task 4 Removing Barriers Sub-Task Force.....	5
Task 5 Water Rights and Reclaimed Water Committee .....	7
Task 6 Rule Advisory Committee Work Plan 2008 .....	9
Meeting Attendees .....	10

**Welcome and Introductions**

Angie Thomson, EnviroIssues, welcomed everyone and introductions were made. Angie reviewed the agenda and the purpose of each topic.

Nancy Winters, Washington State Department of Ecology (Ecology), said Melissa McEachron’s old position has been advertised and interviews will be done soon. The individual filling the position will be responsible for writing pieces of the rule and meeting the permit requirements.

**Task 1 Rule Development Concepts**

Kathy Cupps, Ecology, reviewed a timeline developed by staff to highlight items that will come to the Rule Advisory Committee (RAC) for recommendation to the legislature. Ecology’s deadline for agency request legislation is the end of August.

Kathy presented a conceptual outline for rule development. The outline provided an overall framework to understand the pieces that will go into the rule. Kathy reviewed the parts of the rule and described where specific pieces would fall. The outline is for one rule encompassing all topics, though discussions are still underway regarding the potential to split topics into separate rules.

Kathy also reviewed a sample part of a ‘default’ rule Ecology is constructing. The ‘default rule’ is based on existing practices. It is a tool to help frame the rule and ensure it does not overlook important topics, as well as identify where the rule needs clarification. The “default” rule also provides a baseline for comparison for new requirements vs. existing practices and for required economic analyses.

### ***Discussion/Questions/Comments:***

- *What is a master generator permit?* Kathy provided Woodinville as an example where several decentralized onsite systems serve various areas throughout the community. Woodinville Water District has proposed the concept of producing reclaimed water on-site for irrigation and other approved uses. When there is no demand for the reclaimed water, the facility would discharge to the on-site septic system and drain field. The Woodinville Water District would receive the master generator permit and provide oversight to the individual treatment and use areas. The owner of a treatment facility receives the exclusive right to the water but the law requires the agency to issue the permit to the generator. Ecology consulted with the Office of the Attorney General (OAG) on how best to issue a permit for this type of project. The OAG stated that generator and owner could be two different entities since they are listed separately. The OAG recommended that Ecology could issue a master generator permit to the entity with oversight responsibilities for the small decentralized systems. The owners of the individual systems covered under the master permit could then receive the right to use the reclaimed water at their property.
- *Would change orders be submitted to Ecology?* Kathy said process changes would be submitted through Ecology. The RAC needs to address the details when we work with the submittal process pieces of the rule. .
- *Where is direct use for flushing toilets addressed in the rule?* Kathy said it is considered a commercial use. Heather Trim said she thought it should be included as a separate line item.
- *Regarding single versus multiple rules, what is standard for rule making outside of reclaimed water?* Kathy said in general Ecology would develop one rule, but because reclaimed water is such a large topic Ecology is considering breaking it up into two pieces. Kathy said there are some advantages of doing it as one rule, it ensures the whole package goes together and pieces do not get delayed.
- *Have you considered a size limit on individual units?* Kathy said the committee has not done that yet. Doug Raines said satellite systems and small systems should operate comparably.
- Walt Canter said the rule should address those sewer agencies that collect water from other jurisdictions to treat at a central plant. If one of the local jurisdictions wants to remove their water from the collection system to reclaim, the same standards should apply. Kathy said the issue of tapping out of a sewer is primarily a local issue not a state issue and asked for additional clarification. After discussion, the RAC decided to refer the issue to the removing barriers subtask force for additional discussion.
- *Has there been a decision made regarding certification of operators?* Kathy said Ecology has taken notes on RAC comments and intends to address operator certification when Ecology updates the operator certification rule.
- Kathy asked the committee how they felt about using the conceptual outline as a path forward. Committee members agreed that this was adequate.

### **Agreements**

- The conceptual rule outline is adequate as a path forward.
- The RAC understands and accepts the concept of the ‘default rule’.
- Ecology will address operator certification issues when updating the operator certification rule.
- Ecology will take the issue of authority to tap into sewerage collection lines to generate reclaimed water to the removing barriers subtask force for additional discussion.

### **Ecology Action Items**

- Ask the removing barriers subtask force to consider the issue of authority to tap into regional sewerage collection lines to generate reclaimed water.
- Review the concept of combined wastewater and reclaimed water permits vs. separate permits.

### **Task 2 - Ecology and Department of Health Coordination and Agreements**

Kathy provided an update on coordination between Ecology and the Department of Health (DOH). Ecology and DOH are working with the OAG for proposed legislative changes to clarify authority. The agencies are looking at developing a process for long term planning and short term coordination. Kathy reviewed past RAC recommendations for the agencies: designate a lead agency, seamless agency coordination, flexibility to combine or separate permits, and simplify permit renewals. Kathy clarified the roles of the agencies and how they have split up some of the responsibilities. DOH will do large onsite systems and systems where only uses are urban non-irrigation uses, Ecology will oversee all other systems. Ecology will conduct the bulk of the feasibility studies, engineering review, permits and compliance requirements. Ecology will use a staff level work group, they will update interagency guidance and place process requirements in the rule. Ecology will bring this information back to the RAC after the technical standards have been developed.

### ***Questions/Comments:***

- *Is the proposed legislation for 2009?* Kathy said Ecology is hoping to package the changes in time for 2009 legislation.
- Heather Trim said she was not sure the committee made a recommendation regarding whether the permits should be together or separate. Separate permits would make it more difficult for interested parties to track the permits. Ecology acknowledged the request for a single permit to facilitate tracking permit issuance and will revisit the June meeting notes to determine what the committee recommended.
- Jade Sullivan said the combination of permitting is a concern for water districts because it would be hard to be paired with a sewer discharge permit as a water purveyor. Jade asked how Ecology will regulate and permit the use of reclaimed

water to customers. The law directs Ecology to issue the permit to the owner of the facility generating the reclaimed water. If a different person purveys the water, then the permittee needs to develop a contractual agreement with the purveyor to assure compliance with the permit.

- Keith Folkerts said the Puget Sound Partnership Action Agenda should be noted in the coordinated planning requirements to determine how this group's work might fit into their planning.

### **Task 3 Technical Advisory Panel**

Paul Schuler (PNCWA) reported that Ecology worked with PNCWA to convene the technical advisory panel (TAP) suggested by the RAC last November. The TAP will assist the RAC with details related to technical standards and engineering practices. The experts on the panel are familiar with reclaimed water practices and regulations around the country, but will be focusing on a regulation that is specific to Washington. The TAP plans to meet monthly until Oct 2008.

Kathy said the TAP meeting in March will focus on source control and pathogen reduction requirements. The TAP will consider categories such as: potable water, unrestricted human contact water (incidental ingestion like swimming, irrigation at parks, or garden uses), restricted human contact water (boating/fishing, public areas with restricted access, and worker areas), and no human contact water (splitting out possible animal contact and food crop contact). The TAP will bring recommendations back to RAC in April. Kathy also outlined the planned schedule after April to prepare the recommendations for Ecology by October.

#### ***Questions/Comments:***

- *If groundwater is identified as one use can it be used for potable or emergency use?* Kathy said the TAP intends to spend some time addressing that issue. Craig Riley said they looked at a use as either indirect or direct, meaning use immediately after treatment or after an environmental buffer. Heather brought up the issue of hormones in the groundwater in California. Kathy said the TAP wanted to start by discussing pathogens to establish how the members work best together. They will bring that back to the RAC for a policy recommendation.
- *Will RAC have an ongoing report every month on the TAP?* Kathy confirmed that there would be ongoing reports. She said the recommendations have to come back to this group for advice to Ecology. Kathy suggested that RAC member's sign up for the list serve to receive the meeting notes and agendas.
- Angie asked if there were other things committee members feel they need from the TAP. Heather said she would like to see the key questions and notes for issues that are brought to RAC for decisions. Kathy agreed to provide this information for committee members. She said the workplan discussed today was from the first meeting, they will continue to refine the plan and the list of questions they will

address. She also said the meetings are open to the public and committee members are welcome to come.

- Keith said it seems like the TAP is focused on problems and difficulties and wanted to make sure they do not forget to look at the benefits as well. Keith felt it is important to paint the picture of how reclaimed water can be beneficial for salmon habitat and aquifers by providing more water for other uses. Kathy commented the TAP is trying to be objective and science based, but said Keith's comment is valid and may fit into TAP work under best management practices. Eugene Radcliff said the Removing Barriers Sub-task Force will look at marketing topics and could include Keith's point in their discussion as well.
- *Is the requirement for ten foot separation of purple pipe being dealt with in the TAP?* Kathy confirmed that is one of the issues the group is dealing with.
- *Will the TAP look at non food crops and animal uses?* Kathy confirmed they would look at these issues as well. Ann Wick asked that the group include dairies too.

#### **Task 4 Removing Barriers Sub-Task Force**

Eugene Radcliff summarized the Removing Barriers Sub-Task Force recent work. On March 26 meeting, the taskforce looked at staffing levels and discussed several issues about coordinated planning. Eugene distributed a handout summarizing the group's approach. The favored approach was to propose clarifying changes to the planning requirements under RCW 90.46.120.

Maryanne Guichard added that most members did not want to open up all seven statutes referenced. They recommended that individual agencies incorporate reclaimed water planning into their regulations and guidance as it came up for revision. The handout listed several alternatives and Maryanne clarified the handout was meant to show that some combination of these could be used.

Kathy distributed a draft discussion revision to RCW 90.46.120, noting that this was based on the discussion at the meeting. The Sub-Task Force would like to know if the RAC agrees with the approach in the example. Kathy reiterated that the Sub-Task Force is leaning towards using regulations and guidance instead of changing the statues, but this approach needs to be deemed acceptable by the Governor's office. Discussion followed.

#### ***Discussion Questions/Comments:***

- *How does the proposed revision to RCW 90.46.120 relate to coordinated water system process? What do the words local and regional mean?* Kathy said the subtask force did not get into that level of defining the terms. Walt said he thought only King County would benefit the way the statue is currently written. He said he has problems with Ch 36.70A RCW and said the group needs to be careful about the definition of regional water supply plans. Craig suggested the definition of regional needs to be addressed so the few agencies that do not apply can be exempt. Clint said the water

supply plan is already in the statute so it needs to be changed or defined. Kathy suggested the Sub-Task Force take this topic back for further discussion.

- Hal Schlomann said under the municipal water act, all utilities are required to coordinate on reclaimed water, potable water and reuse water supplies. This language would create new sources of authority and a circular system. Hal felt the whole GMA reference should be eliminated. Kathy suggested that the topic go back to the Barriers Sub-Task Force for discussion and those that feel strongly should participate.
- Nancy suggested the committee needs to vote on the approach, and then the Barriers Sub-Task Force can debate the details. Angie clarified that she would like the committee to vote on whether the approach of revising RCW 90.46.120 is okay as opposed to revising all seven statutes. She reiterated that the committee is not voting on the language, but the idea of changing the language. Some committee members felt the committee needs input from the Office of the Attorney General before they move forward. Lynn clarified that when Ecology initially sought legal advice, the OAG felt the easiest way to go about this would be to go in and amend all the statutes. The Sub-Task Force thought there may be an easier way to do this while making sure it is clearly defined. If the RAC agrees, the Barriers Sub-Task Force will go back and do some work to see what is possible. Angie asked committee members if they supported this approach. Committee members indicated their support for having the Barriers Sub-Task Force look at alternatives to changing all seven statutes.

The removing barriers STF also considered staffing. Jim McCauley provided a brief review of staffing update for the reclaimed water program. He said Ecology has 4.5 temporary positions and 2 permanent positions. The Water Resources and Water Quality programs provide support. DOH also has 1 permanent position (Craig Riley's position) and 1 temporary position that offends in September 2008. Jim said each of Ecology's regional offices use about 10% of one full time employee. The Barriers Sub-Task Force looked at staffing recommendations and identified three areas for needs after rule implementation: project implementation; program policy and implementation guidance; and program education and outreach/training. Jim said there is also a need for one overall state Program Coordinator to provide direction across agencies and programs. The last need identified was to hire an efficiency expert to conduct an in-depth review to determine scope and funding. Jim reviewed the workload of the staff he just identified and discussed future workload dependent on the amount of projects that move from feasibility and planning into design and construction. Jim said they would like 2-3 people at headquarters to be the lead positions in addition to the financial management section, and 1-2 people in each region after 2010.

#### ***Questions/Comments:***

- *If the workload is intermittent how will employees be used and conversely, if more than a few projects come in will the employees be stretched?* Kathy said the water quality program has most of the review permitting, monitoring, inspections, and compliance responsibility. Nancy added that Ecology's permit fees that subsidize

reclaimed water are capped because of I-960; they have a task force to try to decide what to do about that.

- Don suggested bringing in outside consultants to deal with the water rights issues and keeping Ecology in the review role if the work is expected to be up and down. Heather felt this brings up some conflicts when an entity other than Ecology prepares technical documents. Nancy agreed this might not be practical because Ecology has had issues in the past with the work consultants have done.
- Walt asked Ecology to take a look at near term requirements and long range requirements for staffing. He asked Ecology to provide the committee a range of numbers if they feel they cannot provide hard numbers at this point. Walt said staffing needs should be evaluated as far out as possible.
- Angie asked if there was anything else that needed to be addressed with the Barriers Sub-Task Force. Walt said he was troubled by the use of watershed in the previous presentation. There are two types of watershed plans, one is all inclusive, the other does not address public water supply. So there needs to be a clarification of that.
- Kathy said the Removing Barriers Sub-Task Force will also look at implementation of local plans, water supply plans, sewer plans and evaluate the potential use of those in water conservation plans. They will then make recommendations of whether there should be additional requirements under those plans. At this point the group agreed to look at the guidance for sewerage plans and develop a combined checklist. DOH and Ecology will come up with a checklist to address both sides. The group will look at the Environmental Law Institute's report on incentives at their next meeting.
- Lynn said the issue of water suppliers putting in reclaimed water facilities themselves when they used to discharge into a regional wastewater system is an issue that should be addressed by one of the Sub-Task Forces. Walt said the issue is really about whether to build a central system for each of the communities to use, or build lots of smaller plants. Craig added that the barrier is related to who owns or has legal access to the water in the sewer. Don said this is an issue in a lot of counties, not just in Spokane or King County. Don said once the reclaimed water is generated the law is very specific, but between the water collection and distribution system the law is silent. Kathy suggested bringing this issue to the Removing Barriers Sub-Task Force initially and deciding where to go from there. Committee members agreed with this approach. Dave Monthie said King County is about to start a comprehensive reclaimed water planning process and will begin to deal with this issue. The concerns include not only contractual issues but statutory issues as well. There are standard investments and minimum flows to maintain the system. King County intends to work with the other agencies in this process.

### **Task 5 Water Rights and Reclaimed Water Committee**

Lynn summarized the Reclaimed Water and Water Rights Advisory Committee work to date. She said the group's first two meetings were spent reviewing background materials and case studies. The group then spent time laying out questions and outstanding issues and in January they started trying to address the issues. Lynn provided a handout that

outlined the Water Rights work plan. One major issue the group identified was the statutory language about impairing water rights. Lynn provided an additional handout that lists the locations where at least some instream flows were established. This work is part of what the committee will try to do in the short term and long term.

*Discussion Questions/Comments:*

- Hal noted that if the water utility is cleaning up the water and fixing the total maximum daily load (TMDL) issues, they have a lot of money invested and may not want to put the water back in the stream. Lynn said currently the statute says the plant can reclaim the water if the downstream user is not impaired.
- Dave said even if it impairs an existing water right, there is currently no statute that prevents wastewater treatment plants from modifying their discharge. The statute only applies to reclaimed water. The folks who invest in upgrading wastewater plants but do not characterize them as reclaimed water could bypass this requirement. Lynn said the City of Carnation is a good example where they fixed a public health issue by putting in a membrane bioreactor (MBR) and discharged to a wetland. Walt said in the Carnation example the plant discharges to wetland and eventually to the river. He said the question is what happens after five years if they decide to use the effluent as reclaimed water instead. Dave said there is no case law that says a downstream user that relies on the flow can claim impairment. Walt said this committee should be prepared for the unforeseen circumstances of that.
- Dave said Ecology is looking at wastewater discharges as a form of credit for water rights. As wastewater utilities get hit with more stringent water quality standards they will have to reduce discharges. Dave thought the water resources people have not considered this. Hal said the water resources people look at any withdrawal as a consumptive use and will not give a credit for a return flow.
- Lynn said the state did not provide additional funding for impairment analysis. A project proponent may wish to hire their own consultant to do an impairment analysis. Many of the issues the committee brought up can be addressed through guidance, but the group needs to think about statutory changes as well and propose them for 2009. Craig said the statute does not say you have to do an impairment analysis. Craig said doing one is due diligence, but that needs to be clarified in the rule. Lynn said the groups will address this issue.
- Lynn said the water utilities are not fully represented on the Water Rights Committee and said if there are others that would like to participate they are welcome. Walt agreed and said the group should specifically have an east-side seat on the committee. Lynn said when the committee gets to the legislative session next year they will need as many people to be educated on these topics as possible so that everyone can speak to these issues when they get brought up in the legislature.
- *When does the Water Rights Committee anticipate having material that would be included in the rule?* Lynn said she was not sure but said as they get to each issue they will consider what will go into the rule, the statute, and guidance.

## **Task 6 Rule Advisory Committee Work Plan 2008**

Kathy proposed focusing on Sub-Task Force work for the next month and not reconvening the RAC until April. Committee members agreed with this plan. Angie said the next RAC meeting will be on April 23<sup>rd</sup>.

Angie outlined the topics that RAC will need to address in their work plan:

- Definitions
- Submittals
- Permit process (draft language)
- Introduction (part 1): relation to other regulations

\*Input from the other technical committees will be ongoing.

Angie asked what order the committee would like to deal with the topics listed. Kathy suggested the group start by looking at the definitions she has been compiling in April. Doug asked that the list of definitions be sent out prior to the April meeting so committee members can review them individually before having a group discussion. Kathy agreed to send out the list and said the first discussion of definitions will serve as an introduction but there will be future discussions and work on this topic as well.

Nancy said the group will need information on the list of submittals before they can begin working on that item. Kathy said Ecology will need to fill Melissa's old position before they can start on draft language for the permit process. Nancy suggested the group work on the introduction last.

Committee members asked Ecology to send out information as it becomes available for those that would like to read it ahead of time and then send a reminder email prior to the meeting with all of the necessary materials.

Heather announced the South Sound Science Symposium will be on March 27th and encouraged committee members to attend.

Ecology noted that the TAP will meet on March 27 in place of the RAC meeting and members of the RAC are welcome to attend. It will be in Lacey at the Ecology offices from 9 am – 3:30 pm.

### **Agreements**

- No RAC meeting in March.
- RAC will look at definitions in April
- RAC will begin looking at the permit process when Ecology rule writer positions are refilled.
- RAC will consider submittals in the fall of 2008.

**Action Items**

- Ecology will send out definitions in advance of the April meeting.

**Meeting Attendees**

*Department of Ecology*

Katharine Cupps, Agency Lead

Angie Thomson, Facilitator

Emily Neff, Note Taker

*Department of Health*

Maryanne Guichard, Director, Office of Shellfish and Water Protection

<b>Committee Members and Alternates</b>	<b>Guests</b>
Tim Wilson, City of Lacey	Dave Monthie, King County
Lars Hendron, City of Spokane	
Jade Sullivan, Covington Water District	
Doug Raines, Department of Corrections	
Craig Riley, Department of Health	
Lynn Coleman, Department of Ecology	
Nancy Winters, Department of Ecology	
Clint Perry, Evergreen Valley Utilities	
Susan Kaufman-Una, King County	
Keith Folkerts, Kitsap County	
Karla Fowler, LOTT Alliance	
Heather Trim, People for Puget Sound	
Paul Schuler, PNCWA (via phone)	
Ginger Desy, Sno-King Coalition	
Ann Wick, WA Dept of Agriculture	
Hal Schlomann, WASWD	
Walt Canter, WASWD	
Dale Broyles, WA State Parks	
<b>Ecology Staff</b>	
Jim McCauley	
Eugene Radcliff	
Jennifer Busselle	