

Reclaimed Water Rule Making Committee Meeting
September 24, 2008
9:30-2:30 p.m.

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Welcome and Introductions

Angie Thomson, EnviroIssues, welcomed everyone, led the Rule Advisory Committee (RAC) in a round of introductions, and reviewed the meeting agenda. Kathy Cupps, Washington State Department of Ecology (Ecology), and Ginger Desy joined the RAC via telephone.

Kathleen Emmett, Ecology explained that the state of Washington is under a hiring freeze, so Eugene Radcliff and Jennifer Busselle’s positions will not be filled. Ecology is understaffed, but she is hopeful that the lack of staff will not affect the RAC.

There were no comments regarding the notes from the July 23 meeting.

Task 1 Proposed Ch 90.46 RCW Legislative Changes

Kathy Cupps led the RAC through the Z-draft of the proposed Ch 90.46 RCW legislative changes. Kathy asked for the RAC’s support and reminded everyone that the language can still be edited.

A. Z-draft Overview

Kathy explained that the attorneys general recommended having the specific permitting authority in Ch 90.46 RCW rather than at the rule level, since it covers any permit or regulatory action. Much of the legislation is derived from the Water Pollution Control Act and Washington Department of Health (DOH) requirements, and some of the definitions from the original legislation were changed.

Questions/Comments

- Heather Trim commented that public review is not in the proposed legislation. She recommended that a wastewater treatment facility’s National Pollutant Discharge Elimination System (NPDES) permit and reclaimed water permit be scheduled for review at the same time so that the public review of the permits may be conducted

simultaneously. Heather thought that having the permits available for review at different times would be burdensome and confusing to the public.

- Others disagreed with Heather’s recommendation and were concerned that the public would view reclaimed water as wastewater if the permits were tied together.
- The RAC developed public review language and voted on whether to add: “Timing of public review shall be coordinated with the public review process under Ch. 90.48 RCW where appropriate.” The majority of the group supported the language; however there were some red and yellow cards. The RAC decided that it would not add this language at this time.
- *For the requirements in Section 14, which documents need to be submitted for approval? How far down the system are plans required – all the way to the end users?* Kathy said that there are uses where Ecology would need to see plans, such as for wetland and groundwater recharge. This section concerns distribution of water and not the end use. The group added “required” to the language in Section 14, Lines 19 and 20 which now reads “All *required* feasibility...” The required plans will be clarified in the rule.
- *Is there a timeframe for establishment of the lead agency?* Jade Sullivan commented that he wanted a timeline for establishment of a lead agency and Section 2 does not provide one. Kathy said that Section 9 specifies that the lead agency will be determined in the rule.
- *Why does Section 16 use “any person” rather than the SEPA wording of a “responsible individual or responsible official”?* Sonia Wolfmann, assistant attorney general, said “person” is defined in the definitions and Section 16 defines the crime. She advised against limiting the scope of Section 16. In civil penalty actions the agency or organization is named, rather than the individual, and an individual would be named only if acting maliciously or outside of their employment.

B. Definitions

Kathy led the RAC through the definitions portion of the proposed Chapter 90.46 RCW Z-draft. After discussing the definition changes and updating the definitions as needed, Angie asked the RAC to indicate their support of each change.

Definition #5 – Constructed Treatment Wetlands

The RAC decided to send this definition to the attorney general (AG) for review from a federal viewpoint and ensure it is consistent with Definition #4-Constructed Beneficial Use Wetlands.

- The RAC discussed that while the state does not consider constructed treatment wetlands waters of the state, local and state agencies may have a different definition.
- There was also concern that the language “Constructed treatment wetlands are not consider wetlands” is confusing, and the definition should clarify that constructed treatment wetlands are not considered “natural wetlands” since they are not classified as waters of the state.

Definition #4 – Constructed Beneficial Use Wetland

The RAC decided to remove “restore” and “replace” from the definition and to send the definition to the AG for review.

The majority of the group supported the language, with one member raising a yellow card.

- Susan Kaufman-Una recommended including the word “enhance” in the definition because enhance and restore are different actions. Finding a degraded wetland and enhancing it may be preferable to restoring it.
- Keith Folkerts remarked that you cannot restore a non-wetland. If you construct a wetland for reclaimed water use and later remove the water, then the site is no longer a wetland.
- Bruce Rawls was concerned about projects where historic wetlands are restored or enhanced for wetlands banking purposes. Using the RAC’s definition of a constructed beneficial use wetland, one of his projects would not be considered a wetland and he might not be able to get funding for the work.
- Kathy pointed out that constructed beneficial use wetland is used for mitigation wetlands and in Ch 90.46.090 RCW. She recommended addressing wetlands in the rule and recommending any necessary changes to the statute at that time.

Questions/Comments:

- *Why are the legislative changes being done this year?* Kathleen said the big motivation this year is to specify reclaimed water permitting authority and to clarify definitions in order to help with the rule-making process. Kathy explained that the main intent of the RAC’s legislation is to address requests from the legislature to update the reclaimed water program and remove barriers. Ecology has been working with the Department of Health (DOH) to create a good regulatory program to put into the rule as well as designate the lead agency and its roles. As the statute stands now there are constraints to the reclaimed water program, which include duplicate reviews, lack of clarity and other issues which are causing confusion and delays on projects.
- *Can we still make changes to Z-draft at this time?* Yes. Ecology’s agency request legislation has been sent to the Office of Financial Management for their review. This is the RAC’s final chance to make revisions to the draft before it goes to the legislature for consideration. The deadline for comments on the Z-draft is Monday, Sept. 29.
- *Why was Definition #14 – Beneficial Use removed?* The definition was not needed for statute so the RAC took it out. Beneficial use as it relates to reclaimed water will be considered in rule.
- *For Definition #16 – Streamflow or surface water augmentation, would it be better to use “stabilize volumes” in place of “increasing volumes”?* There was a lengthy discussion about volumes during the July RAC meeting and “increasing volumes” was the language decided upon.

- *For Definitions #3 and #9 does “water” mean reclaimed water?* Kathy said no, because the waters described in those definitions are process waters that do not have a domestic wastewater component with them. Agricultural water use may not include reclaimed water.
- *Ignoring the yet to be discussed Section 6, does the RAC feel it can support the legislation as is plus the changes just discussed?* The majority of the group supported the legislation, with two members holding yellow cards. One yellow card indicated a neutral position, the other reflected some questions and answers the member is not comfortable with yet.

Task 2 Section 6 (RCW 90.46.120) Discussion

Kathleen Emmett led the group through Section 6 of the Z-draft. She asked the RAC to look at the existing statute and compare it to the Z-draft. If during the discussion the RAC could agree upon the language then she proposed not changing the statute. Angie asked the RAC to indicate their support of any changes.

E. Coordinated Planning

Kathleen gave the group a handout on Coordinated Planning from a previous meeting, noting that the first four bullet items explain the intent of the section. Kathleen asked the group to discard the 90.46 Plain Talk handout.

The RAC voted on whether to remove the reference to the Growth Management Act in Section 6.

The majority of the group supported the change, with two members holding yellow cards. Susan and Keith held yellow cards because they were neutral about the action and had not talked to their counsel about this. They will inform Kathleen about their counsel’s recommendations.

- The RAC agreed that the first two bullets were correct; however there were concerns about the last two bullets
- For Bullet #3, some members of the RAC agreed with the principle of the bullet, but felt it needed a specific definition for “consideration”.
- Tom Martin commented that for Bullet #3, reclaimed water does not create a new water supply but instead is a more efficient use of existing water and instream flow. Craig disagreed and said that by statute reclaimed water is a new water supply. Lynn Coleman said that it varies whether it is technically a new water supply.
- Hal Schlomann said he does not want to reference the Growth Management Act because he believes it is not a water system planning tool. Hal recommended removing references to the Growth Management Act from Section 6 because it gives extraordinary water planning authority to an entity not formerly involved.
- Kathy said that Ecology does not have a strong feeling either way about Hal’s recommendation and that removing it from this statute will not change the authority of the Growth Management Act.

Part 1

The RAC changed “facility” to “system” in this sentence:

“Revenues derived from the reclaimed water system shall be used only to offset the cost of operation of the wastewater utility fund or other applicable source of systemwide funding.”

In addition, there was discussion about whether “other applicable source of systemwide funding” should remain in the sentence. The majority of the RAC supported leaving it in as is; however there were two members who raised yellow cards.

- Don Perry asked about the benefit of “other applicable source of systemwide funding.” He said that if it is to limit the utility then cities implementing reclaimed water would not be able to do so.
- Bruce explained that his county has an enterprise fund and cannot divert funds from it into county operations. The idea is to keep revenue in the enterprise fund and in the project.
- Some found the sentence about revenues ambiguous.

Part 2

The RAC added “potential” to the subsection language which now reads:

“If any potential or proposed use of reclaimed water is to augment or replace potable water supplies or to create supply, then regional water supply plans, or any other potable water supply plans prepared by multiple water purveyors, must consider the proposed or potential use of the reclaimed water as they are updated.”

The group decided to include a clarification of “consideration” and “potential” in guidance. In addition, the RAC decided to remove references to the Growth Management Act (36.70A RCW).

- Susan recommended adding the word “potential” in the subsection rather than simply having “proposed use.” She did not want to be required to have all reclaimed water projects she is considering in a plan.
- Don commented that King, Snohomish and Pierce counties are currently going through their planning process, and this language would require Lake Haven to change the three county plans to implement their plans. This would be very difficult for them to do.
- There was concern that including “potential” would place a burden on water supply plans, so there needs to be clarification about “potential.” In addition, there are other laws/requirements, such as the municipal water law and sewerage plans, that require consideration of reclaimed water.

Part 3

The RAC decided to delete the reference to the Growth Management Act (36.70A RCW) and replace it with 90.48 RCW.

- DOH will lead the water plan coordination.

Part 4

The RAC decided to eliminate the updated Part 4 language in the Z-draft and instead revert to the 2007 language (shown in strikethrough in the Z-draft). The majority of the group supported this decision; however Hal and Walt Canter raised yellow cards because they think the language forces development of a market where a product does not already exist.

- Jade Sullivan commented that a city, town, or county may review a water supply plan, want a reclaimed water facility and require infrastructure be built to support such a facility, but the infrastructure may be unused for long time because there's only a potential for reclaimed water. He would like some sort of limitation added to this language.
- Reclaimed water is similar to water use efficiency, water conservation and ASR, so it would be considered as part of the suite of tools available and part of the water supply plan, not as part of a short plat.
- Bruce commented that he thinks this section should be in guidance and not in the statute.

Section 6 overall

The RAC voted on whether to support Section 6 with the new changes and using the 2007 language for Part 4.

The majority of the RAC supported the section, with one member raising a yellow card.

- Walt and Hal will need to consult with their attorneys and managers about the Z-draft and will get back to the group.

Task 3 Sub-group Updates

A. Water Rights Impairment Group

Lynn Coleman said that the Water Rights Impairment Group met in August and September and decided to leave the water rights impairment portion of the statute as is. They evaluated their priorities and decided that the group will work on the water rights impairment determination process. They will focus on outlining the roles and responsibilities, describing the notification requirements, determining when a water facility could impair flow or water rights, and determining the process for making those decisions. The group will consider the process as it relates to tribal treaty rights, water right holders, instream flow and the parties that might be involved in those topics. The next Water Rights Impairment Group meeting is on October 14, 2008 at the Department of Ecology Building in Lacey.

Questions/Comments

- *Is it impairment if you are increasing the efficiency of water use by moving from a consumptive use to a use where there is a return flow to the environment? What if you are returning less water, how does that affect water rights?* Lynn said that the short answer is that it depends on your situation such as where you are and where your water comes from; for example, whether you discharge into a marine system.

B. Technical Advisory Panel

Jim McCauley briefly explained the activities of the Technical Advisory Panel (TAP). The TAP met in August and September and at their upcoming October, November and December meeting they will draft technical standards for commercial industrial uses, irrigation uses, and reliability and redundancy.

The TAP is working on standards regarding storage and distribution. In particular they have been discussing pathogens. During the last session they introduced draft language about pathogens, but they still need to work on virus and disinfection uses.

The TAP has been working on reliability language as well; however they do not have current recommendations regarding treatment trains and capacity.

The group has developed key recommendations regarding pharmaceuticals, personal care products and endocrine disruptors. The recommendations include:

1. Pharmaceuticals, personal care products and endocrine disruptors should be addressed at a later date. There is not sufficient technical data and research to set definitive water quality standards about pharmaceuticals, personal care products and endocrine disruptors as they are an emerging issue.
2. Reclaimed water will provide a higher level of treatment than other alternatives, and will include tertiary and reclamation processes.
3. For human health, water may be a smaller pathway than other media.
4. There is concern regarding transfer of emerging contaminants through disposal and land treatment.
5. The rules should be flexible regarding these issues.

Questions/Comments

- *Has the TAP discussed nanoparticles?* Yes. The TAP knows there are laboratory detection limits, but the group felt there wasn't enough information available for them to craft standards. Jim commented that endocrine disruptors are a similar problem because there is no single treatment process that can removal all endocrine disruptors, so the TAP decided they need more education about these topics before making standards.

C. Removing Barriers Sub-task Force

Kathleen Emmett reviewed the work of the Removing Barriers Sub-task Force (RBSF). The RBSF has been working on recommendations, which includes a robust public

involvement component. Kathleen will send the RBSF's recommendations to the RAC for their review.

Additionally, the RBSF is still working on the Ch 90.46.120 checklist. Jim McCauley took the lead on the list and will continue working on it even after the RBSF sunsets. The RBSF meets again on September 25, 2008, and following the meeting the group will tour the LOTT facility.

Task 4 Legislative Report

Tim Gaffney gave a brief summary of the work he is doing on the legislative report. The document has four major chapters, being written by Tim, Jim McCauley, Kathleen, Lynn Coleman and Jocelyn Winz. The legislative report will be published on December 31, 2008.

Tim passed out hardcopies of the legislative report, reviewed the chapters of the document and noted that he is still working on the list of committee members. The funding task force was not included in the legislative report because they did not do any work this year.

Tim will send an electronic version of the document to the RAC after the RBSF meets on September 25. Tim asked for the RAC to review the legislative report and send him their comments by October 3, 2008.

Questions/Comments

- *Should the committee member listings be limited to the original committee members or should they be limited to those who participated in the meetings over the last year?*
Walt recommended that the committee lists have a column for regular members and another for contributing members.

Task 5 Where do we go from here?

The next RAC meeting is on November 19, 2008, and during the meeting the RAC will talk about rule making and review the final draft of the legislative report. Kathy reminded the group that over the next few months they will focus on the language for the rule.

There are no RAC meetings scheduled for October or December.

Questions/Comments

- Bruce requested a tentative meeting schedule for 2009. Others commented that the schedule should take into consideration that the meetings may need to run longer due to amount of time rule-making language takes.

Wrap-Up and Action Items

Prior to the next meeting:

- Kathleen will send out an updated Z-draft soon and would like comments by Monday, September 29.

- Kathleen will send the RBSF's recommendations out after their meeting on September 25.
- Tim will send an electronic version of the legislative report after the RBSF meeting. The deadline for comments on the legislative report is Friday, October 3.

During the November 19 meeting, the RAC will:

- Review the final draft of the legislative report.
- Start discussing rule making.

Meeting Attendees

Department of Ecology

Katharine Cupps, Agency Lead
 Tim Gaffney, Rule Writer
 Angie Thomson, Facilitator
 Diann Strom, Note Taker

Department of Health

Craig Riley
 Dave Lenning, Environmental Health and Safety

| Committee Members and Alternates | Guests |
|------------------------------------------|---------------|
| Sonia Wolfman, Attorney General's Office | |
| Dawn Freier, City of Olympia | |
| Frank Needum, City of Sequim | |
| Bill Peacock, City of Spokane | |
| Jade Sullivan, Covington Water District | |
| Doug Raines, Department of Corrections | |
| Clint Perry, Evergreen Valley Utilities | |
| Susan Kaufman-Una, King County | |
| Keith Folkerts, Kistap County | |
| Don Perry, Lakehaven Utility District | |
| Karla Fowler, LOTT Alliance | |
| Heather Trim, People for Puget Sound | |
| Tom Martin, PUD Clallam County | |
| Ginger Desy, Sno-King Coalition | |
| Bruce Rawls, Spokane County | |
| Hal Schlomann, WASWD | |
| Walt Canter, WASWD | |
| Ecology Staff | |
| Jim McCauley, Department of Ecology | |
| Kathleen Emmett, Department of Ecology | |
| Lynn Coleman, Department of Ecology | |