

Reclaimed Water Rule Making Committee Meeting
July 23, 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), joined the RAC via telephone.

Kathleen Emmett announced the RAC’s latest staffing changes. She introduced Tim Gaffney, Ecology’s rule writer for reclaimed water, and explained that Jennifer Busselle accepted a new position.

Kathleen also informed the RAC that the meeting schedule has been changed. The RAC’s August and October meetings have been cancelled, but it will meet on September 24, 2008. The November meeting date has changed from November 26 to November 19. Currently no meeting is scheduled for December; however if the RAC needs to conduct a final review of the legislative report then a meeting can be scheduled. Additionally, the Removing Barriers Sub-Task Force’s (RBSF) July and August meetings have been cancelled and their next meeting is September 25, 2008.

Task 1 Proposed Ch 90.46 RCW Legislative Changes

A. Definitions

Kathy led the RAC through suggested definition changes for Chapter 90.46 RCW. After discussing the definition changes and updating the definitions as needed, Angie asked the RAC to indicate their support for each change individually.

Revised Definition #6 - Constructed treatment wetlands

“Constructed treatment wetlands” means impoundments using wetland type vegetation intentionally constructed on non-wetland sites and managed for purposes other than to produce or replace natural wetland functions and values. Constructed treatment wetlands are not considered “wetlands.”

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- Kathy said that a constructed wetland is not considered a water of the state because it is not really a wetland, but uses wetland features for treatment.
- There were concerns about treatment to different class levels, but the RAC decided to work on these issues in the rule.

No opposition was voiced for this definition change

Revised Definition #7 – Direct groundwater recharge

"Direct groundwater recharge" means the controlled subsurface addition of water directly into groundwater for the purpose of replenishing groundwater.

- Don Perry recommended that the definition include “See also definition #18 - surface percolation for groundwater recharge in the vadose zone and surface percolation.”

No opposition was voiced for this definition change.

Revised Definition #8 – Grey water or gray water

“Greywater or gray water” means domestic-type flows from bathtubs, showers, bathroom sinks, washing machines, dishwashers, and kitchen or utility sinks. Gray water does not include flow from a toilet or urinal.

- Don asked about the purpose of using gray water and whether it is a risk-assessment issue. Craig Riley, Washington State Department of Health (DOH), commented that the definition needs to concur with the State Board of Health’s gray water definition as well as definitions used by departments of health across the county. Craig said the definition has been modified to not use “sewage.”
- Craig also noted that DOH is going through the formal rule-making process for gray water.
- Pool water is not considered gray water, but it is covered by NPDES permits and other health department rules.

No opposition was voiced for this definition change.

Revised Definition #9 – Groundwater recharge criteria

The RAC supported modifying the definition by replacing the term “groundwater recharge criteria” with the term “state drinking water contaminant criteria” and making similar amendments to RCW 90.46.080.

“State drinking water contaminant criteria” means the contaminant criteria found in the drinking water quality standards adopted by the state board of health pursuant to chapter 43.20 RCW and the department of health pursuant to chapter 70.119A RCW.

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- RAC members had some concerns regarding including the drinking water contaminant criteria in the statute and applying different groundwater recharge criteria in the rule.

Lynn Coleman asked whether the proposed definitions work with the aquifer storage and recovery rule and whether the Technical Advisory Panel (TAP) will use the drinking water standards or groundwater standards. Kathy responded that Chapter 90.46.080 RCW is the only place where the term groundwater recharge criteria is mentioned, so she suggested using the term state drinking water contaminant criteria to improve clarity. People are confusing the term 'ground water recharge criteria' with the 'ground water quality standards in Ch 173-200 WAC. The legislature tasked Ecology with establishing the standards for groundwater recharge in rule. We are only changing the term, not the actual standard in the statute.

- Craig commented that if the statute uses groundwater quality standards then the public may be confused about whether the drinking water standards are insufficient. In addition, there are different contaminant requirements for the two standards and they may not overlap. Don Perry commented that irrigators can irrigate with water that meets drinking water standards but does not meet groundwater standards, so there may be challenges in communicating this.

Revised Definition #11 – Land application

“Land application” means use of reclaimed water as permitted under this chapter for the purpose of irrigation or watering of landscape vegetation.

- Lynn asked whether the rule excludes land application for spray fields and Craig confirmed that it did.

No opposition was voiced for this definition change.

Revised Definition #13 – Planned groundwater recharge project

“Planned groundwater recharge project” means any reclaimed water project designed for the purpose of recharging groundwater.

No opposition was voiced for this definition change.

Definition #15 – Reclamation criteria

RAC decided the definition is not needed.

Revised Definition #17 – Streamflow augmentation

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“Streamflow or surface water augmentation” means the intentional use of reclaimed water for rivers and streams of the state or other surface water bodies for the purpose of increasing volumes.

- Kathy will determine whether removing the last sentence from the existing definition will cause problems in the statute.
- Keith Folkerts asked how water going into a stream via a wetland would be classified and Kathy said that it would be considered wetland use as well as streamflow augmentation use.
- Craig said he is concerned that the definition limits streamflow augmentation to stream uses and increasing flows only because it limits irrigation transport. Keith commented that the irrigation transport Craig mentioned is stream transport, and Kathy said this could be further defined in the rule.
- The RAC discussed whether stream augmentation applied to lakes and Keith suggested that if it did apply to lakes then the definition should be “stream or lake augmentation.” Kathy said this issue could be further developed in the rule.

No opposition was voiced for this definition change.

Revised Definition #18 – Surface percolation

“Surface percolation” means the controlled application of water to the ground surface or to unsaturated soil for the purpose of replenishing groundwater.

No opposition was voiced for this definition change.

New Definition – Departments

“Departments” means the departments of ecology and health unless otherwise specified within this chapter. When used in the singular, “department” means either the department of ecology or the department of health.

New Definition – Lead Agency

“Lead Agency” means whichever of the two departments that has been designated by rule as the agency that will coordinate, review, issue and enforce a reclaimed water permit issued under this chapter.

No opposition was voiced for the new definitions.

Revised Definition #14 – Reclaimed water

“Reclaimed water” is water derived in any part from domestic wastewater that has been adequately and reliably treated so it can be used for beneficial purposes. Reclaimed water is not wastewater.

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- The RAC wants to eliminate “sewage” and “effluent” from the definition to stay away from any human waste component.
- The RAC considered listing exceptions to the definition, such as agricultural process water, but decided against it.
- Hal Schlomann asked whether agricultural process water includes waste from slaughterhouses and whether animal waste is acceptable. Kathy said the wastes must be reliably and adequately treated but the standards may be different than human wastes. Lynn thought that it does include slaughterhouse or agricultural process water; as that water would be considered industrial reuse water.

No opposition was voiced for this definition change, but Walter Canter noted that his stakeholders will have a variety of opinions about the definition.

Revised Definition # 20 – Wastewater

Karla led the RAC through the “Sewage” and “Wastewater” definitions worksheet and explained that the definitions currently overlap and wastewater is the more inclusive term.

“Wastewater” means water-carried wastes from residences, buildings, industrial and commercial establishments, or other places, together with such groundwater infiltration, inflow, surface waters, or commingled industrial wastewater as present.

- The RAC suggested including inflow and infiltration in the definition. In addition, there was a discussion about defining wastes and where they come from.

No opposition was voiced for this definition change, but Walter Canter noted that his stakeholders will have a variety of opinions about the definition.

Revised Definition #16 – Sewage

The RAC changed the name from “Sewage” to “Domestic wastewater” and developed the following definition:

“Domestic wastewater” means wastewater which includes human wastes.

No opposition was voiced for this definition change, but Walter Canter noted that his stakeholders will have a variety of opinions about the definition.

B. New and Amended Sections

Kathy presented the proposed new and amended language sections to Chapter 90.46 RCW. Kathy noted that the new and amended sections have already been reviewed by the attorneys general (AG) at Ecology and DOH.

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The RAC generally supported the language for Parts B – E; however Walter, Hal and Ginger Daisy will ask their stakeholders to review the new language and will notify Kathy by the beginning of August of their stakeholders' concerns. Kathy will send the proposed changes electronically to the RAC.

Questions/Comments

- Don had concerns about language under the Coordinated Planning amendment. He noted that “All revenues received from distribution...” gave him cause for concern because this may force a loss onto water utilities. Kathy said that it is system-wide, which includes wastewater and water supply systems, so it will not hurt water utilities.
- In the new “Operating Permit required” section, Kathy said that the term “fixed term” will be specified in the rule.
- *Who will pay for the updates to the regional water supply plans?* Kathy said that there is an interagency group refining a checklist and guidance for the intent of this section. Hal questioned what “consider” meant in the Coordinated Planning amendment (section 2). Kathy responded that it will be defined in the rule and relates to the work the RBSF completed.
- Hal commented that if a utility’s permit is revoked then it is left with stranded costs and questioned whether there was a provision for receivership since the utility has an obligation to provide service to its customers. Kathy said that it will be spelled out in the rule and that there are cases where permits may be revoked because the water is not being treated sufficiently or in accordance with the permit.
- *Has the new “Authority to enter premises – Search Warrants” section been reviewed by the U.S. Department of Homeland Security?* Kathy said that the AG added this language and she will follow-up with the AG about it.
- For the new “Violations – Civil penalty – Procedure” section, Don was concerned that an operator violating its wastewater permit could discharge to a water body because the facility has a NPDES permit which allows them to discharge stormwater. Kathy said this provision is for the water reclamation portion only.
- *Do you think the new language will make it through in one legislative session?* Yes.
- *If the legislature approves the new statute language then will the RAC work on revising the statute in the future?* Kathy said no; once the statute passes and clarifies the specific authorities then the RAC will be working on the rule.
- *Will the staffing requirements be included in the statute?* No, but the staffing requirements will be included the legislative report.
- *Is the staff budgeting request for 2009 or 2010?* Kathy thought the budget request is for 2010, and it is not part of the statutory change.

Task 2 Sub-group Updates

A. Water Rights

Lynn Coleman reviewed the Water Rights Committee meeting held July 15th. She said that the committee decided not to recommend changes to the statute at this point in time

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(i.e. 2009 session). The committee will work with Ecology to provide better direction in rule and guidance regarding water rights impairment.

The subcommittee is working on a process that will convene a stakeholders group early in planning process for a reclaimed water facility to discuss potential water rights impairment. Lynn said this front-loads the water rights impairment process to solve problems early. There are concerns among committee members about the costs and availability of agency staff if this approach is going to work well..

The Water Rights Impairment Subcommittee will meet again in September and the committee will start working on improving existing guidance. Lynn will notify RAC members about the meeting location.

Questions/Comments:

- Jim McCauley recommended having an emphasis on guidance rather than rule-making because water rights impairment analysis is in its infancy. Jim chairs an Ecology staff group working on making the process consistent.
- Craig commented that utilities will want to use reclaimed water as water supply if they are going to the expense of constructing a reclaimed water facility. While there are other benefits, the system must be designed so it successfully provides water supplies. Lynn disagreed that the sole driver is water supply, but did note that water reclamation facilities have water supply aspects (e.g., producing and selling water).
- Craig said that for unadjudicated basins Ecology cannot make a water rights impairment decision with complete certainty.
- Lynn reminded the RAC that the Water Rights Impairment Committee will need help to educate the legislature about their findings.

B. Technical Advisory Panel

Jim McCauley briefly discussed the status of the Technical Advisory Panel's (TAP) work.

The TAP has:

- Considered the RAC's comments about pathogen reduction and is working to resolve the issues the RAC identified, including log removal, good science related to standards and developing water quality parameters. The TAP expects to have draft recommendations for pathogen standards in September.
- Developed resolutions to the RAC's comments about irrigation issues.
- Discussed groundwater recharge issues, such as water quality criteria, groundwater standards versus drinking water standards, vadose zone recharge, anti-degradation and residence time. No final conclusions have been made regarding these topics.
- Developed conclusions about irrigation and urban non-irrigation standards and will have draft recommendations in August.

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During the August meeting, the TAP plans to discuss pharmaceutical, personal care product and endocrine disruptor issues. The TAP's goal is to complete their workplan by October. This is a very ambitious goal.

C. Removing Barriers Sub-Task Force

Kathleen Emmett gave a brief explanation of the RBSF's work. She said that the RBSF has assigned the coordinated planning checklist development to a new interagency staff workgroup that Jim is leading and will work with them to review the product. She also pointed out that changes to 90.46 RCW had been made to facilitate coordinated planning. The RBSF has developed the following organizational recommendations:

- Elevate the importance of reclaimed water while maintaining the current organizational structure.
- Outline the duties of the reclaimed water manager (lead).
- Elevate the reclaimed water manager's (lead) authority within Ecology.
- A long-term goal of creating a department of water to include reclaimed water and other water programs across the agency.

The RBSF has identified two incentive categories to be developed to remove barriers to reclaimed water: cost and education. A discussion of these incentives is on the agenda for the September meeting to further flesh out the recommendation from the committee. Additionally, the RBSF has requested input from the Wastewater Operators Committee regarding certification of reclaimed water facility operators.

Kathleen will send the RBSF's recommendations to the RAC via e-mail so the group can discuss them at the September meeting. The RBSF will also present their incentive and operator certification recommendations to the RAC in September.

Questions/Comments

- Pete Tjemsland recommended that the RBSF and Wastewater Operators Advisory Committee ask the PNWCA if they have any input on reclaimed water facilities operator certification, and Craig said that this will be discussed at the national meeting in September.
- *Is there interest in a one-day workshop for operators to discuss certification and other reclaimed water issues? Is there interest in inviting the Arizona representative to talk about their experience?* There may be interest in doing so in the late fall.
- Karla will give a tour of LOTT facility during the RBSF meeting in September.

Task 3 Legislative Report

Eugene Radcliff explained the content of the 2008 legislative report and reviewed a handout detailing the report's schedule. The legislative report will have four chapters covering the rule development process and will include recommendations from the RAC and subcommittees.

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Eugene is working on the report outline and plans to send it to authors by the second week of August. The draft report content is due in September and Eugene will ask for the RAC's comments during their September meeting. Ecology will review the report in October and will produce the final draft in November which will go to the Office of Financial Management. The legislative report is due to the legislature on December 31.

There will be very few hard copies of the legislative report, so the majority of the reports will be available on the Web page.

Questions/Comments

- Bill requested that Eugene send out chapters for the RAC's review and comment as they become available, rather than wait for the entire report. The chapters sent out for RAC review should also include the intent and proposed outcome of each.

Task 4 Putting the Rule Together

Tim Gaffney explained the rule-making process and timeline handout. The future meetings of the RAC will focus on rule-making and the rule is due December 31, 2010; however the effective date can be 30 days later. There are a lot of tough issues that have been moved from the statute into rule making, so Tim will need input from the RAC and the subcommittees during rule development. Tim also pointed out that as the legislation moves forward it may affect the rule-making process.

Questions/Comments

- Bill requested that Tim send out one or two components of the rule at a time so that there is instant feedback which Tim can incorporate into the next components. Walter commented that the components do not have to be sent in sequential order.
- Doug requested that the documents be posted to a Web site rather than sent via e-mail because of e-mail attachment file limits. This Web site would be intended for committee members only and should have a login/password, but it does not have to be a SharePoint site.

Wrap-Up and Action Items

Prior to the next meeting:

- Kathy will review the statute to ensure that removing the last sentence in Definition #17 – “Streamflow or surface water augmentation” will not be a problem.
- Kathy will send the RAC an electronic version of the proposed changes and additions to Chapter 90.46.
- Hal, Ginger and Walter will take the proposed new language to Chapter 90.46 RCW back to their stakeholders and send any concerns to Kathy as soon as possible.
- Kathy will ask the AG if the U.S. Department of Homeland Security has reviewed the proposed “Authority to enter premises – search warrants” section.

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- Kathleen will send the RBSF's recommendations via e-mail to the RAC for their approval.

During the next meeting:

- The RAC will comment on the draft legislative report.
- The RBSF will present their incentives and operator certification requirements recommendations to the RAC.

Angie reminded the RAC that there is not an August meeting, but the RAC will meet again on September 24 at a yet to be decided location.

Meeting Attendees

Department of Ecology

Katharine Cupps, Agency Lead (by phone)

Angie Thomson, Facilitator

Diann Strom, Note Taker

Committee Members and Alternates	Guests
Hal Schломann, WASWD	
Tim Wilson, City of Lacey	
Craig Riley, Department of Health	
Bill Peacock, City of Spokane	
Doug Raines, DOC	
Clint Perry, Evergreen Valley Utilities	
Keith Folkerts, Kitsap County	
Walter Canter, WASWD	
Tom Martin, PUD Clallam County	
Pete Tjemsland, City of Sequim	
Karla Fowler, LOTT Alliance	
Ginger Desy, Sno-King Coalition	
Brian Topolski, LOTT Alliance	
Don Perry, Lakehaven Utility District	
Ecology Staff	
Eugene Radcliff	
Kathleen Emmett	
Lynn Coleman	
Jim McCauley	
Tim Gaffney	