

Regulatory Framework Working Group

Charge from Groundwater Management Area Advisory Committee

Study Session I

Working Group Members

Tom Eaton – Chair (Environmental Protection Agency), Andres Cervantes (Department of Health), Charlie McKinney (Department of Ecology), Chelsea Durfey (Turner and Co.), Dan DeGroot (Yakima Dairy Federation), Jason Sheehan (Yakima Dairy Federation), Jean Mendoza (Friends of Toppenish Creek), Laurie Crowe (South Yakima Conservation District) Nick Peak (Environmental Protection Agency), Vern Redifer (Yakima County Public Services), Ginny Prest (AGR), Jim Dyjak (Concerned Citizens of the Yakama Reservation), Larry Fendell (citizen) and Steve George (Yakima County Farm Bureau)

Meeting/Call Dates

Meeting: Denny Blaine Bldg, 810 East Custer Av, Sunnyside WA
2:00p.m. to 4:15p.m., Thursday, February 19, 2015

Participants

Present: Jim Davenport, Tom Eaton, Charlie McKinney, Jean Mendoza, Landon Schilperoort, Melanie Redding, Sanjay Barik, Larry Fendell, Lee Murdock, Jim Dyjak, Ginny Prest, Laurie Crowe, Eric Winiecki, Wendy Marshall, Steve George, Marie Jennings, Jim Trull, Gordon Kelly, Ryan Ibach, Vern Redifer, Rand Elliott, Patricia Newhouse, David Newhouse, Ginny Stern, Tom Tebb

Other Attendees: Lisa Freund, Erica Naasz, Kelly Rae (Yakima County support staff)

Key Discussion Points

Welcome & Meeting Overview

Introduction, Purposes and Courtesies - Jim Davenport and Tom Eaton

Jim Davenport welcomed the working group.

Tom Eaton, Chair, explained that the County developed a matrix with Federal, State and local ordinances for the three study sessions. Today's session will focus on the State and Federal ordinances. He said that the questions were brainstormed by the working group and then given to the presenters to describe how their regulations work. Tom said the Regulatory working group would reconvene at a later date to assess this study session.

Jim Davenport added that the questions for today's study session were in the attachment with the Agenda and that the dates for two additional study sessions have been scheduled

for April 2 and April 23. He noted that questions would be appropriate throughout the presentations.

Panel 1: Groundwater Management Area (GWMA)- Charlie McKinney

Charlie reviewed Washington Administrative Code (WAC) 173-100 that outlines the GWMA plan development process. Ecology administers area GWMA programs, establishes guidelines and procedures based on geographic areas with problem groundwater.

Charlie stated that the intent is to forge a local partnership that addresses water quality and nitrate contamination. He said that the Groundwater Advisory Committee (GWAC) will develop a process to build an approach and direction that Ecology can support. Yakima County is the lead agency for the GWMA plan development and it will oversee the development, schedule and budget to ensure the program is sound. The final product is to develop a groundwater management program.

Jim D. asked if the GWMA has jurisdiction to enforce the implementation of the GWMA program. Charlie responded that it would be implemented by the State and local agencies. The GWMA will establish a set of recommendations and require that producers and others recognize that we have a problem and that the GWMA wants to be a part of the solution.

A member of the GWAC stated that there are more problems than just nitrates, including adverse health effects and dry wells. The member would like a larger scope of discussion than merely nitrates.

Vern responded that the GWMA will address water quality and that there would be some crossover between quality and quantity. Everything in the WAC pertaining to water quality is intended to be addressed. A member asked if water quantity would be looked at and Vern answered no. He explained that had been considered in the Yakima Basin Integrated Plan.

A powerpoint handout was distributed to the group for the following discussions:

Panel 2: Federal and State Standards and Permits - Environmental Protection Agency

Safe Drinking Water Act, SDWA § 1421 42 USC 300g-1, SDWA § 1431.

Drinking Water Standards presentation by Eric Winiecki, Wendy Marshall and Marie Jennings

The presenters provided an overview of the Safe Drinking Water Act (SDWA). They stated that the EPA does not regulate water systems with less than 15 connections or less than 25 individuals. The standards are regulated by 90 plus chemicals and it is reviewed every six years. They explained that EPA and other agencies do research for contaminants.

The EPA also has secondary standards that are not regulated as the states are not required to adopt them. These secondary standards apply to public water systems that have more than 15 connections or 25 or more people, but these standards do not apply to private

wells. As far as the nitrate standard goes, all systems are required to be monitored except for transient water systems.

Marie explained the 1996 amendment for Source Water and Protection. She stated that not all contaminants can be regulated; however, there is a lot of activity protecting sources of water. The State identifies all sources and potential threats to drinking water to ensure that they are protected.

The EPA, through 106 Funding (\$50k-250m nationally), is in collaboration with other agencies to integrate all tools under the Clean Water Act. The EPA has a vision for all agencies nationally to be working together and combining the regulatory and voluntary rules.

Eric reviewed SDWA Section 1431 that outlines remedial actions that may be ordered. It focuses on underground sources of drinking water.

Questions/Comments:

Is the consent order signed between EPA and the dairies in the dairy cluster pursuant to EPA's administrative authority, or is it a court order. It is entered under EPA's administrative authority.

Jim D. asked what additional tools the EPA would like to have. Eric stated that it would like to have more authority around a program which controls waste.

Is the distance from Seattle to Yakima a problem for the EPA? No.

Are there any injection wells in Yakima County and if so, how many? Unknown.

Jim D. asked who handles a situation where someone may test or think their water is contaminated. The State handles these issues and then follows up as needed.

Is there follow-up? Yes, if needed. The EPA has a good relationship with the State.

How about public vs private? GWMA is dealing mostly with private wells. What is the standard for nitrates in private wells? Standard pertains to public water systems. It is not illegal to have 10ppm in private water systems and there are no requirements to improve them.

What is the standard to someone contributing to nitrates? A GWAC member answered this saying that the EPA defines the standard for public water supply. There is a privacy agreement but regulations define other water supplies. The member further explained that a Class B has less than 15 connections or less than 25 people. Individual, private wells are outside of the public water supply. There are no standards for a private home; however if one is selling or sharing water then you are held to Class A water quality standards.

A member asked about underground injection class 5 wells.

ACTION: Discussion on UICs to be included in next Study Session.

Vern added that the County has hundreds of underground injection wells as a street drainage system. The County has a stormwater permit for discharge, a National Pollution Discharge Elimination System (NPDES) Permit. This will be addressed under the RCIM Working Group. There is a database that identifies all the UCIs in Yakima County.

State Water Pollution Control Act, RCW 90.48, WAC 173-200 by Melanie Redding, WA Department of Ecology

Melanie explained that EPA's authority under the Clean Water Act in Washington State was delegated to the State of Washington. The state accepted the delegation. The RCWs passed give authority to Department of Ecology to adopt groundwater standards, which are different than standards for drinking water. There are several mechanisms/criteria designed so that they don't go over the recommended standards. There is also an anti-degradation policy that protects the quality of water from getting worse. National Pollutant Discharge Elimination System (NPDES) Permits, Stormwater Permits, and Concentrated Animal Feeding Operation (CAFO) Permits are different permits for different types of discharges.

Questions/Comments:

Under the 1996 amendment, Washington State adopted wellhead, surface water and groundwater. It is a misnomer to assume everyone was directed to find contaminants to drinking water. That was a risk management tool. After being in effect for over 20 years, why is Yakima in this situation? The GWMA area is not served primarily by public water systems, but mostly by private wells. The authorities can tell public water systems that they need to treat, give public notification and then compliance orders, but do not have jurisdiction to compel treatment of private wells.

A member asked if the State could trace water for 10 years in Class A systems. The answer was yes.

How large is a well-head protection area? The answer depends upon the elevation/depth of the screened area within the well casing, and the elevation of the aquifer. One would need to look at the risk in the 1-year, 3-year and 5-year interval.

A member commented that the burden to pay was on the taxpayers and EPA agreed. If there is suspected contamination, the EPA will check potential sources and work with the local authorities, take a sampling and then do an investigation. Groundwater standards have provisions for compliance and early warning. The objective is to work in conjunction with the permit or another agency. A discussion followed on the different types of permits to address pollution.

A member advised that the public water systems are identifying different contaminant sources so the agencies have used that as a tool. They added that this makes for pro-active decisions but mostly in urban areas.

How long has public water been monitored? Public water has been monitored since the late 1970s.

Is there success with violation corrections? Yes, for drinking water.

Is treatment the best success? Yes, it has generated clean up action. Some of the clean-up sites have been pesticides, railroads and localized. The EPA aggressively goes after sites under the Model Toxic Control Act.

A member asked if there was an active committee on groundwater. The answer was no.

Clean Water Act, RCW 90.48, (State role under Clean Water Act) by Tom Eaton, EPA

Tom stated that pollution services are regulated. There is a new state water act where EPA is setting the guidelines. The Federal government will take a role to assist the states with grants. This will give a strong role to citizens and will focus on surface water.

The main programs are Water Quality Standards which consists of a lot of scientific research and then the states/tribes adopt those standards subject to EPA approval. Once standards are set, the state is responsible to meet the water standards. The NPDES permitting program is the backbone approach. It applies only to point sources. They are not allowed to discharge pollutants to surface water, and must use Best Available Technology (BAT) to avoid discharge of pollutants. The EPA or state can impose requirements for higher levels of treatment.

The Clean Water Act was amended to address diffused, or “non-point” sources of pollution. The aspect of the Clean Water Act is primarily a funding program. The EPA/State can write compliance orders, file civil suits and seek civil penalties, as can citizens.

State Water Pollution Control Act, RCW 90.48, (State role under Clean Water Act) by Charlie McKinney, WA Department of Ecology

Charlie explained that the Water Pollution Control Act encompasses protection of water in the State and that there are over 80 sections to this act. RCW 90.48 refers to discharges into waters. It gives significant authority to address pollution. DOE accepts and investigates complaints about pollution of both surface water and groundwater. Pollution of surface water is easier to identify than pollution of groundwater. Ecology has the ability to determine if violations have occurred. It posts a “Notice of Violation” if a violation has occurred. Most people are usually very compliant.

ACTION: CAFO permitting will be discussed in the third Study Session.

State Waste Discharge Permits, WAC 173-216 by Sanjay Barik, WA Department of Ecology

State Water Discharge Permits are general permits (14 in Washington State) with the exception of public-owned facilities of at least 5 million gallons a day. There are three facilities: in Yakima, Kennewick and Richland.

Questions/Comments:

How do they identify who needs a permit? There is a threshold of discharge for point sources. Others, like wineries, have a general permit. General permits are issued to similar industries, as it is more efficient. The general permit is based on a volume threshold for discharge, potential threshold for discharge and visual threshold for discharge. Monitoring and monthly reporting is required of permit holders.

How do you know that there is compliance with a general permit? The general permit is less stringent. They are required to submit on a monthly basis to make sure that they are meeting conditions.

Are any legislative changes anticipated this year? Don't expect any major changes.

Will there be well monitoring of wine lagoons? There potentially could be some monitoring.

How is a discharge permit relative to the GWMA? Food processors discharge wastewater which is similar to CAFO. We want to make sure it won't negatively affect groundwater. Facilities could possibly be sources of nitrate.

Jim Davenport asked the group if they had any recommendations on what actions should be taken by the GWMA related to Ecology's work on the CAFO General Permit. Charlie stated that we could zero in on this later in the process. DOE is working on a permit that would provide better groundwater protection. The department plans to do listening/stakeholder meetings soon.

A member asked if the monitoring of groundwater had been happening since 1938. The Department of Ecology was not created until the 1970's; however, prior to Ecology, there may have been different industries doing the monitoring. Charlie added that there is a centralized database (a lot still in paper files). He is not sure if everything has been entered electronically. The data could be suspect. Ecology is trying to get a handle on better data. They are mostly focused on surface water and do not have an ambient groundwater program.

Is the NPDES program effective? Yes.

Is there more pollutant from non-NPDES holders? It was recommended that the GWMA not focus on the NPDES. Potential sources should be looked at more closely.

If the NPDES and General State Permit are not effective, how do you permit if there's no regulatory authority?

ACTION: The GWMA Program will contain a chapter on the Regulatory Environment within the Ground Water Management Area.

Meeting adjourned at 4:10p.m.

Resources Requested

None at this time

Recommendations for GWAC

None at this time

Deliverables/Products Status

None at this time

Proposed Next Steps

Evaluate whether study session approach is the best approach. Prepare for study sessions II (April 2, 2015) and III (April 23, 2015)