

Approved Minutes of the Technical Advisory Committee Meeting
February 14, 2012

Attendees: Roger Thompson Mary Clark
 Bill Zabiloski Anne Whiteley
 Mark Bannon Peter Boemig
 Steve Rebillard Gail Center
 Cindy Parks Rodney Pingree
 Justin Willis Brian Kelly
 Steve Revell Scott Stewart
 Spencer Harris Ernest Christianson

Scheduled meetings:

March 20, 2012	1-4 PM	Liquor Control Conference Room- Montpelier
April 17, 2012	1-4 PM	Liquor Control Conference Room- Montpelier

Agenda:

The agenda was reviewed and accepted.

Minutes:

The draft minutes of the January 10, 2012 meeting were reviewed. Anne asked for correction on page 2. She said that a judge directed her in a couple of cases to do an informal mediation. Anne said that some cases where concern is based on technical issues a solution is reached in mediation but that in some cases it is a personality conflict. Anne said that eventually there will be court rulings that will give guidance on whether “overshadowing” is a taking in certain situations. Roger asked what is the most severe impact she has seen and Anne said that in one case she knows of a small lake front lot that is entirely “overshadowed” by a neighboring well because the neighbor insisted on using a shallow well. Anne said that takings are fact specific for each case. Spencer said that language being proposed that requires the “overshadowing” notice provided to the neighbor be filed on the land records as an encumbrance could have significant impacts. Spencer asked if all “overshadowing” situations are encumbrances and Anne said no with an example of a 10’ “overshadowing” there would be no adverse impact on the neighboring property.

H.469:

Anne reviewed the bill. The proposed bill states that all “overshadowing” is an encumbrance. Anne told the House Fish, Wildlife, and Water Resources Committee that the bill raises a question about whether notices would need to be filed for all of the pre-existing permits. Anne also raised the problem of sending a construction crew away for

14 days if during the construction process it became necessary to modify the plans in a way that created or extended “overshadowing.” Anne said that the Committee is not interested in proceeding with the proposed language. Rep. Krebs is interested in doing something with the language that Anne provided to the committee last year that would reduce the paperwork burdens on applicants and their designers. The Committee is not interested in just repealing the “overshadowing” statutory language. Steve asked if Rep. Krebs would support repeal and Anne answered that he would.

Mark testified to the Committee as well and focused on the cost of the notice. In some cases there are several neighbors that need full packages of the application materials and almost all of the neighbors call to discuss the situation. Mark recommended doing more outreach by the Agency to reduce the number of questions coming to the designers. Craig Heindel also testified to the Committee. Roger asked about the status of Rep. Krebs’s concerns from last year that the TAC had not given full consideration to the possible reduction in isolation distances between wells and leachfields. There are still concerns and Rep. Krebs noted that EPA is proposing a 50’ isolation distance. TAC noted that the existing Wastewater System and Potable Water Supply Rules (Rules) allow for reductions to as little as 50’ when the hydrogeologic conditions are favorable.

H.464:

Cindy reviewed this bill and said that the House has passed a bill with a moratorium on high volume hydrofracturing. Many legislators are concerned about risks to potable water supplies. Cindy looked at peer reviewed journals to prepare for her testimony. The legislators heard testimony from several groups with concerns. Cindy also testified that if a lot of wells were drilled that required Agency supervision it would adversely affect staff resources. Steve asked if the legislation has any linkage to the hydrofracturing process using on drinking water wells and Anne and Cindy said there is none.

Gail asked about what other New England States are doing. Cindy said this not an issue in the other states because they do not have oil bearing geologic formations. Ernie said that the legislators asked if they needed to make a statutory change knowing that the process is currently prohibited under Vermont’s Underground Injection Control Rules. Ernie stated the Department’s request was to make this a statutory change because the Vermont’s rules are based on delegation of the Federal Underground Injection Control Rules and if the program reverted to Federal administration the existing Federal rules do not prohibit hydrofracturing. Mary distributed three documents related to the hydrofracturing process, one prepared by an oil company and two by Penn State University.

Cindy noted that in addition to the questions of contamination of potable water supplies everyone agrees that there are very large amounts of water used to fracture the bedrock and the treatment and disposal of the flow back water are significant problems.

S.77/H.470:

Anne reviewed the identical bills, that propose to prohibit any disconnections from public community water systems unless the customers have an adequate alternative water source, and said they are related to the Proctor Water System. The system includes lead piping, lead lined water tanks, other poor quality piping, and has other problems as well. The repairs to the system would be very expensive. The current system is gravity feed from its source in the town of Chittenden to the system in Proctor with customers connected along the way. Doing treatment at the plant would require pumping the treated water back uphill along the route to provide treated water to all of the customers which is prohibitively expensive. Therefore Proctor wants to disconnect 95 customers in Chittenden. The bill would apply to all water systems though there was discussion of limiting it to only Proctor. This led to a discussion of the consequences and an understanding that the State has no money to support repairs to the system or to provide alternate sources of water to the disconnected customers. Anne said that eventually EPA will intervene and direct the Proctor Water System to make the upgrades. The bill could also override Vermont Court decisions that allow the process of disconnecting customers to proceed. Anne thinks the bill is not going to be passed but some legislators are looking for funding.

H.577:

Anne said that this bill addresses two ANR issues. The first is some technical corrections related to funding conditions and forgiveness for water supply projects funded by the State. The second is a change related to water supply operating permits which are affected by ongoing revisions to the Federal Statutes. As the new Federal requirements take effect existing water systems are deemed to be deficient. ANR cannot issue a new permit for projects with a deficiency so temporary permits with compliance schedules are issued. The bill as proposed would make this process more workable.

River Management Bills:

Anne said there are several different bills attempting to regulate different things. There are so many bills that are going in different directions that nothing is certain enough to discuss at this time. Rodney noted that one bill that seeks to prohibit any development within the flood hazard zone would seem to raise takings issues.

S.183:

Steve asked about this bill that would require water testing of all new sources. This bill is identical to one passed during the previous legislative session which was vetoed. Anne said there have been no hearings yet as far as she knows. The ANR position is to support education rather than mandatory testing. The Vermont Health Department also leans toward education rather than mandatory testing. There is no final Administration position yet as the two Agencies have not reached final agreement. The bill does not mandate a

data base that would provide geographic location of the water sources but if the bill passes and the data base is not created there will be unhappy legislators.

ANR updates:

Ernie said that the merger of the former Water Supply Division and the Wastewater Management Division into the new Drinking Water and Groundwater Protection Division is going well. It is still unknown where the Division will be located in the long-term. Anne said things are waiting for the Legislators to decide how much renovation should be done in Waterbury.

Spencer asked if the EDEC (electronic application process) is moving forward towards requiring full use of the system. Ernie said there is still a mandate to move forward. Ernie said that at this time about 28% of applications are filed electronically at the Springfield Regional Office while about 2.8% are filed electronically at the Rutland Regional Office. Steve estimated that about 5% are electronic applications at the St. Johnsbury Regional Office. Anne said that the Agency fee bill that must be approved this year proposes to simplify the fee categories for Regional Office Permits. Peter said that his office submits about 90% of their applications electronically. Justin said he has submitted only a few electronic applications. Ernie said that he is working on reducing the number of fields to be answered in the electronic application form. Then the question is making sure the information from the application form is transferred to the appropriate places in the tracking system. This would reduce the amount of information required on the application forms and reduce the amount of administrative work for the Regional Office Staff. Bill said that plan review on the computer monitor screen is difficult but that once the review is complete the electronic system makes issuing the permit easy. There is still a question about whether or not one hard copy of the plans should be submitted with the application as most of the staff prefers reviewing a hard copy.

UIC Rules:

Cindy is circulating a list of conditional exemptions within the Department. This will be discussed with the TAC when more fully developed. Roger asked about the general status of the UIC Rule update and whether the rules should be approved by EPA before going through the Vermont process. Anne thought that EPA would likely approve any changes proposed by Vermont as the Vermont rules are at least as restrictive as the EPA requirements.

TAC Focus and Use of Time:

Steve raised strong concerns that the TAC seems to spend way too much time reviewing the status of legislation and discussing topics that are not really subject to TAC control which prevents the Committee from getting to topics where they have expertise and can affect the outcome. This view was supported by the Committee and there was discussion about how to make the meetings more effective. Mark suggested holding the discussion

about legislative issues until the end of the meeting. Mary suggested assigning time periods to various topics. Anne asked which topics should be discussed.

Water Supply Rules:

Ernie said that he had met with Anne to work on updating the Water Supply Rules. Unfortunately most of the information was lost in the flood. They are drafting a list of issues that will be first reviewed by the Regional Office staff. Anne promised that once TAC gets the Water Supply Rules the Committee will be heavily involved in working out the details and language for the revisions.

Next Meeting:

Anne called for topics for the next meeting. Ernie suggested discussing filter backwash disposal for systems treating water with radionuclides. One suggestion is to use the New Hampshire approach. Gail asked if Bill Erwin should attend and Ernie said yes.

Rodney recommended against using too many subcommittees, observing that there always seemed to be a full discussion and review of every detail rather than relying on the subcommittee work. It was discussed that in some cases this may suggest that the subcommittee tried to discuss the issue with the full Committee prior to completing a full review. Spencer asked if the soil versus perc test and desktop hydro chart revisions have been sent to subcommittees. They have not.

Scott said that the well drillers are very interested in seeing the Water Supply Rules updated and any issues related to water treatment systems. Anne said there should be something to review in about two months.

Gail asked Ernie what contaminants need to be treated and when the requirements apply. Ernie will circulate a draft document for voluntary testing of water sources serving one single family residence.

Mark asked if the replacement well exemption, which allows for well drillers and homeowners to agree on a replacement well for one single family residence, is working well or should be revised. Anne said it is unlikely that statute would be changed. Roger and Mark said that the question is whether the quite specific requirements in the exemption are being followed. Mark noted that it does not appear that ANR follows up on any of these to see if the requirements are met.

Items prioritized for discussion with high, low, and medium ranking

1. Soil identification vs. perc test **medium**
2. Curtain drain with presumption of effectiveness **high**
3. Revisions to desktop hydro chart **medium**
4. Minimum amount of sand under a mound **high**

5. Water Supply Rule update **high**
6. Seasonal High Water Table determination for performance based systems **high**
7. Wastewater Strength

Executive Committee

Steve Revell, Ernest Christianson, Roger Thompson

Alternates – Chris Thompson, Spencer Harris, Claude Chevalier, Craig Heindel

Subcommittees

Hydrogeology –

Craig Heindel, Bill Zabiloski, Mark Bannon, Scott Stewart, and Steve Revell.

Overshadowing of Isolation Distance Issues –

Anne Whiteley, Ernie Christianson, Roger Thompson, John Beauchamp,
Gail Center, Chris Thompson

UIC Rules and Geothermal Wells -

Craig Heindel, Steve Revell, Roger Thompson, Ernie Christianson, Scott Stewart,
Rodney Pingree, Kim Greenwood, Cindy Parks

SHWT Monitoring –

Craig Heindel, Steve Revell, Roger Thompson, Ernie Christianson, Bill Zabiloski,
Dan Wilcox

UIC Rules and Disposal of Wastewater from Water Treatment Systems –

John Beauchamp, Gary Adams, Roger Thompson, Ernie Christianson,
Gail Center, Cindy Parks

Wastewater Strength -

Mary Clark, Cindy Parks, Peter Boemig, Bill Zabiloski, Roger Thompson,
John Akielaszek,