

Regulatory Framework Working Group

Charge from Groundwater Management Area Advisory Committee

[Insert Charge]

Working Group Members

Jean Mendoza, Chair (Friends of Toppenish Creek), Andres Cervantes (Department of Health), Bill Dunbar (Environmental Protection Agency), Charlie McKinney (Department of Ecology), Chelsea Durfey (Turner and Co.), Dan DeGroot (Yakima Dairy Federation), David Newhouse (interested party), Ginny Prest (WSDA), Jason Sheehan (Yakima Dairy Federation), Jim Dyjak (Concerned Citizen of Yakama Reservation), Larry Fendell (interested party), Laurie Crowe (South Yakima Conservation District), Nick Peak (EPA), Patricia Newhouse (Lower Valley Community Representative), Steve George (Yakima County Farm Bureau), Stuart Crane (Yakama Nation), Sue Wedam (Lower Valley Community Representative), Vern Redifer (Yakima County Public Services), Jim Davenport (Yakima County Public Services)

Meetings/Calls Dates

Meeting: August 12, 2015 5:30 PM – 8:00 PM

Call Number: 509-574-2353 PIN #2353

Participants

Present: Jean Mendoza, Dan DeGroot, Ginny Prest, Charlie McKinney, Jim Davenport, Jim Dyjak, Larry Fendell, Sue Wedam, Stuart Crane, Vern Redifer; Lee Murdock, Mary Wurtz (Yakima County Support Staff)

*via phone

Key Discussion Points

Review Workgroup Goals and Objectives:

Jean presented a handout entitled “A Proposed Road Map for the GWMA Regulatory Work Group.” Jean asked for comments on the paper and the discussion was centered on the “Outputs” column.

- Ginny P. questioned the item “Legal Opinion from Jim Davenport” under Resources. Jim stated that his opinion is not controlling. Any lawyer may give his opinion.
- Vern agreed with the Mission Statement and commented that the logic model restates the goals and objectives.

An overview of regulatory action and how the law has evolved followed. The ultimate goal of looking at current regulations is to consider their historical development. Look at the ways

people have attempted to address a particular problem. A participant suggested a worldwide comparison to see what others are doing. Lee commented that she can see this getting big really fast. One option is to compare monitoring wells within the GWMA with monitoring wells throughout Washington State in order to see how regulations have evolved over there over time and if rules got more stringent over time. Vern stated the challenge from Yakima County is figuring out what the history of the problem and regulatory response has been. It was suggested that just because something has been tried before and failed does not mean it isn't good.

Concern was expressed that if we continue down the path of looking at all the information there will be a ton of opinions about it. Sue Wedam stated that it seemed as though some topics on this Work Group's agenda are being covered by other groups. Duplication should be avoided.

Jean sees the Regulatory Group's job is to ask questions and put in simple explanations. Jean was hoping to have more representation for non-ag people. Vern felt that this is not part of the Regulatory Work Group's purview. The recommendations of the GWAC should have a broad public impact.

Motion: Concentrate on study of existing regulations and then talk about next steps. This would help show where the gaps are.

Motion was seconded and passed. It was mentioned that the list that HDR had compiled regarding regulatory and non-regulatory policies and guidelines on water quality should be the guide.

Motion: To evaluate the current regulations and consider if things are not adequate.

Motion was seconded and passed.

A member suggested that we put this part on hold for a little while since once the committee is through studying the regulations there should be an obvious path. Another suggested that the activities in column two be completed before columns three, four and five are completed. Jim D stated that the document needed a timeline.

Dairy Nutrient Management Program discussion with Ginny Prest:

The following questions were covered:

Question #1: *What specific regulation are you addressing? Provide the citation where it may be found. Identify the responsible agency personnel.*

- Ginny outlined and listed the Washington State RCW's and WAC's that pertain the Washington State Department of Agriculture (WSDA) Dairy Nutrient Management Program (DNMP) including RCW 90.48 -Water Pollution Control Act, RCW 90.64 -Dairy Nutrient Management Act, RCW 43.05 - Technical Assistance, and WAC 16-611 - Nutrient Management Rules. Ginny said the regulations and rules target mostly surface water and not ground water. WAC 16-611 Nutrient Management spells out the requirements for the recordkeeping that dairy producers must complete and maintain. In addition, WAC 16-611 has a penalty matrix for discharges to waters of the state (surface) and recordkeeping

violations. DNMP gives the dairy an opportunity to fix their mistakes by providing technical assistance as required by RCW 43.05 (the program uses a notice of correction). If the dairy has a second discharge to surface waters, the dairy will receive a penalty of \$4000. Penalties increase for any subsequent infractions. Most water quality penalties are for fecal coliform. WSDA's DNMP has a good history of people correcting any issues when identified through inspections, technical assistance, warning letters and enforcement actions. WSDA DNMP does not have the regulatory authority to give someone a monetary fine for over applying nitrates.

Question #5: *How much has education of the regulated community improved regulatory effectiveness? How is this measured?*

In 2009, RCW 90.64 was amended to include the requirement for all dairies to maintain records for land applications of all nutrients (this includes all sources of nitrogen). In 2010, RCW 90.64 was amended to include a penalty for lack of recordkeeping. In October 2012, WAC 16-611 Nutrient Management rule was signed that included recordkeeping requirements and penalty matrix for both discharges to waters of the state and recordkeeping violations. This last January WSDA DNMP had two years of inspection data. Based on the data, elevated nitrate levels were noted in some fields. The program utilized warning letters and notices of correction to recommend to producers of additional steps that should be taken to reduce nitrate levels in the soil.

It was expressed that it was frustrating to be subject to regulations but not your neighbor.

Consistency is needed.

Question #29: *Is the regulation current? Is it adequate to address the problem it was designed to solve? If not, do you have any ideas on how it could be changed to be more effective or to improve compliance, e.g. modification of standard, modification of penalty, etc.?*

- The questions asked at the meeting regarded legislation for application of manure and nutrients by non-dairy agricultural producers. What would the legislation look like? Would it be a mirror copy of dairy requirements? Will application records be required? Will they have routine inspections?
- Vern asked what the testing requirement is for dairies. Ginny replied dairies are required to test the soil, one foot deep, for organic matter (%), ammonia-N, nitrate and phosphorus. Dairies are required to test manure for % solids, total nitrogen, total phosphorus and ammonia-N.

If a dairy is exporting manure to another person, the dairy is required to provide manure analysis and keep records on how much is exported. The dairy supplying the manure to another party or a broker does not have control over what the receiving party does with the manure. Jim questioned if non-dairymen should be required to keep the same records as dairymen. Vern added that commercial fertilizer has to be recorded by the dairies also.

The chart “Inspection/Compliance Yakima County”, on Page 10, was reviewed. It broke down the past five years of WSDA DNMP inspection and compliance actions. Penalties for discharges to waters of the state start at \$4,000 and progress up to \$10,000.

Resources Requested

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Recommendations for GWAC

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Deliverables/Products Status

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Proposed Next Steps

- Next meeting: