

## **HB 894 Stakeholder Meeting #2**

### **May 28, 2015**

#### Welcoming and introductory remarks:

The meeting began with a short presentation to welcome participants and to set expectations for meeting objectives. It was recognized that stakeholders have requested more time for discussion. Participants were informed that today's agenda would remain flexible to allow greater opportunity for discussion. The key objective stated for this meeting was the introduction of a revised SWP planning approach. A general agreement exercise was to be utilized to help identify issues, concerns, and unintended consequences.

An "ice-breaking" exercise was executed to demonstrate that although we all have different motivations, our thinking processes are relatively synchronous, and this fact will be beneficial to our efforts to develop HB 894.

#### Discussion of relevant progress:

The purpose of the first segment of the meeting was to review and discuss relevant progress since the initial meeting. Three topics were covered: a PCS exercise summary, stakeholder survey results, and an interim report submitted by the NC Commission for Public Health.

#### ***Potential Contaminant Source Exercise Results – Rebecca Sadosky***

Presentation provided an overview of the PCS exercise results from the first stakeholder meeting. The two exercise objectives were: 1) Assign a risk category for the 16 existing PCS datasets (historical default = high), and 2) Identify PCSs not currently considered in SWAP but should be examined for potential inclusion. Nine PCS categories were identified to remain in the high risk group, five were identified as posing moderate risk, and two PCS categories were identified to move to the low risk group. Four additional PCS categories were identified as potential candidates in future SWAP risk assessments.

#### Comments/Questions:

- Above ground storage tanks should be a priority because they are the major reason for this legislation. The event in Charleston, WVA involved above ground chemical storage.

#### ***Summary of Stakeholder Survey – Jay Frick***

The second topic included a review of initial stakeholder preferences as per a survey completed following the December stakeholder meeting. Results indicated that the vast majority of stakeholders have a clear understanding of the intent of HB 894. Additionally, there was broad support regarding the usefulness and relevance of existing SWP tools (e.g., GIS mapping applications, DW Assessment Areas, PCS database, and SWAP Reports). Susceptibility analysis had relatively less support, with only 74% of the stakeholders selecting it as useful and relevant to HB 894. Comments associated with susceptibility ratings included concerns that the analysis is

vulnerable to changes in land use/land cover and the realization that susceptibility ratings are a qualitative, relative indicator of risk. Regarding the potential SWP planning model presented at the December 2014 meeting, stakeholders were mixed. Approximately 40% had either no opinion or disagreed that the proposed model would adequately address the intent of HB 894. Comments to improve the proposed SWP planning approach included: (i) not making it comprehensive, (ii) adopting minimal baseline standards sufficient to meet the bill's intent, and (iii) emphasizing emergency preparedness as the highest priority element. Regarding the agency's overall approach to implement HB 894, which includes rulemaking to specify SWP planning as well as development of resources to support local activities, 75% of stakeholders agreed this approach as "reasonable and appropriate."

### ***Review of Interim CPH Progress Report – Jay Frick***

An interim progress report was submitted to the Environmental Review Commission by the NC Commission for Public Health (CPH). The report highlighted the agency's research related to rule development, input from the NC Source Water Collaborative, and discussion of the formal stakeholder process. The HB 894 website was introduced as a primary mechanism for communicating with stakeholders and other interested members of the public. A key concept developed in the CPH report was the existing regulations that are in place and already impart some degree of protection to drinking water sources. Four potential obstacles to implementation of HB 894 were recognized in the report. These include: plan development costs, logistics of mandatory implementation, jurisdictional concerns, and freedom of information concerns. On May 13, 2015, the agency was asked to appear before the CPH to provide a review and answer questions related to HB 894. Discussion initiated by CPH members included concerns about interconnectivity, extended spill response time, and suggestions to create a "risk-scale" to classify spill events.

#### **Comments/Questions:**

- Background information related to creation of the bill creation was provided:
  - Discussions with the CPH and DENR upper management occurred following the coal ash spill. The consensus was a concern was safe drinking water. The existing SWP planning process is voluntary and not technical.
  - Worked with DENR to come up with a better SWP plan. Worked with Commission for Public Health to simplify it.
  - Recommend a basin area 48 hours up-gradient from the plant using flow, velocity. Determine potential PCSs (spill sources) within that boundary.
  - Recommend requiring PCSs in that area to notify the treatment plant as well as police and other emergency response personnel when there is a spill.
  - Next, determine contaminants that are treatable. Have a plan in place to treat or turn off intake to the plant. Begin analyzing water samples so that you know when to turn the source off and then back on when the contaminant has passed.

- The potential need for additional legislation was recognized and support was offered.
  - Indicated that the Clemson probe may be an option for real-time monitoring.
- Several stakeholders commented on the high importance of communication between PCSs facilities and the water treatment plant.
- A question was posed regarding the creation of a requirement such that all potential contaminant source owners to contact WTPs and that if so, that would be a game changer to the way things are currently done. (DENR no longer in the middle)
  - EPA plan has 5 components – most deal with communication.
- Thanks were provided for introducing this bill and reference was made to the great heritage of clean drinking water in NC.
- Secondary legislation may be needed to require sources to notify utilities in a reduced timeframe.
- There may be technical barriers to this proposed methodology (real-time data monitoring) because probe technology is not adequate or cost effective, there are numerous and changing contaminants of interest to water utilities, and there are a significant number of variables required to account for when calculating travel time (lack of sufficient PWSS staff to implement).
- Water systems have a lot of smaller PCSs in the watersheds they don't know about.
- A question was raised about new legislation passed last year regarding departmental release of information before an investigation is final. There is conflicting legislation regarding sensitive information.
  - Secondary legislation may be necessary to fully implement this law.
- There was a question and confirmation that large impoundments would be handled differently than run of river systems. Sources have different levels of risk, which should be incorporated into the implementation schedule.
- There needs to be a plan to connect PCSs with utilities. Need a database of who the PCSs are. Similar to "212 Community Right to Know." Possibly incorporate into Spill Prevention, Control, and Countermeasure Rule (SPCC).
- Rule Implementation priorities were suggested
  - First priority: Within a specified area of interest, the utility needs to identify PCSs.
  - Second: Find a way to get notification to utilities ASAP in case of a spill/release.
  - Third: Contingency plan to do sampling. Utility will then make decisions to protect people. May not know flow.
  - 8 hours may not be enough time to get sample results.
  - Contingency plan. Utilities make the final decision about closing intake. Gives utilities knowledge of what's out there and when there's a release.

- A question was raised regarding the availability of alternative sources as a component of the plan. A concern was then raised about the Interbasin Transfer rule potentially impeding this process.

### ***Revised SWP Planning Approach Discussion – Jay Frick***

There was a short review of how the SWP planning model proposed for HB 894 has evolved. It was recognized that an acceptable approach continues to evolve and is subject to three main drivers: (i) the law was written to require action from public water utilities, (ii) various regulatory mechanisms related to DW protection already exist, and (iii) no resources are currently allocated to incentivize SWP activities (related to planning or implementation). Each of these driving factors was examined individually with resulting consequences.

Because the law was written to require action from public water utilities, we can only write rules for those things a utility can control. As stated recently in a meeting with upper management, “Utilities can’t control risk, but they can better understand and be better prepared to mitigate risk.” Rules cannot be written that affect PCS facilities or their owners. To do so is outside the scope of HB 894.

Regulatory mechanisms are currently already in place to protect drinking water. These are listed in the appendix of the NC CPH interim report. There are no immediate initiatives to mandate that utilities assume regulatory oversight of PCS facilities. As recently stated by upper DENR management, “A SWP plan will not stop someone who is intent on ignoring the rules.” Therefore, intensive new regulatory mechanisms may not contribute to improved SWP planning activities.

The last major driving factor is that no resources have been allocated to incentivize SWP planning or implementation activities. It was discussed that this situation actually acts as a disincentive to comprehensive SWP planning as it makes implementation of proactive strategies identified in a SWP plan economically unrealistic. A prime example is land conservation projects.

In addition to the major drivers, there are two minor factors influencing the development of rules to implement HB 894. The first of these regards the current understanding that a local stakeholder team is required to initiate and complete a SWP plan. Requiring involvement of a local stakeholder team is an effective way to capture diverse opinions and may be necessary to better ensure action following a voluntary process. However, because SWP planning and implementation will become mandatory, plan development by a local stakeholder team may unnecessarily delay the process. An acceptable compromise might include public input after a local SWP plan has been drafted. Other alternatives for public involvement are open for consideration. The second minor driver reflects concerns that publication and/or availability of SWP plans submitted to the state may conflict with NCGS 132 by releasing sensitive public security information.

Considering the drivers above (major and minor), a revised SWP planning approach was presented to the participants. The new approach is more streamlined than the previous model. It relies on the utility to initiate and complete the plan, and it focuses on identification and prioritization of

PCSs and threats. Mandatory provisions, primarily related to emergency preparedness, will be recommended for required implementation. Resulting local SWP plans will remain an internal document and be available for the agency's review upon request or during a site visit. The agency will solicit input from the HB 894 stakeholder team to help identify mandatory provisions for implementation.

For illustration purposes, a hypothetical example was discussed. In the scenario presented, the agency provided Jasper, NC with a defined assessment area and a starting list of PCSs that may affect drinking water quality. Jasper public utilities then expanded on this information and created a SWP plan that included the following components:

- Communication protocols with high priority PCS facilities
- A feasibility study for interconnection with the County WTP
- Intake shutoff drills
- A refined conservation plan to address rapid implementation and public notification
- Emergency management training from NC DPS
- Membership in NCWaterWarn

The adequacy of the example above was discussed. The provisions in the plan were deemed consistent with the concept of "better understanding risk and better preparation to mitigate risk."

In conclusion, two summary slides were presented. The first contained points of where the HB 894 implementation effort is not going. In general, and within the scope and language of HB 894, *the agency will not pursue*: strengthened regulations against PCS owners, shared regulatory oversight of PCS facilities, mandatory implementation of all proactive strategies, plan development by a local stakeholder team, and submittal of the plan to DENR as a public record. *The agency will pursue*: strengthened awareness of risks and threats, consideration of alternate sources of water, emphasis on emergency preparedness, and utilization of existing drinking water assessment areas and SWAP technical reports.

This revised approach aims to achieve balance and includes input from stakeholders, upper management and the NC CPH. It also addresses the intent of the Bill, minimizes economic burden, sets emergency preparedness as a top priority, doesn't conflict with existing regulatory programs, and avoids the sensitive public information issue.

Comments/Questions:

- There may be some issues with the Freedom of Information Act and not being responsible for sensitive information. Farm Bill Federal Statue #1619 may also be an impediment to obtaining information regarding agricultural operations.
  - A suggestion was made that plans should be kept at the water system and not submitted to the state. With review being done on-site during inspections.

- There were questions and reservations about this.
- Chemical information displayed on the front of buildings for fire responders could be a valuable tool for sharing information with WTPs.
- Creating a super-jurisdictional task force could be a way of working with sensitive information and keeping it confidential. Perhaps will need a MOA or MOU between jurisdictions to promote information sharing.
- Doesn't the drought legislation passed a while back get at some of these things?

***Group discussion - identification of issues, concerns, and solutions - Jay Frick***

Jay conducted a 5 finger exercise (1=love it to 5=block it) and called on some individuals that voted 4 or 5. The exercise was used to identify issues and concerns associated with the revised SWP planning approach.

**Comments/Questions:**

- Most facilities have been asked to update conservation plans (local water supply plans and water shortage response plans) that may contain components relevant to the proposed SWP plan. Avoid redundancy when possible.
- There is more information in the public knowledge base – local agencies, public safety, and emergency management that should be shared with the water utility. Possibly need inter-agency agreement to get this information to the water systems.
- Would like to see more enforcement, planning for catastrophic events. Refer to EPA document (Planning for Emergency: Drinking Water Supply).
- Emergency management may be unaware of a role that could assist drinking water protection. If a utility has to shut down an intake, then they need to engage the town's emergency management. Utility needs to know when/how to contact emergency management as well as what resources are available.
- Concerned about not including all PCSs in this process. Need to include them as much as we can.
- We should seek additional legislation for actions not possible through HB 894.
- Worried about SWP plans not being submitted to DENR. Provisions in public records act will allow for submittal with sensitive information redacted if needed.
- Opportunities for stakeholders from PCSs or other groups are necessary.
- This is an awareness exercise. Need more enforcement. May bring issues to light.
- Concerns with PCS/communications.
  - PCSs are not always stagnant; chemicals stored at a facility may change.
  - How can utilities know what chemicals are being transported through the watershed?
- Size of the water system may not be the major factor. More important criteria may be susceptibility, type of PCS, how close they are to the intake.

- HB 894 requirements are in consultant's wheel house. When a spill occurs, response activities need to happen quickly.
- Concerned about how large the SWP plan could get.
- What's the point of the document? Having it at the plant if there's a problem? Something similar to an SOP that is easy to use?
- Uneasy - Not convinced that the current legislation is what would be necessary for communication from PCSs not in jurisdiction. Need some way to require them to agree to communicating and/or participating with the local SWP plan.
- Should we have another category of written comments that we can build on? A wish list of legislation? Something to capture ideas?

***Mandatory Plan Components Exercise – Rebecca Sadosky***

Participants were asked to break into small groups and discuss/record what plan components they feel would be necessary to meet the intentions of HB 894 and to make this a meaningful/useful document. In addition, groups were asked to identify the components of the most basic plan that a water system would need to create. A representative of each group then gave a report out on their discussion.

- Utility-determined high priority/high risk PCSs
- Treatment/Demand Response
  - Plant off (procedure and scheduled exercises for intake shut off)
  - Outreach procedures – communication aspects of the SWP plan with consumers
  - The SWP plan should reference Emergency Response Plan and Water Shortage Response Plan
  - Remediation Plan
- Back Up Plan that considers alternative supplies

***Concluding Remarks – Jay Frick***

Participants were reminded that they can continue to submit written comments, suggestion and ideas to the agency after today's meeting has concluded. The agency intends to take all the information compiled to date and begin outlining potential draft rules for HB 894. The next stakeholder meeting will likely include review of draft rules as a major component of the agenda.