

LYV GWMA Regulatory Group

The following questions are intended to inform and stimulate the thinking of invited representatives in preparation for the study session. While we do not intend to go question by question with each presenter, we ask that presenters review the questions and be as prepared as possible to address them if asked.

1. Which specific regulation are you addressing? Provide the citation where it may be found. Identify the responsible agency personnel.
2. What problem is the regulation designed to solve? What activity does the regulation limit, regulate or control? How is that activity related to the potential for nitrate to be discharged to groundwater?
3. How does the regulation work, i.e., through licensing, registration, standard setting, recommendation of best management practices, reporting, technology, performance monitoring, planning, funding, other approach?
4. What metrics does the agency use to measure whether the regulation is effective in reducing nitrate concentrations? What means are used to apply those metrics, e.g. inspection programs, monitoring reports, field samples? What data is available reflecting the application of those metrics?
5. What does the agency do to inform the regulated community or the public of the existence of the regulation? What is the agency doing to make it easier for the public to contact the agency in order to learn what to do about groundwater contamination? How much has education of the regulated community improved regulatory effectiveness? How is this measured?
6. Is the regulatory activity coordinated or integrated with that of other agencies? Where coordination, integration or assistance from other agencies' programs are important, has that been forthcoming? Was it helpful? If not, why not?
7. Does the general authorizing statute of the agency provide any overarching or guiding principles or purposes that are incorporated within the regulatory approach taken by those responsible for administering the regulations? If so, what are they?
8. Would the regulation be more effective if administered by a different agency?
9. How much voluntary compliance with the regulation occurs? If the regulation is advisory, as with recommendation of best management practices, how is voluntary compliance measured or monitored?
10. What reasons are given by those who do not comply? Standard set too high/unachievable? Regulation too complex/not understandable? Rapidly changing regulatory environment? Time needed to realize compliance? Necessary technology not available? Money/profit? Money management/availability (grants/funding)? Opposition to governmental interference? Opportunism/assessment of risk of enforcement?

11. Are you aware of examples of enforcement actions taken within the GWMA that have reduced nitrate levels in groundwater? Is it possible to quantify those reductions?

In particular, do you know of any enforcement actions in the GWMA since 1990 that were in response to nitrates in the ground water and whether there was a reduction in nitrates as a consequence of those enforcement actions? If so, should reported nitrate levels in these prior enforcement areas be discounted as being under current remediation?

12. Are you aware of examples of enforcement actions within the GWMA that have had positive or persuasive influence on other members of the regulated community resulting in greater voluntary compliance? Is it possible to quantify that greater voluntary compliance?

13. Does compliance differ in different subareas or different subgroups within the GWMA? If so, why?

14. Were existing practices or facilities “grandfathered” when the regulation was adopted? If so, do the grandfathered facilities or practices represent a significant potential source of nitrates?

15. Does the regulation establish penalties for non-performance?

16. What is the litigative exposure of parties that do not comply with the regulation?

17. Does the regulation use any complaint or notice process to cause the agency to take action?

18. What course of action does the agency take when made aware of cases where the regulation is not being followed?

19. Does the regulation identify a method to prioritize agency actions in responding to cases where the regulation is not being followed? How does the agency prioritize its response if the regulation does not identify a method?

20. How far is it between the agency or its personnel and the GWMA? Does the distance affect the ability of personnel within the agency to be “in the field,” to be aware of public concern within the area, to know the regulated community, to understand the difficulty of compliance with the statute or regulation?

21. What level of education, training or special knowledge is necessary to implement the agency’s regulatory authority?

22. Is the current organization or management of the agency structured to enhance administration of the regulation?

23. How is the regulatory activity funded? Is it certain and predictable (e.g., tax revenue) or unpredictable (e.g., legislative appropriation)?

24. Is the agency fully capable, due to availability of personnel, training or funding, to respond in cases when the regulation is implicated? If not, what additional personnel, training or funding are

needed? If additional personnel or funding were available what would the agency do that it is not now doing?

25. Does the regulation provide incentives or disincentives to induce preferred performance?

26. Has the regulation caused opposition or dissatisfaction within the regulated community?

27. Does the regulation cause economic dislocation in the GWMA community? To the regulated parties? To others?

28. Does the agency currently contemplate any alterations to the regulation?

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.?

30. Are you aware of regulatory or non-regulatory approaches utilized in other areas with similar problems that could be utilized in this GWMA?

31. Are you aware of proponents for alternative regulatory or non-regulatory approaches that would address the same problem or the same regulated community? Who are they? What alternatives do they recommend? Do you agree with the recommendations, or do you have other ideas for alternative regulatory or non-regulatory approaches to achieve better results?

32. What are the existing rules and regulations concerning groundwater?

33. Are there any gaps in the above?

34. How should these gaps be addressed?