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Fast Track Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC 25-720-50.B.
Regulation title	Water Quality Management Planning Regulation
Action title	Amendments to Water Quality Management Planning Regulation; Potomac-Shenandoah River Basin non-TMDL waste load allocation modifications
Date this document prepared	February 2, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The Harrisonburg-Rockingham Regional Sewer Authority has plans to expand and upgrade its facility on the North River, a tributary to the South Fork Shenandoah River. The seasonal CBOD5 and TKN limits for the North River WWTF (VA0060640) are proposed for modification to reflect waste load allocations that have been shown to be protective of water quality at the 28 MGD flow tier. The current section of the Water Quality Management Planning (WQMP) Regulation was adopted by the State Water Control Board at its September 28, 2005 meeting. As expressed in the regulation, the North River WWTF is limited to a CBOD5 (Jan-May) waste load allocation of 1030 kg/d and CBOD5 (Jun-Dec) of 606 kg/d. The facility is also limited to a TKN (Jun-Dec) waste load allocation of 303 kg/d and TKN (Jan-May) of 545 kg/d. During the permit reissuance process, the discharge was remodeled using the QUAL2E model because critical flows in North River had decreased and additional flow tiers were requested. The limits outlined in the following table were demonstrated to be protective of water quality conditions in the North River downstream of the facility's discharge. The amended WQMP should appear as such,

Water body	Permit No	Facility Name	Outfall No	Receiving Stream	River Mile	Parameter Description	WLA	Units WLA
VAV-B23R	VA0060640	North River WWTF AKA Harrisonburg-Rockingham Regional Sewer Authority	001	North River	15.01	CBOD5 (JAN-MAY)	1030 700	KG/D
						CBOD5 (JUN-DEC)	606 800	KG/D
						TKN (JUN-DEC)	303 420	KG/D
						TKN (JAN-MAY)	545 850	KG/D

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

At their March 2007 meeting, the State Water Control Board adopted the following recommendations by staff of the Department of Environmental Quality:

1. That the Board authorize the Department to promulgate the proposed amendment to 9 VAC 25-720-50.B of the Water Quality Management Planning Regulation for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization should also be understood to constitute its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
2. That the Board authorize the Department to set an effective date 30 days after close of the 60-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.
3. Should the proposal fail to complete the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act or changes to the proposal be needed, it is recommended that the Board authorize the Director to make the decision under 9 VAC 25-10-30.C. concerning the use of the participatory approach or alternatives.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

State mandate in the Code of Virginia, §62.1-44.15, is the source of legal authority identified to promulgate these amendments. The promulgating entity is the State Water Control Board.

The scope and purpose of the State Water Control Law is to protect and to restore the quality of state waters, to safeguard the clean waters from pollution, to prevent and to reduce pollution and to promote water conservation. The State Water Control Law (Code of Virginia) at §62.1-44.15(10) mandates the Board to adopt such regulations as it deems necessary to enforce the general water quality management program of the Board in all or part of the Commonwealth. In addition, §62.1-44.15(14) requires the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes that are consistent with the purposes of this chapter. The specific effluent limits needed to meet the water quality goals are discretionary.

The correlation between the proposed regulatory action and the legal authority identified above is that the amendments being considered modify waste load allocations that are shown to be protective of water quality and contribute to the attainment of the Virginia Water Quality Standards.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The amendments are needed to allow for the planned expansion of the North River WWTF while ensuring that the expanded discharge remains protective of water quality in the receiving stream North River. The modified waste load allocations reflect limits for CBOD5 and TKN that are protective of water quality at the expanded flow tiers.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The proposed amendments are expected to be non-controversial, and therefore justify using the fast-track process. The amendments will reflect effluent limitations outlined in the current VPDES permits at various flow tiers and have been shown to be protective of water quality for North River downstream of the North River WWTF. The current VPDES permit was issued with the original WQMP limits, with the revised effluent limits outlined as available to the facility once the WQMP is amended. The permit was reviewed by EPA and public noticed with all public comment issues addressed. The permit's effective date was September 11, 2006.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

In 9 VAC 25-720-50. B., for the North River WWTF (VA0060640), change the CBOD5, Jan-May waste load allocation from 1030 kg/d to 700 kg/d and the CBOD5, Jun-Dec waste load allocation from 606 kg/d to 800 kg/d.

In 9 VAC 25-720-50. B., for the North River WWTF (VA0060640), change the TKN, Jun-Dec waste load allocation from 303 kg/d to 420 kg/d and the TKN, Jan-May waste load allocation from 545 kg/d to 850 kg/d.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

The public will benefit, as these amendments will ensure the attainment and preservation of water quality standards in the North River downstream of the North River WWTF discharge. There is no disadvantage to the agency or the Commonwealth that will result from the adoption of these amendments.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The amendment does not include requirements exceeding applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

Only members of the Harrisonburg-Rockingham Regional Sewer Authority (owners of North River WWTF) are particularly affected by the proposed amendments.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Analysis not performed as no small businesses are affected.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	None.
Projected cost of the regulation on localities	None.
Description of the individuals, businesses or other entities likely to be affected by the regulation	Sewage Treatment Plant.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	One.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	None.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

No viable alternative approach, less burdensome or intrusive, identified.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

No direct impact expected.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9 VAC 25-720-50.B.		For North River WWTF (VA0060640), <ul style="list-style-type: none"> ◆ CBOD5 Jan-May WLA = 1030 kg/d ◆ CBOD5 Jun-Dec WLA = 606 kg/d ◆ TKN Jun-Dec WLA = 303 kg/d ◆ TKN Jan-May WLA = 545 kg/d 	For North River WWTF (VA0060640), <ul style="list-style-type: none"> ◆ Change CBOD5 Jan-May WLA from 1030 kg/d to 700 kg/d ◆ Change CBOD5 Jun-Dec WLA from 606 kg/d to 800 kg/d ◆ Change TKN Jun-Dec WLA from 303 kg/d to 420 kg/d ◆ Change TKN Jan-May WLA from 545 kg/d to 850 kg/d