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## Periodic Review and Small Business Impact Review Report of Findings

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-780
<b>VAC Chapter title(s)</b>	Local and Regional Water Supply Planning
<b>Date this document prepared</b>	July 13, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

## Acronyms and Definitions

*Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

Not applicable.

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

The State Water Control Board is authorized by §62.1-44.15 of the Code of Virginia to promulgate regulations. Section 62.1-44.38:1 of the Code of Virginia requires the Board to "establish a comprehensive water supply planning process for the development of local, regional and state water

supply plans consistent with the provisions of this chapter." This regulation became effective in 2006 and was amended in 2006 and 2015. There are no regulatory changes associated with this periodic review.

The General Assembly modified state law pertaining to the comprehensive water supply planning process during the 2020 Session. (Chapter 1105 of the 2020 Acts of Assembly.) Amendments to §§ 62.1-44.36, 62.1-44.38, and 62.1-44.38:1 of the Code of Virginia direct the Board to encourage the development of cross-jurisdictional water supply projects, and to adopt regulations designating regional planning areas based primarily on river basin. The amendments also mandate that each locality in a particular regional planning area shall participate in cross-jurisdictional, coordinated water resource planning, and all localities in each area shall together develop and submit a single regional Plan. The bill directed the Department of Environmental Quality (Department) to facilitate the creation of regional water plans by ensuring sufficient coordination among localities, providing planning and other assistance, and ensuring that each regional plan identifies risks and proposes cost-effective strategies in response. A Notice of Regulatory Action was published in the Virginia Register on June 7, 2021, to initiate a regulatory action to amend the regulation in response to changes in state law. A proposed regulation was developed, and comments are being accepted on the proposed regulatory changes until July 21, 2023.

### Alternatives to Regulation

*Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.*

Statute directs the Board to establish a comprehensive water supply planning process for the development of local, regional, and state water supply plans. Under the current regulation, localities can choose to develop a plan independently (local plan) or may choose to plan regionally with other localities (regional plan). In total, 48 water supply plans were submitted in 2008, of which 10 were local plans and 38 were regional plans with the majority of those consisting of one county and one or more cities or incorporated towns located within the boundaries of the county. Planning regions were not specifically determined based on river basin or with respect to shared sources of water supply. No regulatory changes are being proposed as part of this periodic review; however, there is a current regulatory action proposed in response to changes to statute, as referenced above in the *Legal Basis* section. Alternatives were identified that would be consistent with state law and revisions to this regulation are currently underway to incorporate changes that were made to state law in 2020.

### Public Comment

*Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

An informal advisory group was not formed for the purposes of this periodic review. One comment was received during the public comment period and is summarized below.

Commenter	Comment	Agency response
Mission H2O	Changes to state law were made in 2020 that modified the requirements associated with the water supply planning process and these changes are not reflected in	DEQ concurs that this regulation needs to be amended to incorporate changes that were made to state law in 2020. A NOIRA was published in 2021 to initiate the process to amend this regulation. The proposed

	<p>the regulation as it currently exists. The regulation needs to be updated to incorporate these changes. Commenter acknowledged that a Notice of Intended Regulatory Action (NOIRA) was published in 2021 to address these revisions, but the proposal had not been published for public comment as of May 1, 2023. .</p>	<p>regulatory amendments were published in the Virginia Register on May 22, 2023, and comment will be accepted on the proposed amendments through July 21, 2023. Since the process for making these changes is already underway the result of this periodic review is to retain the regulation as is and continue processing the regulatory revisions to the regulation through the previously initiated regulatory action.</p>
<p>Missions H2O</p>	<p>Provided comments related to the content of the proposed amendments prior to the start of the public comment period for the proposed amendments to the regulation.</p>	<p>Comments related to the proposed amendments to the regulation in response to the 2020 changes to state law will need to be submitted to the agency during the public comment period for the proposed amendment. All comments received during the public comment period for the amendments to the regulation will be reviewed and responses will be provided to commenters prior to the Board taking a final action on the regulation.</p>

**Effectiveness**

*Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.*

This regulation continues to be needed to protect public health, safety and welfare. The regulation establishes criteria that local and regional water supply plans must contain, and water supply planning plays a crucial role in ensuring that water will be available in the future for public use while maintaining beneficial uses of state waters. The regulation is clearly written and easily understandable. This regulation is currently being amended to incorporate changes made to state law in 2020.

**Decision**

*Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).*

*If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.*

The requirements of the regulation continue to be needed, however revisions to this regulation are currently underway to incorporate changes that were made to state law in 2020. A NOIRA was published in 2021 to initiate the process to amend this regulation. The proposed regulatory amendments were published in the Virginia Register on May 22, 2023, and comment will be accepted on the proposed amendments through July 21, 2023. Since the process for making these changes is already underway the result of this periodic review is to retain the regulation as is and continue processing the regulatory revisions to the regulation through the previously initiated regulatory action.

## Small Business Impact

*As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

The requirements of the regulation continue to be needed; however, revisions to this regulation are currently underway to incorporate changes that were made to state law in 2020. A NOIRA was published in 2021 to initiate the process to amend this regulation. The proposed regulatory amendments were published in the Virginia Register on May 22, 2023, and comment will be accepted on the proposed amendments through July 21, 2023. Since the process for making these changes is already underway the result of this periodic review is to retain the regulation as is and continue processing the regulatory revisions to the regulation through the previously initiated regulatory action.

The regulation contains requirements for water supply planning to be conducted on local and regional levels. Localities also must plan how they will meet their future water supply needs, and potentially increased demands for the future. The regulation has been written in a format to minimize the complexity of the regulation. Under the current regulation, localities can choose to develop a plan independently (local plan) or may choose to plan regionally with other localities (regional plan). In total, 48 water supply plans were submitted in 2008, of which 10 were local plans and 38 were regional plans with the majority of those consisting of one county and one or more cities or incorporated towns located within the boundaries of the county. Planning regions were not specifically determined based on river basin or with respect to shared sources of water supply. In response to changes to state law the proposed regulatory amendment requires that each locality in a particular regional planning area participate in cross-jurisdictional, coordinated water resource planning, and all localities in each area shall together develop and submit a single regional Plan. One commenter noted that the regulation as currently written was not consistent with current requirements of state law but acknowledged that amendments were proposed to this regulation.

The requirement for local and regional water supply plans to be developed is a state requirement and there is no equivalent federal requirement for these plans to be developed. This regulation is currently being amended to be consistent with current state law.

This regulation was last amended in 2015 to correct citations referenced in the regulation. The regulation requires local plans to be updated and resubmitted every ten years, and changes in technology or economic conditions are reflected in the revised plan. There are no regulatory changes associated with this periodic review. A NOIRA was initiated to amend this regulation prior to the start of this periodic review. After comments are received on the proposed amendments a final regulation will be presented to the State Water Control Board for their consideration.

This regulation does not directly regulate small businesses. Localities develop local water supply plans and may choose to include provisions in their plan that minimize impacts on small businesses.