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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9 VAC25-780
VAC Chapter title(s)	Local and Regional Water Supply Planning
Action title	Amendments to Local and Regional Water Supply Planning Regulation in accordance with sections 62.1-44.36, 62.1-44.38, and 62.1-44.38:1 of the Code of Virginia.
Date this document prepared	October 6, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Local and Regional Water Supply Regulation (9VAC25-780) was promulgated in 2005 in accordance with section 62.1-44.38:1.A of the Code of Virginia, which required the State Water Control Board (Board) to establish a comprehensive water supply planning process for the development of local, regional and state water supply plans (Plan). The General Assembly modified this statute during the 2020 Session through 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 directs 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.

This regulatory proposal will amend the existing Local and Regional Water Supply Plan Regulation to implement the amendments made by Chapter 1105 of the 2020 Acts of Assembly.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

Board – State Water Control Board
Department – Department of Environmental Quality
Plan – Water Supply Plan

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

This regulatory action is in response to the directive created by Chapter 1105 of the 2020 Acts of Assembly that requires the Board to adopt regulations.

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 and 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.

Chapter 1105 of the 2020 Acts of Assembly made amendments to section 62.1-44.38:1 of the Code of Virginia directing the Board to adopt regulations designating regional planning areas based primarily on river basins, and state that the regulations shall identify the particular regional planning area in which each locality shall participate, and which local stakeholder groups shall or may participate in coordinated water resource planning. The amendments also require each locality to participate in cross-jurisdictional, coordinated water resources planning, and that each regional planning submit a singly jointly produced regional water supply plan, which shall clearly identify the region’s water supply risks, propose cost-effective regional strategies to address these risks, and comply with all other applicable criteria and guidelines developed by the Board. Amendments to section 62.1-44.38 direct the Board to estimate the risk that each locality and region will experience water supply shortfalls, and require the Board to direct the Department in its facilitation of regional planning efforts.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of this regulatory action is to optimize the use of the state’s water resources to achieve sufficient water supply to meet the needs of all beneficial uses of water through cost-effective regional approaches to meet future water supply need which is essential to protect the health safety and welfare of the citizens of the Commonwealth. The regulatory action will establish regional planning areas based primarily on river basins, and develop a set of regulatory requirements that result in improved cross-jurisdictional regional water supply planning.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

Amendments to the Local and Regional Water Supply Planning Regulation will establish regional planning areas, identify the particular regional planning area in which each locality shall participate, and state which stakeholder groups shall or may participate in coordinated resource planning. Amendments to the regulation will also establish the frameworks for the Department to facilitate regional water planning efforts, ensure localities coordinate in the development of water supply plans, prioritize allocation of funding to localities that participate in regional planning, and provide estimates of water supply shortfalls for each locality and region. The amendments will also require each regional water supply plan to clearly identify the region’s water supply risks and propose cost-effective regional strategies to address those risks.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

Alternatives were not considered as the General Assembly directed the development of regulations for this purpose.

**Periodic Review and
Small Business Impact Review Announcement**

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. The Board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, or email to: Ryan Green, P.O. Box 1105, Richmond, VA 23218, (804) 698-4258, or ryan.green@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>). Written comments must include the name and address of the commenter. In order to be considered, comments must be received before the close of the public comment period.

Public Hearing at Proposed Stage

A public hearing will not be held following the publication of the proposed stage of this regulatory action unless requests for a public hearing are received during the NOIRA public comment period from at least 25 persons.

Regulatory Advisory Panel

Please indicate, to the extent known, if advisers (e.g., regulatory advisory panel or negotiated rulemaking panel) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using a panel in the development of the proposal; 2) the agency is using a panel in the development of the proposal; or 3) the agency is inviting comment on whether to use a panel to assist the agency in the development of a proposal.

The Board is using a panel to develop a proposal. Persons interested in assisting in the development of a proposal should notify the Department's contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). The primary function of the panel is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the panel will be sent to all applicants.