



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Department of Environmental Quality
VAC Chapter Number:	Primary Action: 9VAC 25-720 Secondary Action: 9 VAC 25-420, 430, 440, 450, 452, 460, 470, 480, 490, 500, 510, 520, 530, 540, 550, 560, 570 and 572
Regulation Title:	Primary Action: Water Quality Management Planning Public Participation Guidelines Regulation Secondary Action: Water Quality Management Plans
Action Title:	Primary Action: Adoption of Water Quality Management Planning Public Participation Guidelines Regulation Secondary Action: Repeal 18 Water Quality Management Plans as state regulations
Date:	June 21, 2001

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary*

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The proposed primary action is to adopt a Water Quality Management Planning Public Participation Guidelines (WQMPPPG) regulation. This regulation sets forth the public participation procedures that the Board shall follow in connection with development of Total Maximum Daily Loads (TMDLs), certain wasteload allocation studies, 303(d) Lists of impaired

waters, and the Water Quality Management Plans (WQMPs). This regulation will provide the public and stakeholders with an adequate opportunity to participate in the development and implementation of these water quality management planning programs.

The proposed secondary action is the repeal of the existing WQMPs as state regulations. These plans are basinwide or areawide waste treatment or pollution control management plans developed in accordance with sections 208 and 303(e) of the Clean Water Act (CWA), as implemented by 40 CFR 130. These plans serve as repositories for TMDLs, water quality based effluent limits, and the recommended pollution control measures needed to attain or maintain water quality standards.

Basis*

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The Clean Water Act, §303(d)(1)(c) and (2); as implemented by the Federal Water Quality Management Regulation, 40 CFR 130; authorize the states to develop Total Maximum Daily Loads (TMDLs). Sections 62.1-44.15 (10), 62.1-44.15(13), and 62.1-44.19:7 of the Code of Virginia give the State Water Control Board the duty and authority to develop and adopt TMDLs and establish programs for effective area-wide and basin-wide water quality control and management. The Code also authorizes the Board to develop pollution abatement and water quality control plans.

Water Quality Management Plans are required by Section 303(e) of the Clean Water Act [33 U.S.C. 1313(e)] as implemented by 40 CFR 130. Federal law does not require that water quality management plans be adopted as regulation.

The Office of the Attorney General has certified that the State Water Control Board has the authority to promulgate the proposed regulation and repeal the Water Quality Management Plans as state regulations under applicable law, including Chapter 3.1 of Title 62.1 of the Code of Virginia.

Note: The full texts of the legal authorities can be found at the following web site addresses:

<http://www.vipnet.org/vipnet/government/code-of-virginia.html>
<http://www4.law.cornell.edu/uscode/33/1251.html>

Purpose*

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The proposed primary action is to adopt a Water Quality Management Planning Public Participation Guidelines (WQMPPPG) regulation. This regulation sets forth the public participation procedures that the Board shall follow in connection with development of Total Maximum Daily Loads (TMDLs), certain wasteload allocation studies, 303(d) Lists of impaired waters, and the Water Quality Management Plans (WQMPs). Since most of the pollutant reductions quantified in the TMDLs are to be achieved through voluntary strategies, public participation in the TMDL process and related water quality management program is essential for the attainment of water quality standards. This regulation is needed to provide the public and stakeholders with an adequate opportunity to participate in the development and implementation of these water quality management planning programs.

The secondary proposed action is the repeal of the existing WQMPs as state regulations. These plans are basinwide or areawide waste treatment or pollution control management plans developed in accordance with sections 208 and 303(e) of the Clean Water Act (CWA), as implemented by 40 CFR 130. These plans serve as repositories for TMDLs, water quality based effluent limits, and the recommend pollution control measures needed to attain or maintain water quality standards.

There are currently 18 WQMPs that have been adopted as regulations by the Board during the 1970s and through the early 1990s. These plans no longer reflect current conditions and need to be updated. There are no federal or state statutory or regulatory requirements for the plans to be regulations, but they continue to be carried on the books of the Virginia Registrar of Regulations. The repeal of these plans as regulations will allow for a more dynamic WQMP update process; reduce potential for conflicts between TMDLs, VPDES permits and the existing WQMPs; and eliminate unnecessary and outdated regulations.

The proposed regulatory actions are necessary to protect the health, safety or welfare of the citizens of the Commonwealth because they ensure opportunity for the public to become involved in water quality management planning activities and allow for a more dynamic planning process thereby improving the planning process.

Substance*

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The proposed primary action, Water Quality Management Planning Public Participation Guidelines (WQMPPPG) regulation, sets forth the public participation procedures that the Board shall follow in connection with development of Total Maximum Daily Loads (TMDLs), certain

wasteload allocation studies, 303(d) Lists of impaired waters, and the Water Quality Management Plans (WQMPs). The proposed secondary action is the repeal of the existing WQMPs as state regulations.

Issues*

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

The advantages of the primary proposal, the WQMPPPG regulation, are providing the public with adequate opportunity to participate in water quality management planning programs, especially TMDLs. The proposed WQMPPPG regulation provides more opportunity for public involvement in water quality management programs than existing state or federal regulations. For example, the federal public participation requirements for TMDLs are a single public notice in the Virginia Register. The minimum public participation requirements for a TMDL in the proposed WQMPPPG regulation are two public notices in the Virginia Register and two public meetings.

Much of the pollutant reductions identified and quantified in the TMDLs are to be achieved through voluntary programs and strategies. Public understanding and support is essential for the TMDL pollutant reductions to be implemented. The proposed WQMPPPG regulation provides assurance that adequate public participation will be provided.

The advantages of the repeal of the 18 existing WQMPs as regulations are allowing for a more dynamic WQMP development/update process; reducing potential for conflicts between TMDLs, VPDES permits and the existing WQMPs; and eliminating unnecessary and outdated regulations.

There are no federal or state requirements that WQMPs be adopted as regulations.

There is no potential disadvantage to the public, agency, or the Commonwealth resulting from the adoption of the WQMPPPG regulation or the repeal of the 18 WQMPs as state regulations.

Locality 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.

These two proposed actions are statewide in application and will not affect one locality more than another.

Public Participation*

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the impacts on point and nonpoint source stakeholders that are subject to the TMDL process and the impacts of the regulation on farm or forest lands. Anyone wishing to submit written comments for the public comment file may do so at the public meeting, by mail, or by email to Charles H. Martin, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, (804) 698-4462, fax - (804) 698-4032, chmartin@leg.state.va.us. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the close of the comment period.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; (e) the projected cost of the regulation for affected individuals, businesses, or other entities; and (f) an estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or organizations in Virginia.

A November 1, 2000 report contains an estimate of \$8,700,000 in DEQ personnel costs for developing and implementing TMDLs in Virginia through year 2010. TMDL public participation activities account for approximately one third or \$2,900,000 of the human resource need. However, due to the crucial need for public participation in the TMDL process, DEQ is currently doing much of the public outreach required in the primary proposal, the WQMPPPG regulation, for TMDLs. General funds and EPA grants are the sources of these funds. There is no proposed impact on the localities, regulated community, or individuals from this proposed regulation.

The proposed secondary action, repeal of the 18 WQMPs as state regulations, should not have any fiscal impact.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by

the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

Public participation requirements, for Water Quality Management Planning programs, contained in existing state and federal regulations / statutes generally consist of giving a single public notice for public comment. The proposed WQMPPPG regulation is expanding the opportunity for public participation beyond current requirements. For example, EPA minimum public participation requirements for TMDLs are a single public notice. The minimum requirements contained in the proposed WQMPPPG regulation are two public notices in the Virginia Register and two public meetings.

The proposed repeal of the 18 WQMPs as state regulations will remove the plans from the provisions of the Administrative Process Act. However, public participation requirements for the WQMPs are contained in the proposed WQMPPPG regulation. The proposed public participation for the repealed WQMPs exceeds the public participation requirements required by EPA.

Alternatives

Please describe the specific 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.

The Water Quality Management Planning Programs covered by these proposed actions are federal requirements and some of the federal planning programs have been supplemented by state statute and regulations. One alternative is to do nothing. This would minimize the opportunity for public participation in the development of pollutant reduction planning programs that have regulatory and voluntary components. Development and implementation of these programs without adequate opportunity for public participation was considered the more intrusive and burdensome alternative. Therefore, the proposed alternative, the WQMPPPG regulation, provides adequate public participation opportunities in the development and implementation of the pollutant reduction planning programs would minimize the intrusive/burdensome impacts of the reduction actions.

One alternative to the repeal of the WQMPs as state regulations is to do nothing. However, these plans are outdated and need revision. Updating a WQMP as a regulation takes about two years. There is no federal or state requirement for these plans to be regulations. To maintain them as regulations is more burdensome than the alternative to repeal them as state regulations.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

Following is a summary list of comments from the public comment period and public meeting held on the proposed Water Quality Management Planning Public Participation Guidance regulation.

- Why is the point source definition different from the VPDES permit definition?
- The proposed regulation should include the elements of a Water Quality Management Plan (WQMP) that are contained in the federal regulation for WQMPs.
- This regulation should include a public hearing provision for TMDLs and WQMPs.
- Any DEQ proposal to amend the assimilative capacity, WLA, or LA of a stream should be included in the public notice section of this proposed regulation.
- Public notice mailings should include the general public and environmental groups.
- The description and location of nonpoint source activities should be included as part of public notice content described in this proposed regulation.
- Regulation should include wording stating that TMDLs are subject to judicial review. Procedures for obtaining this review should be added at the end of this rule.
- This proposed regulation should include guidelines for the formation of a local advisory committee and membership requirements.
- When will DEQ resolve the issue of what part of the TMDL is to be adopted by the SWCB?
- The proposed rule should incorporate TMDL implementation plans.

Agency Response: The participatory approach was used for these two proposed actions. An Ad Hoc Advisory Committee was used to provide input to the development of the WQMPPPG regulation and the repeal of the WQMPs as state regulations. Specifically, the WQMPPPG regulation was developed in response to suggestions by the advisory group.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Through peer review of the regulation and relevant public comment, the Department of Environmental Quality has determined that the regulation is clearly written and easily understood by individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Department of Environmental Quality will review the proposed regulation in 3 years to evaluate the effectiveness and need.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

The development of Water Quality Management Planning programs is for the reduction of amount of pollutants entering the Commonwealth's waterways and the attainment and maintain the designated uses of Virginia's waters and has no direct impact on family institution and stability.