



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Department of Environmental Quality
VAC Chapter Number:	9 VAC 25-400
Regulation Title:	Policy for Waste Treatment and Water Quality Management for the Dulles Area Watershed
Action Title:	Amendment
Date:	

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose*

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The Policy for Waste Treatment and Water Quality Management for the Dulles Area Watershed (Policy) was adopted in 1975. The purpose of the regulation is to provide adequate sewage treatment for the affected area and simultaneously protect water quality at drinking water intakes on the Potomac River. The affected area is primarily northwestern Fairfax County and eastern Loudoun County. The Policy is essentially a plan for regional sewage treatment for the Dulles area watersheds. It is composed of two parts:

- Long Range Policy for Waste Treatment and Water Quality Management in the Dulles Area Watershed
- Interim Plan for the Dulles Area Watershed

The Long Range Policy specifies the development of two regional sewage treatment plants, the Leesburg STP and a proposed plant located on Broad Run near Dulles Airport a minimum of 10 miles from the nearest downstream drinking water intake. Both plants are subject to very stringent effluent limitations.

The Interim Plan allows the two plants to have temporary limits that are less stringent than those required by the Long Range Policy.

In 1995 the Leesburg Plant began discharging directly to the Potomac River and therefore the discharge is now governed by Maryland regulations. The Loudoun County Service Authority is currently planning the construction of the Broad Run Plant.

Since its adoption, the regulation has been implemented such that no other new sewage treatment plant could be permitted in the affected watershed.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

The Policy was adopted pursuant to authority vested in the State Water Control Board by 62.1-44.15(3) and 62.1-44.15(13) of the State Water Control Law. 62.1-44.15(3) gives the State Water Control Board the authority to establish standards of quality and policies for state waters. 62.1-44.15(13) gives the Board authority to establish policies for area-wide water quality plans and to consider the feasibility of combined sewage treatments plants with consultation from local authorities.

There is no federal or state mandate for the Policy. The requirements of the Policy exceed the minimum requirements of the Clean Water Act, the State Water Control Law, and their supporting regulations.

As stated above, the Policy is more of a water quality management plan than a water quality standard. Federal regulations require states to have a continuing planning process for water quality management of major river basins or waterbodies (40 CFR 130.5). However, federal regulations do not specify the level of detail or requirements that must be in a plan. The requirements and conditions in the Policy are very detailed, restrictive, and stringent.

The following aspects of the Policy exceed the requirements that have been set for the state generally:

- The number of sewage treatment plants are limited to two and the locations are specified;
- New sewage treatment discharges must be a minimum of 10 miles upstream of a drinking water intake or proposed intake;
- Broad Run is to be the receiving stream for the plant to be sited near near Dulles Airport;
- The design must include an initial backup of 100% and there are to be no bypasses at anytime;
- The effluent limitations are very stringent, far exceeding what might otherwise be required to protect water quality standards;

- The entity which will operate a regional plant must agree to the Policy's administrative and technical requirements before preliminary plans are approved;
- Plant design requirements exceed those specified in the Sewage Collection and Treatment Regulations;
- Changes in design requirements are acceptable only if performance, effluent quality, plant reliability and maintainability are improved or at least equal to that of basic design requirements of the Policy;
- Collection system junctions must have flow measuring devices;
- Member jurisdictions must have a positive siltation control program for all public and private land disturbing activities in the watershed; and
- Member jurisdictions are to control industrial waste discharges into the collection system such that chemicals that are deleterious to the sewage treatment plant are prohibited.

Need*

Please detail the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied

The Policy addresses a significant public health, safety, and welfare issue. Again, its purpose is to protect the drinking water intakes located on the Potomac River. The streams draining the Dulles area watershed enter the Potomac River near the withdrawal points for three major Washington area water utilities, Washington Aqueduct Division, Fairfax County Water Authority, and Washington Suburban Sanitary Commission. These utilities serve over 3 million people in Washington D.C. and its surrounding suburbs in Northern Virginia and Maryland.

Sewage treatment discharges located upstream of drinking water intakes are not uncommon in Virginia. The Department of Health, Office of Water Programs (VDH), usually requires a minimum of 5 miles separation between a discharge and intake. When a discharge does occur to a public water supply, DEQ applies additional water quality standards (9 VAC 25-260-140) and VDH may require additional treatment.

The net effect of the Policy is to provide additional assurance that the drinking water supply is protected. The affected jurisdictions believe the statewide standards used by DEQ in preparing VPDES permits to protect water quality, do not provide the level of assurance they believe is needed to protect their water supply.

Substance*

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed.

The Department of Environmental Quality has received comments that the Policy be reviewed and changed for two reasons.

1. To rewrite the Policy so that it reads like a regulation. The Policy currently reads like a planning document with language that requires much interpretation of its intent and instruction. As written, it is difficult for DEQ to implement. In rewriting the Policy, it should be written to match current regulatory language with clear and concise requirements.
2. To reevaluate the effluent limits prescribed by the Policy. The effluent limits in the Policy were adopted over 25 years ago and they are outdated and unachievable with even the most advanced treatment technologies. The effluent limits do not reflect the current state of wastewater treatment and water quality management and should be changed to match the requirements of the Occoquan Policy, 9 VAC 25-410, a regulation that has worked well in protecting the Occoquan reservoir drinking water supply for the past 25 years.

Alternatives*

Please describe the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the need. Also describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action, and the reasoning by which the agency has rejected any of the alternatives considered.

The first alternative would be to do nothing and let the Policy continue as it exists. This alternative would be detrimental to the affected local governments because it would hamper their abilities to provide adequate sewage collection and treatment.

A second alternative would be to repeal the Policy. This would allow the watershed to be regulated as nearly all other waters, including public water supplies, in the State. This approach would allow discharges that are now prohibited by the Policy. DEQ believes the local jurisdictions, utilities, and citizens would object to a wholesale repeal of the Policy.

Public Participation*

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also indicate whether a public meeting is to be held to receive comments on this notice. Indicate that 1) the agency is not holding a meeting because the agency has authorized proceeding without holding a meeting or 2) the agency is holding a meeting. If a public

meeting is to be held, indicate where information on the public meeting (i.e., date, time and place) may be found.

The Board is seeking comments on the intended regulatory action, including (i) ideas to assist in the development of a proposal, (ii) the costs and benefits of the alternatives stated in this notice or other alternatives and (iii) 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:

Thomas A. Faha
Northern Virginia Regional Office
Department of Environmental Quality
13901 Crown Ct
Woodbridge, VA 22193
tafaha@deq.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.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory Approach*

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board is using the participatory approach to develop a proposed rewrite of the regulation.

Family Impact Statement

Please provide a preliminary analysis of the potential 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.

The proposed amendment of the Policy will have no net affect on the institution of the family or on family stability.