



## Final Regulation Agency Background Document

<b>Agency Name:</b>	Department of Environmental Quality
<b>VAC Chapter Number:</b>	9 VAC 25-780
<b>Regulation Title:</b>	Local and Regional Water Supply Planning Regulations
<b>Action Title:</b>	Adopt Final Local and Regional Water Supply Planning Regulations
<b>Date:</b>	July 20, 2005

Please refer 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* for more information and other materials required to be submitted in the final regulatory action package.

### Summary

*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.*

This new regulation establishes a planning process and criteria that all local governments will use in the development of local or regional water plans. This new regulation details information to be reported in a locality's water supply plan regarding existing water sources, existing water uses, and existing resource information. The regulation requires water supply plans to address conservation and drought response as part of the plan's water management actions. Finally, all local and regional water supply plans are required to include a statement of need based on the adequacy of existing water sources to meet current and projected water demand over the planning horizon. In the event that existing sources are determined to be inadequate to meet demand over the planning period, water supply plans are required to include an analysis conducted in accordance with the requirements of this regulation that identifies alternative ways of meeting the shortfall in water supply. These plans will be reviewed by DEQ and a determination will be made by the State Water Control Board whether the plans comply with this

regulation. The plans will be reviewed every five years to assess adequacy and significant changes will require the submission of an amended plan and review by the Board. There are two changes from the proposed regulation: one addressing safe yield and one addressing the planning period for projecting demand in water supply plans.

### Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

The State Water Control Board adopted the Local and Regional Water Supply Planning Regulation as a final regulation at their June 28, 2005 meeting.

### 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, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.*

Section 62.1-44.15 of the Code of Virginia, as amended, authorizes the Board to promulgate the proposed regulation.

This regulation was developed to implement the mandate of § 62.1-44.38:1 of the Code of Virginia which requires that: "The Board, with the advice and guidance from the Commissioner of Health, local governments, public service authorities, and other interested parties, shall 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."

State Water Control Law (Code of Virginia) web site  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+62.1-44.15>  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+62.1-44.38C1>

The Office of the Attorney General has certified that the agency has the statutory authority to promulgate final text of the regulation, as revised.

### Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final 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.*

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The purpose of this new regulation to establish a comprehensive water supply planning process for the development of local, regional, and state water supply plans that (i) ensure adequate and safe drinking water for all citizens of the Commonwealth, (ii) encourage, promote, and protect all other beneficial uses of the Commonwealth's water resources, and (iii) encourage, promote, and develop incentives for alternative water sources, including but not limited to desalinization. The goal of the regulation is to establish a basic set of criteria that each local or regional water supply plan must contain so that they may plan for and provide adequate water to their citizens in a manner that balances the need for environmental protection and future growth.

The proposed regulation protects the health, safety and welfare of citizens by requiring local and regional water supply planning. The recent drought highlighted the need to require that localities be prepared to plan for and implement contingency plans during unusual climatic events. By the fall of 2002, there were a number of localities around the state that were facing the prospect of being unable to provide public drinking water to their citizens, numerous individual wells failed, and the Governor declared a state of emergency and required conservation actions in many parts of the state.

The proposed regulation is also intended to encourage more efficient use of Virginia's water resources by identifying potential conflicts before they arise among localities securing adequate drinking water supplies and between in-stream and off-stream needs by ensuring consistency in the use of water resources on a statewide basis.

Other regulatory and legislative actions related to this rulemaking are either underway or recently completed. Under a separate rulemaking, amendments to the Virginia Water Protection Permit (VWPP) Program Regulation (9 VAC 25-210) are being considered. The WP-TAC identified a number of permit program related issues during the development of the Local and Regional Water Supply Planning Regulation. As part of the consensus process, DEQ agreed to issue a Notice of Intended Regulatory Action to discuss potential changes to the VWPP to address these issues. There is a technical advisory committee working on this process now and the goal is to have proposed VWPP regulatory amendments for the State Water Control Board to consider at their September 2005 meeting. In addition, the 2005 General Assembly passed legislation related to the processing of permits for water supply projects. The legislation addressed a concern identified in the WP-TAC regarding the need for concurrent processing of permits issued by DEQ and the Marine Resources Commission (MRC). The legislation requires joint public notice and requires the two agencies to issue their permits within one year of each other whenever possible. These actions are being taken to compliment the comprehensive water supply planning process envisioned by the WP-TAC.

## 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 of the regulatory action's detail.*

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There are two important changes made since the proposed action was published. First, the proposed regulation contained definitions for safe yield of a complex system and safe yield of a simple intake. These two definitions were taken directly from the VDH Waterworks Regulation, 12 VAC 5-590, in order to avoid the creation of two different definitions for the term in two sets of regulations. The existing simple intake safe yield is defined as the statistically lowest daily flow that would occur every thirty years (1Q30) while the complex system safe yield is defined as the lowest daily flow available since 1930. Comments were received during the public hearing process indicating that the definition of simple intake safe yield may result in a higher risk of failure for water systems supported by simple intakes than water systems supplied by complex systems. These comments are supported by conditions that occurred at several waterworks located on smaller streams during the drought of 2002. The State Water Control Board deleted these two definitions from the final regulation (page 3, lines 1-12). In addition to removing the definitions, the State Water Control Board inserted an additional information requirement of simple intake systems in 9 VAC 25-780-70 D. The phrase “lowest daily flow of record,” was added after “safe yield” on page 6, line 35 in the final regulation. This change will allow the Board, for any waterworks supplied by a simple intake that is included in a water supply plan, to compare the projected demand for the system with the safe yield, the lowest daily flow of record, and any periods in the historic record when daily flows were below the projected demand to make a determination as to whether the locality should or should not include additional sources in their plan.

Second, the planning period stated in the proposed regulation at 9 VAC 25-780-100 B is 30 to 50 years. This language was interpreted in a manner that created a concern and some confusion on the intent of the provision. The Board sought to clarify this provision in the final regulation by adding language on page 9, lines 31-32 that clarifies that the intent is for the locality to select a planning period as short as 30 years up to as long as 50 years. In addition, the Board added language on page 9, lines 32-34 that clarifies that localities are encouraged to plan for the maximum planning period to ensure that the most appropriate and sustainable alternatives are identified.

## Issues

*Please provide a statement identifying the issues associated with the final regulatory action. The term “issues” means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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.*

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Water supply is a critical factor for the economic vitality and public health of the Commonwealth, as well as its political subdivisions. The demand for water supply is constantly increasing and the amount available to meet these needs is finite. In fact, unmet needs for local and statewide water supply planning have been identified throughout the past quarter-century. The primary advantage to the public of this proposed regulation is the increased probability of a safe and adequate water supply for the citizens of the Commonwealth in the future as well as the

continued enjoyment of all existing off-stream and in-stream beneficial uses. Other advantages to local and regional planners include:

- Improved information on resource issues that impact long-term plans and projects;
- Promotes focus on most viable water supply alternative;
- Improved coordination and preparation for permitting and regulatory processes;
- Economic development tool (i.e., documented plans for meeting water supply needs).

One disadvantage that may be perceived by the public may be the lack of a direct relationship between the planning required by the proposed regulatory action and the permitting of a particular water supply project.

Some advantages to the Commonwealth of this proposed regulation include:

- Greater understanding of water resources and water demands;
- Increased information for use in evaluating water supply projects;
- Increased public involvement in resource management decisions;
- Earlier opportunity to identify and address conflicts among users; and
- Improved responsiveness and preparation for drought.

There are no apparent disadvantages of this regulatory action to the Commonwealth.

Pertinent matters of interest to the regulated community, government officials, and the public are the potential costs to meet the requirements of this regulation.

### Statement of Changes Made Since the Proposed Stage

*Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.*

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The following changes were made since the proposed regulation:

9VAC 25-30 – Deleted the definition for “safe yield of a simple intake (free flowing stream)” and “safe yield of a complex intake (impoundments in conjunction with streams).”

9 VAC 25-780-70 D – Inserted the phrase “lowest daily flow of record,” as an additional information requirement of simple intake systems.

9 VAC 25-780-100 B – Inserted the phrase “a minimum of” and “a maximum of” to clarify the planning period of 30 to 50 years. In addition inserted a new sentence that reads “While not required, localities are encouraged to plan for the maximum planning period to ensure that the most appropriate and sustainable alternatives are developed.”

Further explanation of these changes is provided in the substance section above.

## Public Comment

*Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.*

Nineteen verbal and 11 written comments were received on the proposed regulation. Many comments emphasized the need to ensure adequate funding for this planning, the need to follow through with permit issues raised by the WP-TAC, and the desire by localities for the state to take a more active role in supporting local water supply projects in the federal permit process. The remaining public comments are best described as efforts to promote particular solutions (innovative sources), promote particular funding priorities, promote specific end products such as regional plans, and implementation issues.

What follows below is a brief summary of each person's testimony and the accompanying analysis. Included is a brief statement of the subject, the identification of the commenter, the text of the comment and the Agency's response (analysis and action taken). Each issue is discussed individually as comments were received that affect that provision of the regulation. The Agency's responses are based on consideration of the overall goals and objectives of the local water supply planning program and the intended purpose of the regulation.

### **Comments to 9 VAC 25-780 (General Comments – no particular section)**

SUBJECT: Minimum Instream Flow

COMMENTER: Rick Roth, Friends of New River, Blacksburg, VA

COMMENT: In terms of protecting beneficial instream uses, DEQ should move beyond the "minimum instream flow" approach to adopt a broader recognition of other flow parameters that are important in maintaining "physical and biological integrity". Look at Brian Richter's latest research on Ecologically Sustainable Water Management.

RESPONSE: Comment is noted and DEQ has used Mr. Richter's Indicators of Hydrologic Alteration as a tool in developing instream flow parameters for permits.

SUBJECT: Inter-Basin Transfer

COMMENTER: Tyla Matteson, Sierra Club, Richmond, VA

COMMENT: DEQ should oppose the use of Inter-Basin Transfers in the Local Water Supply Plans.

RESPONSE: The regulations do not address inter-basin transfers and therefore they do not prevent the inclusion of inter-basin transfers as a local water supply alternative. The Technical Advisory Committee (TAC) concluded that limiting the use of inter-basin transfers was a larger policy matter that required clarification by the General Assembly. DEQ will rely on the existing body of laws and regulations to address this issue on the basis of site specific requests.

SUBJECT: Inter-Basin Transfer

COMMENTER: Barry Dunkley, City of Danville, Danville, VA

QUESTION: Does the WSP Regulation allow for the use of Inter-Basin Transfers?

RESPONSE: Yes. The regulations do not address inter-basin transfers and therefore they do not prevent the inclusion of inter-basin transfers as a local water supply alternative. The TAC

concluded that limiting the use of inter-basin transfers was a larger policy matter that required clarification by the General Assembly. DEQ will rely on the existing body of laws and regulations to address this issue on the basis of site specific requests.

SUBJECT: Information Meetings

COMMENTER: Jean Manner, Cowpasture River Preservation Association, Clifton Forge, VA

COMMENT: There should be some information meetings IN EACH LOCALITY before trying to implement this. Citizens will be quick to think – “the DEQ is trying to take over our water supply.” People are slow to learn. Keep educating them. Citizens are suspicious of government. This is very ambitious for such a short time period. The introduction is crucial.

RESPONSE: DEQ held eight (8) public hearings around the state to receive public comment on the proposed regulation. DEQ is also hiring seven (7) full-time regional staff to assist in the education of citizens and local staff of the jurisdictions within their assigned region.

SUBJECT: State-wide Plan

COMMENTER: Mike Russell, Soil & Water Conservation District, VA

QUESTION: Is a Regional/Statewide “Six Year Plan” of water projects similar to the VDOT/CTB six year plan to be developed?

RESPONSE: DEQ will be developing a state-wide Water Supply Plan as the local/regional plans are submitted. The plan will contain all of the proposed local and regional water supply alternatives, including any comments regarding constraints identified by applicable state and federal agencies.

SUBJECT: Emergency Considerations

COMMENTER: Ellis W. James, Sierra Club, Chesapeake Bay Group, Norfolk, VA

Question: What about a major event, accident, or deliberate act that would damage or contaminate an aquifer or other water supply? How are they accounted for in the WSP regulation?

RESPONSE: These issues are addressed in the regulation in several ways. Section 9 VAC 25-780-70.K says that when available, a water plan shall include a summary of findings and recommendations from applicable Source Water Assessment Plans or Wellhead Protection Programs. Section 9 VAC 25-780-90 requires that localities shall include information on their existing water resources and shall identify the potential threats to the existing water quantity and quality.

SUBJECT: Regulations – General Comments

COMMENTER: Terry Reid, Wiley & Wilson, Lynchburg, VA

COMMENT: Under some very difficult conditions and previous history that the regulations were well put together and the staff should be complimented for that.

RESPONSE: Comment noted.

SUBJECT: Regulations – General Comments

COMMENTER: Jeanne Zeidler, Hampton Roads Planning District Commission, Chesapeake, VA

COMMENT: The Regulations represent a reasonable first step toward a comprehensive state water supply plan that integrates the important local and regional water supply planning efforts, which have been underway for years in many parts of the Commonwealth.

RESPONSE: Comment noted.

SUBJECT: Regulations – General Comments

COMMENTER: Thomas M. Slaydon, P.E. Spotsylvania County Director of Utilities

COMMENT: Spotsylvania County supports the comprehensive statewide approach to water supply planning. The time is well overdue for the Commonwealth to provide coordination and support for public water supply. Public water supply has not enjoyed the attention and efforts that other water resources issues have in Virginia in spite of the essential role public water supply plays in our physical and economic health. We believe the proposed regulations take needed steps towards the development of a statewide water supply plan and we urge DEQ to advance a meaningful statewide plan that DEQ will champion as Virginia's plan.

RESPONSE: Comment noted.

SUBJECT: Regulations – General Comments

COMMENTER: David W. Rundgren, New River Valley Planning District Commission, Radford, VA

COMMENT: The New River Valley Planning District Commission agrees that the State and its localities need to conduct water supply planning to assure that the citizens of the Commonwealth have adequate and safe supplies of potable water during normal times and in times of drought.

RESPONSE: Comment noted.

SUBJECT: Municipal Water Supplies should be highest priority for water

COMMENTER: Bruce Boyer, Water Resources Engineer, Spotsylvania County, Department of Utilities

COMMENT: Clearly decisions on water planning involve a number of different uses, but we believe very strongly in the point that municipal water supply is a life support and health issue for each and every community in the state and therefore should receive the highest priority.

RESPONSE: The State Water Control Law, Section 62.1-10 defines public water supply uses for human consumption as the highest priority beneficial use of state water.

SUBJECT: Water Supply is the Single most Important Priority

COMMENTER: Thomas M. Slaydon, P.E., Spotsylvania County, Director of Utilities

COMMENT: For us, water supply is the most important use of our valuable water resources. We operate two water plants, two side-stream storage reservoirs, and a run-of-river reservoir. In addition we operate two major sewage treatment plants and one minor STP. We recognize and support the need to preserve a sound river environment, recreational opportunities, historic and cultural resources, wastewater assimilation, agricultural irrigation and other beneficial in-stream and off streams uses. However, we contend that public water supply by its critical nature for human health and safety must be given the highest priority for protection and for allocation in those areas and/or during those periods when the water resource must be allocated.

RESPONSE: The State Water Control Law, Section 62.1-10 defines public water supply uses for human consumption as the highest priority beneficial use of state water.

SUBJECT: State Advocacy

COMMENTER: Bruce Boyer, Water Resources Engineer, Spotsylvania County

COMMENT: The planning process not only includes plans by the municipalities but a state plan that incorporates the individual plans. Our plans could clearly call for additional water supplies in the future and the plans would include information on which options are feasible and which ones are the most economical and have the least impact on other localities. Once these plans



have been approved and incorporated into the state plan. We feel that it is essential that the state pick up the advocacy in supporting the various communities in the state through the federal process.

RESPONSE: We believe that the end result of this planning process and the associated dialogue between the state and localities will be greater cooperation and understanding of each other's needs. We further believe that this will be the basis for greater state support for local and regional water supply projects. We agree that the state should take a more active role in supporting essential water supply projects and DEQ is committed to assisting those well-planned projects through the federal process.

SUBJECT: State Advocacy

COMMENTER: Thomas M. Slaydon, P.E. Spotsylvania County Director of Utilities

COMMENT: In recent years, Spotsylvania County has worked through federal and state Clean Water Act processes and we have observed other local governments as they worked within the same process. Although we have seen agency staffers serve as the voice of reason during these processes, one of our concerns is that in the absence of any adopted statewide water supply plan, the state agencies have not been able or willing to advocate openly for Virginia's local governments as they work through the Clean Water Act. However once the Commonwealth has created and adopted a statewide water supply plan, then local governments will expect the various agencies in state government to support and serve as advocates for those local governments whose water resources projects are consistent with the statewide plan. We urge the DEQ to set the example of such advocacy as it advances and implements these regulations and as it develops the statewide waters supply plan.

RESPONSE: We believe that the end result of this planning process and the associated dialogue between the state and localities will be greater cooperation and understanding of each other's needs. We further believe that this will be the basis for greater state support for local and regional water supply projects. We agree that the state should take a more active role in supporting essential water supply projects and DEQ is committed to assisting those well-planned projects through the federal process.

SUBJECT: State Advocacy

COMMENTER: Jeanne Zeidler, Hampton Roads Planning District Commission, Chesapeake, VA

COMMENT: The State must become an advocate for essential local water supply projects to support the quality of life and economic vitality of the Commonwealth. This advocacy should be phased, reflecting submittal and approval of local water supply plans and subsequent issuance of needed state permits.

RESPONSE: We believe that the end result of this planning process and the associated dialogue between the state and localities will be greater cooperation and understanding of each other's needs. We further believe that this will be the basis for greater state support for local and regional water supply projects. We agree that the state should take a more active role in supporting essential water supply projects and DEQ is committed to assisting those well-planned projects through the federal process.

SUBJECT: Streamlining Permit Process

COMMENTER: Jeanne Zeidler, Hampton Roads Planning District Commission, Chesapeake, VA

COMMENT: The current state process for permitting water supply projects is lengthy and may involve conflicting decisions by state agencies. Regulations should provide for a streamlined process with one lead state agency coordinating timely state responses. Conflicts between state agencies should be resolved by the state, based on a state water policy rather than placing the burden on the applicant to resolve conflicts between agencies. Regulations should set out a clear appeals process should a favorable permitting decision not occur. The permitting process must be coordinated more closely with the Corps of Engineers and other federal agencies involved in permitting water supply projects.

RESPONSE: DEQ acknowledges this concern which was also shared by the TAC. DEQ has taken steps to address this issue by establishing a work group to develop amendments to the Virginia Water Protection Permit Regulations. The goal is to address as many of these concerns as possible. However, designation of a lead agency in the permit process requires action by the General Assembly.

SUBJECT: Economic Impact Analysis

COMMENTER: Terry Reid, Wiley & Wilson, Lynchburg, VA

COMMENT: I read with interest the Economic Analysis that had been compiled for this regulation. It is woefully understated. The costs for preparing these plans, especially if these plans are to be meaningful plans to be used in a two steps process to move forward with in looking at another alternative. Generally for a medium size city, you are at a couple of hundred to \$500 thousand easily if you get into detailed analysis. It is woefully understated unless you are looking at a “form type” analysis, where someone would just fill in the blanks.

RESPONSE: There is always a level of uncertainty in projecting the cost of compliance for a new regulation, particularly when the effort required to comply can vary due to a number of factors. DEQ staff assisted the Department of Planning and Budget in this cost estimate through staff discussion with a number of local, regional and consultant staff. It is clear that the cost of compliance will vary due to a number of factors, including the amount of local planning already done, size of the locality, the complexity of delivery systems and current sources of supply, the degree of local need for additional supply, and the type of strategies identified to address shortfalls in water supply. The TAC emphasized the need to minimize the financial burden of these regulations on localities by using readily available existing information. These estimates were particularly sensitive to the need to reduce the detailed analysis required for these plans and assumed that the planning would only require a “desk-top” level analysis. In developing the ranges, staff thought it was important to develop estimates that addressed the range of applicable locality (i.e. a small town to a larger locality) and to develop estimates for the range of cost due to the nature of who was doing the work. This may account for at least some of the difference in costs that are described in this comment.

SUBJECT: Regulations – General Comments

COMMENTER: James M. McGowan, Accomack-Northampton Planning District Commission, Accomac, Virginia

COMMENT: For the past 15 years, the Eastern Shore of Virginia Ground Water Committee has been working closely with DEQ and USGS to understand and manage our ground water resources. With new growth occurring on the Shore, it is critical that we take the next step and plan for our future water supply needs. The Ground Water Committee strongly supports DEQ’s efforts to establish a Water Supply Planning Program, as well as a grant program to provide funding to develop local and regional water supply plans. Thank you for the opportunity to

comment on this important new program. The Ground Water Committee is looking forward to working with DEQ on water supply planning for the Eastern Shore.

RESPONSE: Comment noted.

SUBJECT: Regulations – General Comments

COMMENTER: Andrea W. Wortzel, Hunton & Williams LLP, The Virginia Manufacturers Association, Richmond, Virginia

COMMENT: The Virginia Manufacturers Association (VMA) has been an active participant in the Virginia Policy Technical Advisory Committee. We look forward to continuing to work with DEQ and other interested stakeholders to develop and implement appropriate water supply planning requirements. VMA agrees that there is a need to address and plan for long-term water supply needs in the Commonwealth. Development and implementation of supply plans will raise difficult issues such as prioritizing between uses and users, impacts of water quality regulations, deficiencies in the current permitting regime, and planning for alternative water supply sources. VMA appreciates the time and effort that DEQ staff have invested in developing the proposed regulation, and the ongoing efforts to address the issues outlined above. As a general matter, VMA supports the proposed regulation and looks forward to working with Virginia localities as they develop their plans.

RESPONSE: Comment noted.

SUBJECT: Regulations – General Comments

COMMENTER: Thomas G. Botkins, Jr., MeadWestvaco Corporation, Covington, Virginia

COMMENT: MeadWestvaco supports DEQ's efforts to establish regulations that are technically correct, necessary and reasonable. We were an active participant in the Water Policy Technical Advisory Committee that helped draft this regulation and look forward to continuing to work with DEQ and other interested stakeholders to develop and implement appropriate water supply planning requirements. Overall, MeadWestvaco supports the proposed regulation and will support our local governments as they develop their plans. We appreciate your efforts to address statewide water supply planning issues and look forward to working with you as you address some of the longer-term water supply issues.

RESPONSE: Comment noted.

### **Comments to 9 VAC 25-780 (General Comments – Funding)**

SUBJECT: Funding Preference for Regional Plans

COMMENTER: Bob White, Region 2000 Regional Commission, Lynchburg, VA

COMMENT: Will preference be given to Regional Plans versus Local Plans in the distribution of funding?

RESPONSE: Funding guidelines have not been developed yet. DEQ intends to establish a committee to develop criteria for disbursement of funding, but it is DEQ's intent to provide incentives in our financial assistance program funding for regional plans. Maximum limits may need to be established per project or per locality based on available funds.

SUBJECT: Funding for Special Studies

COMMENTER: Jamie Campbell, WW Associates, Engineers, Lynchburg, VA

Question: Will funding be available for special studies such as "stream studies" and "minimum instream flow studies"?

RESPONSE: Funding guidelines have not been developed yet but it is possible such a study could be part of the development of a water plan. DEQ intends to establish a committee to develop criteria for disbursement of funding. These kind of special studies are often very expensive and could quickly exhaust our available funding. Maximum limits may need to be established per project or per locality based on available funds.

SUBJECT: Multiple Year Funding for Regional Plans

COMMENTER: Joyce French, Executive Director, Southside Planning District

COMMENT: The Southside Planning District is ready to start on their plan. When can a locality start on developing their plan; when will funding be available? We are anticipating a need for multiple year funding for 3 years in the amount of \$50,000 per year. Will that type of funding request be considered?

RESPONSE: Once the regulation becomes effective, a locality or Planning District can start on their plans as soon as they think that they have sufficient information and data to begin. DEQ hopes to have funding available concurrent with the effective date of the regulation. The funds for local grants will be made available to DEQ on July 1, but cannot be distributed until the regulation is effective. Multiple year funding is possible. The competitiveness of an individual grant proposal will depend on the nature of the request and the need for the funds. However, funding guidelines have not been developed yet. DEQ intends to establish a committee to develop criteria for disbursement of funding, but it is DEQ's intent to provide incentives in our financial assistance program funding for regional plans. Maximum limits may need to be established per project or per locality based on available funds.

SUBJECT: Economic Assistance

COMMENTER: Terry Reid, Wiley & Wilson, Lynchburg, VA

COMMENT: In the area of Economic Assistance for people to do this, it is going to cost much more than stated to do this. Realistically, most localities are going to need funding. And to have to redo these plans every five (5) years or to amend these plans every five (5) years as the comprehensive plan changes and you have additional demand calculations that you have to do and probably rethink alternatives and look at what other people are doing, there is going to be a re-occurring cost. I was disappointed that there was not a bigger request for funding for reimbursement to localities. If you look at what some other states have done in this area, these things are into millions of dollars for regions of a state for the cost of doing water plans. I know most localities would certainly support it if it went to the General Assembly and said that costs of doing the plans for these regulations would be reimbursed. There would be a lot of support in the General Assembly, you just need to go ask for it. I understand how the process works and sometimes that is not the political way to do it. I would certainly hope that when or before this regulation is effective that some other efforts will be done to find more funding for localities.

RESPONSE: For Fiscal Year (FY) 2006, which begins July 1, 2005, we have been appropriated \$300,000. We don't know what future levels of funding will be. We do know that we intend to seek additional funding and we anticipate that the General Assembly will provide adequate funds for implementation of this regulation.

SUBJECT: Funding

COMMENTER: Bruce Boyer, Water Resources Engineer, Spotsylvania County, Department of Utilities

COMMENT: We clearly see this as an unfunded mandate and note that there is limited state funding associated with this, but probably about half of the estimated funding is included in the requirement and we believe that needs to be beefed up in order to properly and fairly fund those localities and communities that don't necessarily have a good planning process at this time.

RESPONSE: For FY 2006, which begins July 1, 2005, we have been appropriated \$300,000. We don't know what future levels of funding will be. We do know that we intend to seek additional funding and we anticipate that the General Assembly will provide adequate funds for implementation of this regulation.

SUBJECT: Funding

COMMENTER: Thomas M. Slaydon, P.E. Spotsylvania County Director of Utilities

COMMENT: While Spotsylvania County supports the need for such planning the regulation is an unfunded mandate. Since water supply planning benefits everyone in the Commonwealth, the costs should be borne more fully by the Commonwealth. Disparity of the immediate need for water supply planning also supports fuller funding by the Commonwealth. Many local governments do not provide water supply and many localities have little immediate need to perform such planning. These localities will reap few benefits through the development of a water supply plan, so they should not be saddled with the need to fund a plan. We urge DEQ to seek out mechanisms to fund more fully the development of these water supply plans.

RESPONSE: For FY 2006, which begins July 1, 2005, we have been appropriated \$300,000. We don't know what future levels of funding will be. We do know that we intend to seek additional funding and we anticipate that the General Assembly will provide adequate funds for implementation of this regulation.

SUBJECT: Funding

COMMENTER: Jeanne Zeidler, Hampton Roads Planning District Commission, Chesapeake, VA

COMMENT: Funding to support the local and regional water supply planning process is needed to ensure that all localities and regions are able to comply with the regulatory requirements.

RESPONSE: For FY 2006, which begins July 1, 2005, we have been appropriated \$300,000. We don't know what future levels of funding will be. We do know that we intend to seek additional funding and we anticipate that the General Assembly will provide adequate funds for implementation of this regulation.

SUBJECT: Technical and financial assistance – program costs

COMMENTER: Jean Andrews, Augusta County Service Authority, Verona, Virginia

COMMENT: The cost of this program needs to be examined more closely. The regulations say that the state will provide technical and financial assistance for the development of the water supply plan. In the Economic Analysis Impact statement, the estimated costs to localities is between \$13,000 - \$79,000 if the plan is developed using in-house resources and between \$19,000 and \$115,000 if it is developed using a combination of in-house resources and consultants. The agency anticipates providing \$350,000 in grants in FY06 and \$500,000 in grants each year after that. This is in addition to the anticipated cost per year for DEQ for \$850,000. Where is all this money coming from? In future years, what if the General Assembly does not fund this grant program? Will the localities be expected to bear all the costs of this state mandated regulation?

RESPONSE: For FY 2006, which begins July 1, 2005, we have been appropriated \$300,000. We don't know what future levels of funding will be. We do know that we intend to seek

additional funding and we anticipate that the General Assembly will provide adequate funds for implementation of this regulation. The money currently comes from the General Fund. DEQ hopes that the General Assembly will provide adequate on-going funding in the future. If funding is not received, DEQ will assist localities in identifying other sources of grant money but local compliance with the regulation would still be expected.

SUBJECT: Incentives

COMMENTER: Mohammed Shammet, Loudoun County Service Authority, Loudoun County, Virginia

QUESTION: Are there any incentives/grants priorities for innovative alternatives, i.e., using quarries for water storage?

RESPONSE: Funding guidelines have not been developed yet but it is possible that projects that develop innovative alternatives could be part of the criteria this year or in some future year. DEQ intends to establish a committee to develop criteria for disbursement of funding.

#### **Comments to 9 VAC 25-780-10 (Applicability)**

SUBJECT: Existing Water Rights

COMMENTER: Morgan Butler, Southern Environmental Law Center, Charlottesville, VA

QUESTION: What about existing water rights and water supply plans that are currently underway?

RESPONSE: The Local and Regional Water Supply Planning Regulations will not have an impact on existing water rights or on plans that are currently being developed. However, any plan adopted prior to or after the effective date of the regulations will need to be evaluated for compliance with the regulation in accordance with the deadline established for that particular locality.

SUBJECT: Preservation of Existing Water Supply "Rights"

COMMENTER: Thomas M. Slaydon, P.E. Spotsylvania County Director of Utilities

COMMENT: Spotsylvania County is aware of the many potential conflicts among permits, withdrawal certificates, and the riparian water rights doctrine that we live with in Virginia. Although the permits and certificates invariably state that they do not convey any water rights, we find that we operate under a system with rights-like entities. We speak in terms of our rights to take water from the river under certain circumstances. In our case our allowable withdrawals, rights by any other name, were based upon negotiations, studies and consensus with State and Federal regulatory agencies and other local governments. Based upon these allowable withdrawals, we have made substantial capital investments. We urge DEQ do everything possible in the development and application of these regulations not to diminish any "water supply right," especially any around which capital expenditures have been made or infrastructure installed.

RESPONSE: Comment noted. We understand this concern and are discussing this issue in the work group to develop amendments to the Virginia Water Protection Permit Regulations.

SUBJECT: Existing Water Rights

COMMENTER: Andrea W. Wortzel, Hunton & WilliamsLLP, The Virginia Manufacturers Association, Richmond, VA

COMMENT: VMA supports the language in proposed regulation 9 VAC 25-780-10.C, which provides that the regulation does not alter, nor authorize the alteration of “any existing surface, ground water or common law water rights of any property owner with the Commonwealth, except as required by federal law or state law.” VMA believes it is important to recognize that existing water rights will be preserved and not affected by the submission of water supply plans, thus protecting existing users from having local plans establish new systems of water allocation on an individual basis. Issues relating to protection of existing water rights, and any changes to the current water allocation system in Virginia should be debated and considered as part of the state-wide regulatory process. VMA is pleased that this is the approach DEQ is taking.

RESPONSE: Comment noted. We understand this concern and are discussing this issue in the work group to develop amendments to the Virginia Water Protection Permit Regulations.

SUBJECT: Existing water rights

COMMENTER: Thomas G. Botkins, Jr, MeadWestvaco Corporation, Covington, Virginia

COMMENT: MeadWestvaco supports the language in proposed regulation 9 VAC 25-780-10.C, which provides that the regulation does not alter, nor authorize the alteration of “any existing surface, ground water or common law water rights of any property owner with the Commonwealth, except as required by federal law or state law.” MeadWestvaco believes it is important to recognize that existing water rights will be preserved and not affected by the submission of water supply plans, thus protecting existing users from having local plans establish new systems of water allocation on an individual basis. Issues relating to protection of existing water rights and any changes to the current water allocation system in Virginia should be debated and considered as part of the statewide regulatory process.

RESPONSE: Comment noted.

### **Comments to 9 VAC 25-780-30 (Definitions)**

SUBJECT: Safe Yield

COMMENTER: Terry Reid, Wiley & Wilson, Lynchburg, VA

COMMENT: I understand the debate we had about Safe Yield in the TAC. Since the VA Department of Health regulates the operation of our water systems that the definitions should be consistent and pretty much they have been consistent with the Health Department definitions. But I would like to say that I had envisioned and had hoped that the Health Department and DEQ could have gotten together and worked out a more reasonable definition that would ensure people and to accomplish the purpose that you have in mind and that the State has in mind just to make sure that people don't run out of water. I think that the current Safe Yield definitions in there will almost guarantee you that people about 3 to 5 % of the time will run out of water during the most severe droughts. There is not protection for that. The wording “every 30 years” by itself will guarantee that you will run out of water, unless you are extremely lucky. There could be some improvement on that, looking at a longer period the period of record that is out there would certainly be an improvement. I think that also looking at more of a risk-based assessment, that says that we will take a 1% or 2% that will always tie into what a locality can afford. If defined properly at least localities would be aware of what risks they are taking when they approve a plan. They will run out of water 1% or 2% of time, depending on how they calculated their safe yield.

RESPONSE: DEQ plans to take steps to address this issue in the regulation. DEQ believes that the definition of simple intake safe yield may result in a higher risk of failure for water systems supported by simple intakes than water systems supplied by complex systems. These comments

are supported by conditions that occurred at several waterworks located on smaller streams during the drought of 2002. DEQ staff will propose two changes to the final regulation: 1) DEQ will remove both safe yield definitions from 9 VAC 25-780-30 (This will prevent the Virginia Department of Health (VDH) Waterworks Regulation and the DEQ Local and Regional Water Supply Planning Regulation from potentially having conflicting definitions for the same term. We will rely on the definition contained in the Waterworks Regulation.); and 2) in 9 VAC 25-780-70 D we will add the phrase “the lowest daily flow of record” after “safe yield”. In addition to these changes to the regulation, DEQ will also address this issue through several administrative implementation actions including: 1) DEQ will identify the daily low flow of record and provide it to localities for all systems that are supplied by simple intakes; 2) DEQ will re-issue a 1985 publication with an updated list of 1Q30, an updated list of local safe yields that take into consideration the lowest flow of record and we will identify any time periods when the flow of the stream was below the design capacity of the waterworks that is documented in waterworks operation permits; and 3) when evaluating any local plan submitted by a locality or region with a waterworks supplied by a simple intake, DEQ will compare the projected demand for the system with the safe yield, the lowest daily flow of record, and any periods in the historic record when daily flows were below the projected demand to make a determination as to whether the locality should or should not include additional sources in their plan (i.e. 9 VAC 25-780-130). It should also be noted that the Virginia Department of Health (VDH) Waterworks regulation considers safe yield of the source as one of several factors when rating the capacity of a waterworks. VDH staff reports that all systems that are served by a simple intake are required to have at least two days of storage available in the system. VDH is currently reviewing the Waterworks Regulation and anticipates the issuance of a NOIRA sometime in June 2005. DEQ staff will continue to work with the VDH staff to assure issues related to the determination of safe yield will be addressed.

SUBJECT: Definition of “Beneficial Use”

COMMENTER: George A. Somerville, Troutman Sanders LLP

COMMENT: This definition quotes directly (albeit without attribution) from Va. Code § 62.110(b), but it omits the concluding sentence of that statute, which reads: “Public water supply uses for human consumption shall be considered the highest priority.” That sentence is a clear and definitive statement of the policy of the Commonwealth, and it should be included in the definition of beneficial use in the proposed regulation.

RESPONSE: DEQ chose to use the existing beneficial use definition from the closely related Virginia Water Protection Permit Program Regulation.

### **Comments to 9 VAC 25-780-40 (Program Development)**

SUBJECT: Regional Service Authorities

COMMENTER: Jim Giraytys, Northern Shenandoah Valley Regional Program, Winchester, VA

QUESTION: How does this requirement apply to an individual locality that participates in a regional service authority? How does this apply if a service authority is in the midst of future water supply planning now? If it doesn't do all of the requirements, does it still need an individual plan?

RESPONSE: Section 9 VAC 25-780-40 encourages counties, cities, and towns to develop regional programs, but there is no requirement for regional service authority to be the lead—only that they be involved in the planning process. However, the regulations would allow for an Authority to develop the plan and to have the localities involved submit the plan. The



requirement is for a locality or group of localities to submit the plan. Localities could pass a resolution approving the plan and approving the submittal of the plan on their behalf by the Regional Authority. The level of local cooperation, coordination and goal setting that is going on in the Northern Shenandoah Valley Regional Program appears to be consistent with the proposed regulation so a separate individual plan would not be required.

SUBJECT: Regional Service Authorities

COMMENTER: Tamara Green, Albemarle County, Charlottesville, VA

QUESTION: How do the Water Planning Regulations affect local Regional Service Authorities?

RESPONSE: Section 9 VAC 25-780-40 encourages counties, cities, and towns to develop regional programs, but there is no requirement for regional service authority to be the lead—only that they be involved in the planning process. However, the regulations would allow for an Authority to develop the plan and to have the localities involved submit the plan. The requirement is for a locality or group of localities to submit the plan. Localities could pass a resolution approving the plan and approving the submittal of the plan on their behalf by the Regional Authority.

SUBJECT: Regional Service Authorities

COMMENTER: Terry Reid, Wiley & Wilson, Lynchburg VA

COMMENT: Still have some concerns about how Authorities fit into the process. I would like to see more weight given to regional and Regional Authority involvement and participation in the process.

RESPONSE: Section 9 VAC 25-780-40 encourages counties, cities, and towns to develop regional programs, but there is no requirement for regional service authority to be the lead—only that they be involved in the planning process. However, the regulations would allow for an Authority to develop the plan and to have the localities involved submit the plan. The requirement is for a locality or group of localities to submit the plan. Localities could pass a resolution approving the plan and approving the submittal of the plan on their behalf by the Regional Authority.

SUBJECT: Regional Service Authorities

COMMENTER: Terry Reid, Wiley & Wilson, Lynchburg, VA

COMMENT: A couple of areas that still warrant some look at are the role of local authorities to produce plans. There seems to be maybe a disconnect that if you do this as a two (2) step process in getting to the next stage of permitting a particular project, those projects are generally done by the water provider (the authority or that utility that sometimes serves multiple locations). For the data to be consistent in the two processes and for it to be a useful step in the process, the data or the people that are going to put the project forward is the more efficient way to do it. Certainly they deserve the opportunity to have their project in a plan, if it is to be a State Plan. My assumption is or with the stated purpose is to fold these local plans into a State Plan. I think that would also eliminate the need for some planning for some areas of large rural counties that may not be ripe for water planning at this point.

RESPONSE: Section 9 VAC 25-780-40 encourages counties, cities, and towns to develop regional programs, but there is no requirement for regional service authority to be the lead—only that they be involved in the planning process. However, the regulations would allow for an Authority to develop the plan and to have the localities involved submit the plan. The requirement is for a locality or group of localities to submit the plan. Localities could pass a resolution approving the plan and approving the submittal of the plan on their behalf by the Regional Authority. Section 9 VAC 25-780-40 requires that localities consult and coordinate with all community water systems in the planning area and requires that community water systems within the planning area cooperate and participate in the preparation of local water supply planning programs. Since all water authorities operate community water systems these concerns seem to be addressed.

SUBJECT: Water service authorities

COMMENTER: Mohammed Shammet, Loudoun County Service Authority, Loudoun County, Virginia

QUESTION: Water Service authorities are not included in the definition of “Local Government”. Does that mean Authorities will have to submit their plans through the County they serve?

RESPONSE: Yes. In accordance with 9 VAC 25-40, local authorities are expected to coordinate and cooperate with local governments they serve in the development of these plans. However, the locality may choose to allow the authority to submit the plan to DEQ so long as this authorization is fully documented and the plan covers the entire geographic extent of the locality not just the authority’s service area (unless they are co-terminus).

**Comments to 9 VAC 25-780-50, Subsection B (Preparation and Submission of a Program.)**

SUBJECT: Deadlines for Plans

COMMENTER: Jeanne Zeidler, Hampton Roads Planning District Commission, Chesapeake, VA

COMMENT: The deadline for submittal of local and regional water supply plans should be tied directly to the availability of data from the State and a determination by the State of acceptable demand projection methodologies.

RESPONSE: It is our intent to provide available data and guidance prior to the deadlines for compliance so that localities have a reasonable period of time to make use of the information.

**Comments to 9 VAC 25-780-50, Subsection B, Paragraph 4 (Preparation and Submission of a Program.)**

SUBJECT: Regional Plans

COMMENTER: Rupert Cutler, Member Roanoke City Council, Roanoke, VA

Question: Would you recommend that this opportunity be used to create an ad hoc “super region” (such as the Upper Roanoke River Watershed, from Montgomery County through Roanoke to Bedford and Franklin Counties, including Smith Mountain Lake)?

RESPONSE: Section 9 VAC 25-780-40 encourages counties, cities, and towns to develop regional programs. The biggest challenge would be coordination of such a large group and making sure that there was agreement among all stakeholders regarding future water supply issues.

SUBJECT: Regional Plans

COMMENTER: Robert H. Conner, Brunswick County Service Authority

COMMENT: Brunswick County plans on being part of a Regional Southside Plan. I would encourage counties/localities across the state to become part of a regional concept. The Regional Concept is the best approach.

RESPONSE: DEQ agrees that there is value in regional approaches. The regulations recognize and encourage the use of regional approaches and DEQ intends to prioritize any available funding for the production of regional plans.

**Comments to 9 VAC 25-780-50, Subsection C, paragraph 8 (Preparation and Submission of a Program.)**

SUBJECT: Security concerns

COMMENTER: Mohammed Shammet, Loudoun County Service Authority, Loudoun County, Virginia

COMMENT: Define level of sensitive information related to water supply that can be included (or not) in the planning document. As well, the security protocol/program/rule to secure such documents once submitted to the State.

RESPONSE: Comment noted. This was an issue discussed in the TAC at great length. The conclusion was that the real issue was the precision of the maps in identifying the location of such facilities. DEQ staff plan to address this issue through departmental guidance that clarifies the level of mapping required to meet the intent of the regulation.

SUBJECT: Maps

COMMENTER: Jean Andrews, Augusta County Service Authority, Verona, Virginia

COMMENT: The plan, which is to include a map of all existing water sources and future water sources, will be available to the public. Homeland Security has told us not to release maps indicating the locations of our sources, yet it is required here. The map should not be a required item in this plan.

RESPONSE: This was an issue discussed in the TAC at great length. The conclusion was that the real issue was the precision of the maps in identifying the location of such facilities. DEQ staff plan to address this issue through departmental guidance that clarifies the level of mapping required to meet the intent of the regulation.

**Comments to 9 VAC 25-780-50, Subsection C, paragraph 10 (Preparation and Submission of a Program.)**

SUBJECT: Approval Resolutions by localities for Regional Water Supply Plans

COMMENTER: Rupert Cutler, Member Roanoke City Council, Roanoke, VA

QUESTION: You want a resolution of plan approval from every locality that is party to the plan, what about the views of localities that are NOT parties to the plan but whose water supplies would be affected by the implementation of the plan?

RESPONSE: The regulations require that DEQ public notice the intent to find any local or regional plan in compliance with regulatory criteria. During this public notice period comments will be accepted from any other localities or regions that may be impacted by the proposed plan. DEQ will identify potential conflicts among local plans and/or regional plans and to notify submitters of those potential conflicts. DEQ will also be available to help to facilitate discussions if needed. However, the TAC did not want the state to resolve these kinds of potential conflicts during the planning process but preferred to let the localities resolve the issues themselves.

**Comments to 9 VAC 25-780-50, Subsection D (Preparation and Submission of a Program.)**

SUBJECT: Plan Updates

COMMENTER: Scott Morris, P.E., Professional Services Industries, Inc., Fairfax, VA

QUESTION: What is the process to modify or update the water plan if the projected estimates of demand over the next 30 or 50 years begin to exceed at a much higher level? Does this require an entire lengthy process or a shortened update process?

RESPONSE: A formal process has not been developed to address this issue. A five-year review cycle is required by the planning regulations (9 VAC 25-780-50 D) but the plans are only required to be resubmitted if there is a change in circumstances that warrants a plan amendment. Regardless, a plan must be updated and resubmitted every ten-years (9 VAC 25-780-50 E). It is anticipated that each locality would recognize the need for a change and would submit an amendment request. DEQ will be looking at establishing a simplified process for submittal and consideration of a modification or update to a previously submitted Water Supply Plan under appropriate circumstances.

### **Comments to 9 VAC 25-780-60 (State role in program preparation)**

SUBJECT: Timing of State Assistance and Guidance for Plans

COMMENTER: Bruce Boyer, Water Resources Engineer, Spotsylvania County

COMMENT: Section 25-780-60 talks about the state role in program preparation and it lists nine (9) items where the state is specifically tasked to assist in the planning effort at the local level. We would be interested in understanding the timing that the state plans for this section, especially for items 1-6.

RESPONSE: In terms of technical and financial assistance, staff will be in place and funding should be available for assisting localities by the end of the year. Guidance will be available on the same time frame. The development of some information may take longer. Localities that are required by Section 9 VAC 25-780-50 B to submit plans first will receive first priority in the development and provision of data. This assistance and information is expected to evolve and improve over time which is an important concept to understand as this is envisioned as a continuous planning process.

SUBJECT: State role in program preparation

COMMENTER: Mohammed Shammet, Loudoun County Service Authority

COMMENT: An overall alignment and compilation of the different planning reports into one (State or regional) plan. This will enhance coordination among neighboring utilities, identify potential resource sharing opportunities, as well as identifying potential conflicts related to the individual plans. Also, are the Planning District Commissions involved in this program?

RESPONSE: Comment noted. Planning District Commissions can be involved as much as their localities choose to involve them in the development of regional or local programs. For localities pursuing regional plans, DEQ would encourage the involvement of applicable Planning District Commissions.

### **Comments to 9 VAC 25-780-60, Subsection H (State Role in Program Preparation)**

SUBJECT: Technical Evaluation Committee

COMMENTER: Andrea Terry, Rivanna Water and Sewer Authority, Charlottesville, VA

QUESTION: When in the process can the applicant ask for a Technical Evaluation Committee meeting?

RESPONSE: An applicant can request a Technical Evaluation Committee meeting at any time when they feel that there would be a benefit from such a dialogue. It is up to the locality as to whether this should be a formal or an informal dialogue.

SUBJECT: Technical Evaluation Committee

COMMENTER: Jamie Campbell, WW Associates, Engineers, Lynchburg, VA

Question: Are other agencies such as CORPS of Engineers, Department of Game and Inland Fisheries, USGS, etc. on board to assist with the development of plans and the "Technical Evaluation Committee"?

RESPONSE: A number of other agencies involved in making permit recommendations or recommendations were included in the TAC process and indicated that they saw the benefit of participating in a Technical Evaluation Committee during planning level discussions with a potential applicant. These agencies will be invited to participate on the Technical Evaluation Committee.

### **Comments to 9 VAC 25-780-70 (Existing Water Sources)**

SUBJECT: Private Water Purveyors

COMMENTER: Jean Manner, Cowpasture River Preservation Association, Clifton Forge, VA

Question: How are Private Water Purveyors accounted for in the local Water Supply Plans?

RESPONSE: Each locality will need to work with the private water purveyors within their jurisdiction that use 300,000 gallons of ground or surface water a month. DEQ will supply a database of these users from our water use reporting system. The goal is to have localities identify and estimate the overall water use for their jurisdiction in their water supply plan now and 30-50 years into the future.

SUBJECT: Private Water Purveyors

COMMENTER: Bonnie Newlon-Johnson, Assistant County Administrator, Franklin County, VA

COMMENT: One concern we have is that the regulations call for local governments to "consult and coordinate with all community water systems in the planning area" and provide extensive information on their water supplies, future water need, contingency planning, and so forth. The localities have no authority to plan for the water systems that they do not own, and in our county, there are many privately-owned community water systems. We would like to suggest that the State develop its own water information resources for the community systems not owned by the localities, and for those structures which are on wells.

RESPONSE: Comment noted. Each locality will need to work with the private water purveyors within their jurisdiction that use 300,000 gallons of ground or surface water a month. DEQ will supply a database of these users from our water use reporting system. The goal is to have localities identify and estimate the overall water use for their jurisdiction in their water supply plan now and 30-50 years into the future.

SUBJECT: Data collection within a Broad Planning Area

COMMENTER: Terry Reid, Wiley & Wilson, Lynchburg, VA

COMMENT: Relating to the broad planning area that we are talking about, the whole county, the requirement to collect information from private systems, agriculture, other private withdrawals, private wells, and industrial withdrawals of a certain size, just not sure that it is a feasible thing for localities to do or have the authority to do. Maybe that is putting a burden on them that although might not seem much, but someone is going to have to go out to collect the information and I'm not sure that people will give them the data. There will be a substantial costs associated

with collecting this information. The way it was written or my understanding is that we would need to plan for every part of every county or jurisdiction whether they have water served to them or they do not have water served to them. In fact it goes so far beyond as to plan for private withdrawals or community based water systems that are private that are probably not part of the water system of that jurisdiction. Particularly in those areas that are not ripe for planning, there are not trends in development, there are a lot of areas of rural agricultural areas that no comprehensive planning has been done for and probably rightly so, there are no trends for development. To plan for that and to try to project water demands would be almost a useless task. And how to translate that into what you decide is the demand of that region and looking at it realistically to look at how much water someone may be taking in the future, would provide a very false picture. It would seem more realistic since these plans are required to be updated every 5 years; (This is optimistic too, maybe 10 years should be the interval, most people do water planning on a 10 year basis.) given whatever frequency, it would be more appropriate to plan for the service areas every 10 years and get that into the State Water Plan, would be more efficient than trying to get areas that are no even in a comprehensive plan as needing a public water supply, they are served by private wells or individual wells.

RESPONSE: DEQ and the TAC concluded that it was important that these plans be comprehensive in nature and collectively plan for the water needs of the entire state. This conclusion was the basis for the requirement in the regulation for jurisdiction-wide planning. The TAC also promoted the position that even if a locality decided that it did not have any water needs during the planning period, that this fact was important to be included in the State Plan. It also is inaccurate to suggest that if a locality is agrarian in nature that it has no water needs. In addition, DEQ and the TAC believe that there are ways to obtain estimates of use and needs related to private wells in a manner that is not cost prohibitive. Lastly, a five-year review cycle is required by the planning regulations (9 VAC 25-780-50 D) but the plans are only required to be updated and resubmitted if there is a change in circumstances that warrants a plan amendment. Regardless, a plan must be updated and resubmitted every ten-years (9 VAC 25-780-50 E).

SUBJECT: Identification of Water Supply Needs of Industries

COMMENTER: Andrea W. Wortzel, Hunton & Williams LLP, The Virginia Manufacturers Association, Richmond, Virginia

COMMENT: The draft regulation requires local governments to include information about water supply needs of industries within their jurisdiction. The regulation does not recognize that, in some instances, such information may be confidential, as some businesses may not want their competitors to know of their projected long-term needs. While the ultimate plans may not specifically identify the needs of each industry in a locality, industries will be required to submit such information to localities, thus potentially making the information subject to the Freedom of Information Act. VMA requests that the regulation include a statement that, to the extent industries submit confidential business information to state or local government agencies as part of the water supply planning process, such information will be protected from disclosure.

RESPONSE: Comment noted. Staff is currently researching how to respond to this issue and any potential legal ramifications.

SUBJECT: Identification of self-supplied water users

COMMENTER: George A. Somerville, Troutman Sanders LLP

COMMENT: Section 25-780-70, subsections E through J. These provisions require a water plan to include lists of various categories of self-supplied users, but the geographical scope of

those requirements is not specified nor clearly implied. It might refer, for example, to self-supplied users within the geographical limits of the local government submitting the plan, to self-supplied users who take water from the same source as the local government submitting the plan, to self-supplied users who take water from alternative sources potentially available to the local government submitting the plan, or some combination of those options (perhaps among others). The geographic scope of those requirements should be specified in the regulation.

RESPONSE: This information is to be collected for the local or regional planning area.

“Planning area” is defined in 9 VAC 25-780-30 as the geographical area as defined by local government boundaries that is included in a local or regional water supply plan.

### **Comments to 9 VAC 25-780-80 (Existing Water Use Information)**

SUBJECT: Provisions for reporting and projecting water supply needs – community water systems

COMMENTER: David W. Rundgren, New River Valley Planning District Commission, Radford, VA

COMMENT: In reviewing the Proposed Regulations, the Commission finds that the provisions for reporting and projecting water supply needs would be difficult and speculative in the following categories: 9 VAC 25-780-80.B.9 – “For each community water system included in the water plan, the plan shall include an estimate of the disaggregated amounts of water used in categories of use appropriate for the system. Typical categories may include: a. Residential use; b. Commercial institutional and light industrial (CIL) use; c. Heavy industrial use; d. Military water use; e. Water used in water production processes; f. Unaccounted for losses; g. Sales to other community water systems and the names of such systems; or h. Subtotals of the above categories for all community water systems.” Currently, the localities are not keeping records to this level. In order to arrive at this detail requires much speculation and has a high potential for error in projecting the future needs. An adjustment to the regulations which would allow for a basic projection of demand, at the discretion of the plan preparation process would appear to more adequately reflect total demand. By example, the significant change in the mix of industrial and other economic uses over the past decade has created a significant change in the demand. During the next fifty years the change is likely to be even more dramatic. Communities and regions have little opportunity to influence the decisions that have significant impacts on the water supply requirements. A projection of total demand is more likely to be accurate.

RESPONSE: The TAC advised DEQ that this information could reasonably be developed even for small or rural systems.

SUBJECT: Self-supplied non-agricultural users

COMMENTER: Jean Andrews, Augusta County Service Authority, Verona, Virginia

COMMENT: The regulations ask for an estimate of self-supplied non-agricultural users. Industries on private wells might not be willing to share their water usage. How do you propose to deal with these situations?

RESPONSE: There are a number of simple ways to estimate this use based on readily available information. Guidance will be provided on suggested ways to meet this provision of the regulations.



**Comments to 9 VAC 25-780-100, Subsection B (Projected Water Demand Information)**

SUBJECT: Planning Period

COMMENTER: Martin Williams, Malcolm-Pirnie, Newport News, VA

COMMENT: The planning period of 30-50 years is too short. The planning period should be at least 60 years.

RESPONSE: The TAC considered this time period to be standard professional practice for projecting demand for water supply projects. It is our understanding that it is generally accepted that beyond a 50 year period, the reliability of typical projection methods, particularly for population growth, deteriorates rapidly. The planning period contained in the regulation is a compromise between those on the TAC who wanted a 20-25 year projection consistent with the local comprehensive plan and those that preferred the 50 year period. As written, the locality can select a planning period as short as 30 years, as long as 50 years, or anywhere in between. DEQ staff proposes language clarifying our intent that localities are encouraged to plan for the maximum planning period to ensure that the most appropriate and sustainable alternatives are identified.

SUBJECT: Planning Period

COMMENTER: Jean Andrews, Augusta County Service Authority, Verona, Virginia

COMMENT: The draft regulation states that demand should be estimated for the next 30 to 50 years. To keep things consistent and more meaningful, the time period needs to be defined. If one locality writes a plan for 30 years and the neighboring locality writes their plan for 50 years, the plans aren't truly comparable.

RESPONSE: Comment noted. The plans are adequately comparable for thirty years.

**Comments to 9 VAC 25-780-110 (Water Demand Management Information)**

SUBJECT: Conservation goals

COMMENTER: Jean Andrews, Augusta County Service Authority, Verona, Virginia

COMMENT: Is the state going to set a mandate for conservation goals? In 9 VAC 25-780-110, it states that the plan shall include information that describes practices for more efficient use of water that are used within the planning area. Is this only on a voluntary basis or will it become mandatory to implement these conservation practices?

RESPONSE: DEQ presumes that localities are making wise use of their water supplies, including making contingencies for conservation when appropriate. It is generally accepted that reducing or eliminating waste can be achieved through conservation techniques such as reducing unaccounted for losses and installing low flow fixtures. The intent of this regulatory provision is for the locality to document what conservation issues it may have and what steps they are taking to address them.

**Comments to 9 VAC 25-780-120 (Drought Response and Contingency Plans)**

SUBJECT: Drought Response and Contingency Plans

COMMENTER: Gary Craft, Hanover County Public Utilities, Hanover, VA

QUESTION: Where is the Drought Response Component?

RESPONSE: 9 VAC 25-780-120 identifies the standards for the development of drought response and contingency plans for programs that include community water systems and self-

supplied users who withdraw more than an average of 300,000 gallons per month of surface water and/or ground water.

SUBJECT: Drought Response and Contingency Plans

COMMENTER: John W. Shipp, Jr., Environmental Policy and Planning, Tennessee Valley Authority, Chattanooga, Tennessee

COMMENT: We noted that in 9 VAC 25-780-120 three levels of drought response were identified for inclusion in the water supply plans. However, we did not see a corresponding requirement to include trigger development in the plans so that each drought response stage could be activated. If the triggers were defined elsewhere, a reference to them would be helpful.

RESPONSE: The triggers are dependent on the unique characteristics of each individual system. The State Drought Response Plan establishes a mechanism to initiate the required actions based on the presence of specific drought conditions.

#### **Comments to 9 VAC 25-780-130, subsection C (Statement of Need and Alternatives.)**

SUBJECT: Water Reuse

COMMENTER: Rick Roth, Friends of New River, Blacksburg, VA

COMMENT: DEQ needs to encourage “water recycling” (e.g., Roanoke could draw water from Smith Mountain Lake).

RESPONSE: Water reuse could be a component of local water supply plans when appropriate. DEQ encourages the reuse or recycling of water on the geographic scale that you suggest in your comment. This type of approach is used in the Occoquan area of Northern Virginia and could be used in other parts of the state. Where appropriate, localities are expected to consider non-traditional sources of supply as an alternative to meet projected demands.

SUBJECT: Water Reuse

COMMENTER: Tyla Matteson, Sierra Club, Richmond, VA

COMMENT: Would like to see Water Reuse included.

RESPONSE: DEQ encourages water reuse with VDH concurrence. Generally, VDH does not permit water reuse for potable purposes. Where practicable, localities are expected to consider non-traditional sources of supply as an alternative to meet projected demands.

SUBJECT: Desalination

COMMENTER: Tyla Matteson, Sierra Club, Richmond, VA

COMMENT: Would like to see the use of desalination integrated into the local Water Supply Plans where feasible and practical.

RESPONSE: Where practicable, localities are expected to consider non-traditional sources of supply as an alternative to meet projected demands.

#### **Comments to 9 VAC 25-780-140 (Review of Local Programs)**

SUBJECT: SWCB review of plans.

COMMENTER: Jean Andrews, Augusta County Service Authority, Verona, Virginia

COMMENT: The SWCB is to review all these plans, yet no timeframe is given for the overall review process. A timeframe should be included in the regulation.

RESPONSE: No time frame is provided or anticipated as this planning is conceived of as a continuous planning process. The planning envisioned here will continue to be important, probably even more so, into the future.

**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 crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9 VAC 25-780-30		Definitions	Deleted the definitions for “safe yield of a complex system” and “safe yield of a simple intake.” These two definitions were taken directly from the VDH Waterworks Regulation, 12 VAC 5-590, in order to avoid the creation of two different definitions for the term in two sets of regulations. The current definition of simple intake safe yield may result in a higher risk of failure for water systems supported by simple intakes than water systems supplied by complex systems. DEQ believes that it is prudent to remove the definitions from the final regulation and work with the Health Department on revising their safe yield definition to address this issue.
9 VAC 25-780-70 D		Establishes the information required in a water supply plan of community water systems with simple intakes.	Added the phrase “lowest daily flow of record,” after “safe yield.” This adds one additional piece of information required from these water systems. This change will allow DEQ, for any waterworks supplied by a simple intake that is included in a water supply plan, to compare the projected demand for the system with the safe yield, the lowest daily flow of record, and any periods in the historic record when daily flows were below the projected demand to make a determination as to whether the locality should or should not include additional sources in their plan (i.e. 9 VAC 25-780-130).
9 VAC 25-780-100 B		Establishes the planning period required for projecting demand in a water supply plan.	Added the phrases “a minimum of” before 30 years and “a maximum of” before 50 years to clarify that the intent of this provision is for the locality to select a planning period as short as 30 years up to as long as 50 years. In addition inserted a new sentence that reads “While not required, localities are encouraged to plan for the maximum planning period to ensure that the most

			appropriate and sustainable alternatives are developed.”
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**Family Impact Statement**

*Please provide an analysis of the regulatory action that assesses the 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.*

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The Board does not expect any direct impacts on the institution of the family and family stability.