

9 VAC 25-220-60 Agreements.

A. The board shall encourage, promote and recognize voluntary agreements among persons withdrawing surface water in the same surface water management area.

B. When the board finds that any such agreement, executed in writing and filed with the board, is consistent with the intent, purposes and requirements of this chapter, the board shall approve the agreement following a public hearing.

C. ~~Board approval of the agreement shall be conducted according to the Virginia Administrative Process Act (§9-6.14:1 et seq.) and the board's Public Participation Guidelines (9 VAC 25-10-10 et seq.).~~ The board shall provide at least sixty day's notice of the public hearing to the public in general and individually to those persons withdrawing surface water in the surface water management area who are not parties to the agreement, and shall make a good faith effort to so notify recreational user groups, conservation organizations and fisheries management agencies. The board shall be a party to the agreement.

D. ~~Upon final approval as a regulation, the~~ The agreement, until terminated, shall control in lieu of a formal order, rule, ~~or regulation of~~ or permit issued by the board under the provision of this chapter, and shall be deemed to be a case decision under the Administrative Process Act (§9-6.14:1 et seq.)

E. Any agreement shall specify the amount of water affected by it.

F. Any agreement approved by the board ~~as a regulation~~ may include conditions which can result in its amendment or termination by the board, following a public hearing ~~pursuant to §9-6.14:1 of the Virginia Administrative Process Act and the board's Public Participation Guidelines (9 VAC 25-10-10 et seq.),~~ if the board finds that it or its effect is inconsistent with the intent, purposes and requirements of this chapter. Such conditions include the following:

1. A determination by the board that the agreement originally approved by the board will not further the purposes of this chapter, ~~or;~~
2. A determination by the board that circumstances have changed such that the agreement originally approved by the board will no longer further the purposes of this chapter; or
3. One or more parties to the agreement is not fulfilling its commitments under the agreement.

The board shall provide at least sixty days' notice of the public hearing to the public and individually to those persons withdrawing surface water in the surface water management area who are not parties to the agreement, and shall make a good faith effort to so notify recreational user groups, conservation organizations and fisheries management agencies.

9 VAC 25-220-70 Application for a permit.

A. Duty to apply. Any person who withdraws surface water or proposes to withdraw surface water in a surface water management area must have a surface water withdrawal permit, except persons excluded under subsection B of 9 VAC 25-220-70, or exempted under subsection C of 9 VAC 25-220-70, or withdrawals made pursuant to a voluntary agreement approved by the board pursuant to 9 VAC 25-220-60.

A complete application shall be submitted to the board in accordance with this section.

B. Exclusions. The following do not require a surface water withdrawal permit but may require other permits under state and federal law:

1. Any nonconsumptive use;
2. Any water withdrawal of less than 300,000 gallons in any single month;
3. Any withdrawal in any area which has not been declared a surface water management area; and
4. Any withdrawal from a wastewater treatment system permitted by the State Water Control Board or the Department of Mines, Minerals and Energy.

C. Exemptions. The following do not require a surface water withdrawal permit but may require other permits under state and federal law. However, the following do require a surface water withdrawal certificate containing details of a board approved water conservation or management plan as found in subdivision 2 of 9VAC25-220-100 and Part V of this chapter (9VAC25-220-250 et seq.). It is not the intent or purpose of this certification program to affect the withdrawal of water approved by the board.

1. No political subdivision or investor-owned water company permitted by the Department of Health shall be required to obtain a surface water withdrawal permit for:

- a. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in a declared surface water management area before the daily rate of any such existing withdrawal is increased beyond the maximum daily withdrawal made before July 1, 1989.
- b. Any withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has received, by that date, a §401 certification from the State Water Control Board pursuant to the requirements of the Clean Water Act to install any necessary withdrawal structures and make such withdrawal; however, a permit shall be required in any surface water management area before any such withdrawal is increased beyond the amount authorized by the said certification.
- c. Any withdrawal in existence on July 1, 1989, from an instream impoundment of water used for public water supply purposes; however, during periods when permit conditions in a water management area are in force pursuant to subsection G of 9VAC25-220-80 and 9VAC25-220-190, and when the rate of flow of natural surface water into the impoundment is equal to or less than the average flow of natural surface water at that location, the board may require release of water from the impoundment at a rate not exceeding the existing rate of flow of natural surface water into the impoundment. Withdrawals by a political subdivision or investor-owned water company permitted by the Department of Health shall be affected by this subdivision only at the option of that political subdivision or investor-owned water company.

2. No existing beneficial consumptive user shall be required to obtain a surface water withdrawal permit for:

- a. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in a declared surface water management area before the daily rate of any such existing withdrawal is increased beyond the maximum daily withdrawal made before July 1, 1989; and
- b. Any withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has received, by that date, a §401 certification from the State Water Control Board pursuant to the requirements

of the Clean Water Act to install any necessary withdrawal structures and make such withdrawals; however, a permit shall be required in any surface water management area before any such withdrawal is increased beyond the amount authorized by the said certification.

D. Duty to reapply.

1. Any permittee with an effective permit shall submit a new permit application at least 180 days before the expiration date of an effective permit unless permission for a later date has been granted by the board.

2. Owners or persons who have effective permits shall submit a new application 180 days prior to any proposed modification to their activity which will:

- a. Result in a significantly new or substantially increased water withdrawal; or
- b. Violate or lead to the violation of the terms and conditions of the permit.

E. Complete application required.

1. Any person proposing to withdraw water shall submit a complete application and secure a permit prior to the date planned for commencement of the activity resulting in the withdrawal. There shall be no water withdrawal prior to the issuance of a permit.

2. Any person reapplying to withdraw water shall submit a complete application.

3. A complete surface water withdrawal permit application to the State Water Control Board shall, as a minimum, consist of the following:

- a. The location of the water withdrawal, including the name of the waterbody from which the withdrawal is being made;
- b. The average daily withdrawal, the maximum proposed withdrawal, and any variations of the withdrawal by season including amounts and times of the day or year during which withdrawals may occur;
- c. The use for the withdrawal, including the importance of the need for this use;
- d. Any alternative water supplies or water storage; and
- e. If it is determined that special studies are needed to develop a proper instream flow requirement, then additional information may be necessary.

4. Where an application is considered incomplete the board may require the submission of additional information after an application has been filed, and may suspend processing of any application until such time as the applicant has supplied missing or deficient information and the board considers the application complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a permit application, or submitted incorrect information in a permit application or in any report to the board, he shall immediately submit such facts or the correct information.

5. Any person proposing to withdraw water shall submit an application for a permit 180 days prior to the date planned for commencement of the activity resulting in the withdrawal. There shall be no water withdrawal prior to the issuance of a permit.

6. Any person with an existing unpermitted water withdrawal operation shall submit an application immediately upon discovery by the owner or within 30 days upon being requested to by the board whichever comes first.

F. Informational requirements. All applicants for a surface water withdrawal permit shall provide all such information consistent with this chapter as the board deems necessary. All applicants for a permit must submit a complete permit application in accordance with subsection A of 9VAC25-220-70.