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Fast-Track Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9VAC25-220
Regulation title(s)	Surface Water Management Area Regulation
Action title	<i>Fast Track Fast track amendment to update citations and make the regulation consistent with state statute</i>
Date this document prepared	August 5 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulation is being amended to update statutory references contained within the regulation and to be consistent with state statute.

Acronyms and definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

No Acronyms or definitions are used in the agency background document.

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

At its meeting on October 1, 2015, the State Water Control Board authorized the department to:

1. Promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The board's authorization also constituted its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
2. Set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the department does not find it necessary to make any changes to the proposal.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

The State Water Control Board is authorized by 62.1-44.15 (10) to adopt regulations to enforce the general water quality management programs of the Commonwealth. Chapter 24 of Title 21 of the Code of Virginia provides details concerning requirements for Surface Water Management Areas.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Citations within the regulation are being updated to reflect current state statute. Updating the citations reduces confusion concerning the requirements that are to be met. Changes are also being made to the regulation to make it consistent with state statute. Reflecting current state statute is necessary for the regulation to appropriately provide a mechanism to protect beneficial uses of the Commonwealth's water resources during periods of drought thereby protecting the health, safety or welfare of citizens.



Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

This rulemaking is expected to be non-controversial since the only changes being proposed are ones that update outdated citations with current statutory citations or make the regulation consistent with state statute.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

Citations referencing sections of state statute are being updated with current citations. The regulation is also being revised to be consistent with state statute.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantages to the public, agency and Commonwealth will be that the regulation will reference current versions of state statute and will be consistent with state statute. This will avoid confusion concerning the requirements the regulated community should comply with. There are no disadvantages to the public, agency or Commonwealth associated with these regulatory revisions.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

Surface water management area requirements are state only requirements, and no applicable federal requirements for this activity exist. Water supply is a critical factor for the economic vitality and public health of the Commonwealth and its political subdivisions. Meeting the demand for water is complex and the amount available to meet these needs is finite. This regulation is one tool used to assist with balancing the needs for surface water withdrawals with the available supply of surface water.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality would be particularly affected by this regulation.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

This regulatory amendment is to update citations referencing state statute and will also make the regulation consistent with state statute. Updating references within this regulation should avoid confusion concerning requirements that must be met. These changes should not impact the regulated community, which may include small businesses.

Public participation

Please include a statement that in addition to any other comments on the regulation, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and on any impacts of the regulation on farm and forest land preservation. Also, the board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reported, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Melissa Porterfield, Office of Regulatory Affairs, P.O. BOX 1105, Richmond, VA 23218, phone: 804-698-4238, FAX: 804-698-4019, email: melissa.porterfield@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules; or the Department finds it necessary, based on public comments or for any other reason, to make any changes to the proposal, the agency shall: 1) file notice of the objection/reason with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>Since the regulatory amendment corrects citations referencing state statute and makes the regulation consistent with state statute, the proposed amendments do not change the cost for the state to implement and enforce the proposed regulation.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>Since the regulatory amendment corrects citations referencing state statute and makes the regulation consistent with state statute, the proposed amendments do not change the cost for localities to implement and enforce the proposed regulation.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Since the regulatory amendment corrects citations referencing state statute and makes the regulation consistent with state statute, there will be minimal impact if any impact on individuals, businesses, or other entities.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>It is not anticipated that this regulatory change will impact any small businesses.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>It is not anticipated that this regulatory change will impact costs with complying with this regulation.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The regulatory amendment will reference the current version of state statute make the regulation consistent with current statute. This will avoid</p>

	confusion concerning the requirements the regulated community should comply with.
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Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The alternative is to retain the regulation as is. This alternative was rejected since it would potentially be confusing to the regulated community to have the regulation reference outdated versions of state statute.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulation will not have any impact on the institution of the family or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the pre-emergency regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10		Definitions	Revising a citation found in the definition of “surface water” to the current code of Virginia citation. This is a correction to update the regulation with the current statutory citation. Two definitions are being moved within the section to list

			them alphabetically in the regulation.
40		Initiate surface water management area proceeding	Updating citations referencing the Public Participation Guidelines and the Virginia Administrative Process Act.
60		Agreements	Updating citation referencing the Virginia Administrative Process Act.
70 B		Application for a permit-exclusions	§ 62.1-243 of the Code of Virginia includes farm ponds meeting a specific criteria from needing to obtain a permit. This exclusion is being added to 70B to make the regulation consistent with state statute
80 D		Conditions applicable to all permits- Inspection and entry	This subsection is being amended to be consistent with statute. The Surface Water Management Act does not specifically address the authority for DEQ to enter and inspect a surface water withdrawal permit. Language is being added to allow the owner or custodian to consent to inspection by DEQ.