



**Virginia  
Regulatory  
Town Hall**

**Notice of Intended Regulatory Action  
Agency Background Document**

<b>Agency Name:</b>	State Water Control Board
<b>VAC Chapter Number:</b>	9 VAC 25-210
<b>Regulation Title:</b>	Virginia Water Protection Permit Regulation
<b>Action Title:</b>	Virginia Water Protection Permit Regulation Amendments
<b>Date:</b>	May 2, 2000

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

**Purpose\***

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

The purpose of the proposed action is to amend and revise the Virginia Water Protection Permit Regulation to incorporate changes to the Code of Virginia §§62.1-44.3, 44.5,44.15,44.15:5, and 44.29 relating to wetlands as mandated by the General Assembly in Senate Bill 648 and House Bill 1170, and other changes that the Department or the public deems necessary and are warranted.

**Basis**

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

The basis for this regulation is Section 62.1-44.2 et seq. of the Code of Virginia. Specifically, Section 62.1-44.15 authorizes the Board to adopt rules governing the issuance of water quality

permits. Section 62.1-44.15:5 authorizes the Board to issue a Virginia Water Protection Permit consistent with the provisions of the Clean Water Act and to protect instream beneficial uses.

Section 401 of the Clean Water Act (33 USC 1251 et seq.) requires state certification of federal permits for discharges into navigable waters.

### Need\*

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

Pursuant to the actions of the 2000 General Assembly, the Virginia Water Protection Permit Regulation (9 VAC 25-210 et seq.) must be amended in order to enact changes to the Code of Virginia §§62.1-44.3, 44.5,44.15,44.15:5, and 44.29 relating to wetlands. These changes will protect the health, safety and welfare of citizens as they are designed to clarify and streamline the permitting process and to establish and implement policies and programs to protect and enhance the Commonwealth's wetland resources, using a regulatory approach to achieve no net loss of wetlands and a voluntary approach to achieve a net resource gain.

### Substance\*

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

The proposed regulatory action is to amend the Virginia Water Protection Permit regulation in response to the requirements of new legislation and to incorporate other changes to the regulation that the Department or the public deems necessary and are warranted. Some of the changes being considered include:

Incorporate statutory changes into 210-10 Definitions.

Incorporate statutory changes into 210-50 Prohibitions and requirements for permits.

Amend 210-60 Exclusions to incorporate most current exclusions.

Amend 210-80 Application for a permit to update procedures.

Amend 210-90 Conditions applicable to all permits to reflect wetland-specific monitoring requirements.

Amend 210-110 Establishing applicable standards, to include new maximum permit term and specify monitoring requirements.

Amend 210- 130 State General Permits to incorporate changes to review period.

Amend and clarify 210 - 180 through 210 for requirements for permit modifications, revocations and reissuances.

Other changes as may be necessary based on comments or work of the Advisory Committee.

### Alternatives\*

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

The alternative of not amending the regulation is not feasible as the proposed changes are mandated by action of the General Assembly, and portions of the existing regulation are contrary to the amendments to the Virginia Code passed by the General Assembly. The alternative of developing an entirely new regulation would be time consuming and burdensome. The alternative proposed builds upon the existing regulation and incorporates changes mandated by the legislature and other changes necessary to clarify and streamline the permitting process.

### Public Participation\*

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

The Board is seeking comments on the intended regulatory action, including ideas to assist in the revisions to the regulation. An informational public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. In addition, a Technical Advisory Committee has been formed to assist in the development of the regulation; notice of the meeting dates can be found in the Calendar of Events section of the Virginia Register of Regulations.

### Participatory Approach\*

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

The Board is using the participatory approach to assist the agency in the revisions to the regulation.

### Family Impact Statement

*Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children;*

*2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

It is not anticipated that these regulation amendments will have a direct impact on families.