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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-920
<b>VAC Chapter title(s)</b>	General Permit for Use of Surficial Aquifer in a Groundwater Management Area
<b>Action title</b>	<b>Creation of a General Permit for Use of the Surficial Aquifer in a Groundwater Management Area</b>
<b>Date this document prepared</b>	September 30, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

The intent of this new regulation is to conserve groundwater in the confined aquifers within the Groundwater Management Areas for potable needs. This regulatory proposal will create a new general permit to promote use of the surficial aquifer in any Groundwater Management Area.

### Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

“Act” means the Ground Water Management Act of 1992 (§62.1-254 of the Code of Virginia)  
“Board” means the State Water Control Board.

“Groundwater management area” means a geographically defined groundwater area in which the board has deemed the levels, supply, or quality of groundwater to be adverse to public welfare, health, and safety.

“Groundwater” means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

### Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

Chapter 670 of the 2020 Acts of the Assembly (new §§ 62.1-258.1, 62.1-266 H and I) directs the Board to address the impacts of non-agricultural irrigation on the confined aquifer system by prohibiting the use of these aquifers unless the quality and quantity of the surficial aquifer is insufficient for the proposed beneficial use.

### Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.*

Section 62.1-256 of the Code of Virginia authorizes the Board to adopt such regulations, as it deems necessary to administer and enforce the provision of this chapter. Chapter 670 of the 2020 Acts of the Assembly (new §§ 62.1-258.1, 62.1-266 H and I) directs the Board to address the impacts of non-agricultural irrigation on the confined aquifer system by prohibiting the use of these aquifers unless the quality and quantity of the surficial aquifer is insufficient for the proposed beneficial use. The development of regulations to address this legislative objective are authorized.

Section 62.1-258.1 of the Code of Virginia provides that unless the Department of Environmental Quality had determined that the quantity and quality of the groundwater in the surficial aquifer is not adequate to supply the proposed beneficial use, it shall be unlawful in a ground water management area for any person to construct a well for nonagricultural irrigation purposes except in the surficial aquifer. Section 62.1-266 H provides the Board may adopt regulations to develop a general permit for the regulation of irrigation withdrawals from the surficial aquifer greater than 300,000 gallons in any one month.

### Purpose

*Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.*

The development of the general permit is necessary to protect the health, safety, and welfare of citizens by providing for sustainability of the confined aquifers for future uses. There is significant non-potable

groundwater use from the confined aquifer system for non-agricultural irrigation purposes, such as golf courses and community green space. Increasing the use of the surficial aquifer or water table aquifer for non-potable non-agricultural irrigation achieves greater long term confined aquifer sustainability. This regulatory proposal will create a new general permit to promote use of the surficial aquifer for non-agricultural withdrawal in any Ground Water Management Area.

**Substance**

*Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

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The new general permit for non-agricultural irrigation from the surficial aquifer will include the establishment of permit terms, withdrawal limits, reporting requirements and criteria for determining adequate quality and quantity from the surficial aquifer necessary to permit withdrawals.

**Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

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One alternative to the regulatory action is to not initiate a rulemaking to adopt a general permit. This alternative was rejected as the Board has been directed to adopt regulations to establish criteria for determining whether the quantity or quality of the groundwater in the surficial aquifer is adequate to meet a proposed beneficial use.

**Public Participation**

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

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The Board is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. The Board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Joseph Grist, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, Phone: (804) 698-4031, Email: [joseph.grist@deq.virginia.gov](mailto:joseph.grist@deq.virginia.gov). Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>). Written comments must include the name and address of the commenter. In order to be considered, comments must be received before midnight on the last day of the public comment period.



### **Public Hearing at Proposed Stage**

A public hearing will be held following the publication of the proposed stage of this regulatory action.

### **Technical Advisory Committee**

*A technical advisory committee will be involved in the development of the proposed regulation.*

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The Board is using a technical advisory committee to develop a proposal. Persons interested in assisting in the development of a proposal should notify the Department's contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). Any persons who want to be on the advisory committee are encouraged to attend the public meeting mentioned above. The primary function of the advisory committee is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the advisory committee will be sent to all applicants.