



[townhall.virginia.gov](http://townhall.virginia.gov)

## 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> | 9VAC25-210 (Primary)<br>9VAC25-610 (Secondary)   |
| <b>VAC Chapter title(s)</b>                                   | "Virginia Water Protection Permit Program Regulation" (Primary)<br>"Groundwater Withdrawal Regulations" (Secondary)  |
| <b>Action title</b>   | <b>Amendments establishing criteria for (i) water auditing plans and (ii) leak detection and repair plans, and requiring any water withdrawal permit application to include (i) a water auditing plan and (ii) a leak detection and repair plan.</b> |
| <b>Date this document prepared</b>                            | August 25, 2021  |

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 regulatory change is to amend the Virginia Water Protection Permit Program Regulation (9VAC25-210) and the Groundwater Withdrawal Regulations (9VAC25-610) to require that any application for a permit to withdraw surface water (9VAC25-210) or groundwater (9VAC25-610) include (i) a water auditing plan and (ii) a leak detection and repair plan. This regulatory proposal will establish requirements for such plans, as required by Chapter 100 of the 2021 Special Session I Acts of Assembly. This regulatory proposal will also include amendments to conform the Virginia Water Protection Permit Program Regulation to the requirements in Section 62.1-44.15:22 A 2 of the Code of Virginia, as amended and reenacted by Chapter 100 of the 2021 Special Session I Acts of Assembly and will include amendments to conform the Groundwater Withdrawal Regulations to the requirements in Section 62.1-262 of the Code of Virginia, as amended and reenacted by Chapter 100 of the 2021 Special Session I Acts of Assembly.

## Acronyms and Definitions

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

---

“Board” means the State Water Control Board.

“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 the Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates, or otherwise occurs.

“Permit” means either: (i) an individual or general permit issued by the Board under § 62.1-44.15:20 of the Code of Virginia that authorizes a surface water withdrawal, or; (ii) a groundwater withdrawal permit issued under the Groundwater Management Act of 1992 permitting the withdrawal of a specified quantity of groundwater under specified conditions in a groundwater management area.

“Surface Water Withdrawal” means a removal or diversion of surface water in Virginia or from the Potomac River for consumptive or nonconsumptive use thereby altering the instream flow or hydrologic regime of the surface water. Projects that do not alter the instream flow or that alter the instream flow but whose sole purpose is flood control or stormwater management are not included in this definition.

## 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 100 of the 2021 Special Session I Acts of the Assembly directs the Board to establish requirements in regulation for (i) water auditing plans and (ii) leak detection and repair plans. This act provides that every applicant for a Virginia Water Protection Permit for a surface water withdrawal shall include (i) a water auditing plan and (ii) a leak detection and repair plan, that both plans shall comply with requirements established by the Board in regulations, that the Board shall approve such plans that comply with such regulatory requirements, that once approved such plans shall be incorporated by reference as a condition in the Virginia Water Protection Permit, and that the Board shall not issue a Virginia Water Protection Permit for a surface water withdrawal without such approved plans. This act further provides that the water conservation and management plan for a groundwater withdrawal permit shall include (i) a water auditing plan and (ii) a leak detection and repair plan that complies with requirements established by the Board in regulations, that the Board shall approve any water conservation and management plan that complies with the applicable requirements, that once approved by the Board the water conservation and management plan shall be incorporated by reference as a condition in the groundwater withdrawal permit, and that the Board shall not issue a groundwater withdrawal permit, except as provided in § 62.1-260 or 62.1-261 or subsection H of § 62.1-266, without an approved water conservation and management plan.

## 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 62.1-44.15:22 A 2 of the Code of Virginia, as amended and reenacted by Chapter 100 of the 2021 Special Session I Acts of Assembly, provides that every application for a Virginia Water Protection Permit for a surface water withdrawal shall include a (i) water auditing plan and (ii) leak detection and repair plan. Both such plans shall comply with requirements established by the Board in regulations. The Board shall approve every water auditing plan and leak detection and repair plan that complies with such regulatory requirements. Once approved by the Board, such water auditing plan and leak detection and repair plan shall be incorporated by reference as a condition in the Virginia Water Protection Permit. The Board shall not issue a Virginia Water Protection Permit for a surface water withdrawal without an approved water auditing plan and an approved leak detection and repair plan.

Section 62.1-262 of the Code of Virginia, as amended and reenacted by Chapter 100 of the 2021 Special Session I Acts of Assembly, provides that any application for a groundwater withdrawal permit, except as provided in § 62.1-260 or 62.1-261 or subsection H of § 62.1-266, shall include a water conservation and management plan approved by the Board. The water conservation and management plan shall include (i) the use of water-saving plumbing and processes including, where appropriate, water saving fixtures in new and renovated plumbing as provided under the Uniform Statewide Building Code; (ii) a water-loss reduction program; (iii) a water-use education program; (iv) a water auditing plan that complies with requirements established by the Board in regulations; (v) a leak detection and repair plan that complies with requirements established by the Board in regulations; and (vi) mandatory reductions during water-shortage emergencies, including, where appropriate, ordinances prohibiting waste of water generally and providing for mandatory water-use restrictions, with penalties, during water-shortage emergencies. The Board shall approve any water conservation plan that complies with clauses (i) through (vi). Once approved by the Board, such water conservation and management plan shall be incorporated by reference as a condition in the groundwater withdrawal permit. The Board shall not issue a groundwater withdrawal permit, except as provided in § 62.1-260 or 62.1-261 or subsection H of § 62.1-266, without an approved water conservation and management plan.

**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.*

---

This regulatory change is explicitly required by the second enactment clause of Chapter 100 of the 2021 Special Session I Acts of Assembly. The provisions of Chapter 100 of the 2021 Special Session I Acts of Assembly have an effective date of 30 days after the adoption by the Board of the regulations to implement the provisions of the act. The development of these amendments will provide for the efficient use and conservation of surface water and groundwater resources for future uses and is necessary to protect the health, safety, and welfare of citizens. There are significant water losses by permitted water withdrawal users that lack adequate water auditing and leak detection and repair plans. Requiring enforceable water auditing and leak detection and repair plans achieves greater long-term conservation and sustainability of finite water resources.

**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.*

---

Amendments to 9VAC25-210 will be considered to include requirements for (i) water auditing plans and (ii) leak detection and repair plans, as well as amendments to conform the regulation to the requirements in Section 62.1-44.15:22 A 2 of the Code of Virginia, as amended and reenacted by Chapter 100 of the 2021 Special Session I Acts of Assembly.

Amendments to 9VAC25-610 will be considered to include requirements for (i) water auditing plans and (ii) leak detection and repair plans, as well as amendments to conform the regulation to the requirements in Section 62.1-262 of the Code of Virginia, as amended and reenacted by Chapter 100 of the 2021 Special Session I Acts of Assembly.

**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.*

---

One alternative to the regulatory action is not to initiate regulatory amendments to 9VAC25-210 and 9VAC25-610. This alternative was rejected as the Board has been explicitly directed by the second enactment clause in Chapter 100 of the 2021 Special Session I Acts of Assembly to adopt regulations to establish criteria for (i) water auditing plans and (ii) leak detection and repair plans, and requiring any water withdrawal permit application to include a (i) water auditing plan and (ii) leak detection and repair plan that comply with the criteria adopted by the Board.

**Periodic Review and Small Business Impact Review Announcement**

*If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."*

---

This NOIRA is not being used to announce a periodic review or a small business impact review.

**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.*

---

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 by mail, email or fax to Joseph Grist, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, Phone (804) 698-4031, Fax (804) 698-4178, or 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 (<https://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 and notice of the hearing will be posted on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar (<https://commonwealthcalendar.virginia.gov/>).

### Regulatory Advisory Panel

*Please indicate, to the extent known, if advisers (e.g., regulatory advisory panel or negotiated rulemaking panel) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using a panel in the development of the proposal; 2) the agency is using a panel in the development of the proposal; or 3) the agency is inviting comment on whether to use a panel to assist the agency in the development of a proposal.*

---

The Board is using a regulatory advisory panel to develop a proposal. Persons interested in assisting in the development of a proposal should notify the Department's contact person by March 2, 2022 and provide their name, address, phone number, email address and the organization they represent (if any). The primary function of the panel 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 panel will be sent to all applicants.