


# COMMONWEALTH OF VIRGINIA

## Department of Environmental Quality

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**Subject:** Guidance Memo No. GM23-2005  
Public Participation Procedures for Water Quality Management Planning

**To:** Water Planning Program Managers, Water Planning Division Director, Water Permitting Division Director, Regional Directors

**From:** Scott Morris, Water Division Director 

**Date:** July 5, 2023

**Copies:** Deputy Regional Directors, Central Operations Director, Regional Operations Director, Policy Director, Director of Regulatory Affairs and Outreach

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### Summary:

This document provides guidance to maintain consistency with the requirements found in § 2.2-4006 A 14 of the Administrative Process Act (APA) for waste load allocations adopted, amended, or repealed by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.) The procedures outlined in this guidance set forth the process to provide the public and stakeholders with an adequate opportunity to participate in the development and modification of TMDLs and Implementation Plans, 305(b)/303(d) Integrated Reports, non-TMDL waste load allocations, and TMDL priorities. This guidance memo replaces Guidance Memo No. GM14-2016.

### Electronic Copy:

Once effective, an electronic copy of this guidance will be available on the Virginia Regulatory Town Hall under the Department of Environmental Quality

<https://townhall.virginia.gov/L/gdocs.cfm?agencynumber=440>

### Contact information:

For additional information regarding TMDLs, please contact Justin Williams, Office of Watershed and Local Government Assistance Programs, at (804) 659-1125 or at [Justin.Williams@deq.virginia.gov](mailto:Justin.Williams@deq.virginia.gov).

For additional information regarding the 305(b)/303(d) Integrated Reports, please contact Bryant Thomas, Office of Ecology, at (804) 396-5846 or at [Bryant.Thomas@deq.virginia.gov](mailto:Bryant.Thomas@deq.virginia.gov)

For additional information regarding non-TMDL Waste Load Allocations, please contact Meghan Mayfield, Water Permitting Director at (804) 914-3729 or at [Meghan.Mayfield@deq.virginia.gov](mailto:Meghan.Mayfield@deq.virginia.gov)

### Certification:

As required by Subsection B of [§ 2.2-4002.1](#) of the APA, the agency certifies that this guidance document conforms to the definition of a guidance document in [§ 2.2-4101](#) of the Code of Virginia.

### Disclaimer:

**This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate or prohibit any particular action not otherwise required or prohibited by law or regulation. If alternative proposals are made, such proposals will be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.**

# **Public Participation Procedures for Water Quality Management Planning**

Virginia Department of Environmental Quality

# Public Participation Procedures for Water Quality Management Planning

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## Background

On November 5, 2001, the State Water Control Board (“the Board”) published for public comment a proposed regulation concerning public participation guidelines for water quality management planning and the proposed repeal of 18 existing water quality management plans (“WQMPs”) as state regulations. After completion of the public comment period, several changes were made to the original proposal, including a decision to have the Board (i) establish a public participation process in guidance, not regulation; and (ii) have a WQMP Regulation that would contain total maximum daily loads (TMDLs or “cleanup study”), stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations (“WLAs”). The final regulatory action established the Water Quality Management Planning Regulation (WQMPR), 9VAC25-720, effective April 24, 2003.

During the 2014 General Assembly, a provision<sup>1</sup> was added to Virginia's Administrative Process Act (APA) which grants an exemption for the Board's adoption, amendment, or repeal of WLAs into the WQMPR. Therefore, these procedures have been established to be consistent with § 2.2-4006 A 14 of the APA. Specifically, actions resulting in adoption, amendment, or repeal of WLAs and procedures for Board approval have been revised to comply with the exemption criteria. Implementation Plans (cleanup plans), TMDL modifications, 305(b)/303(d) Integrated Reports, TMDL priority establishment and non-TMDL waste load allocations are also addressed in this guidance document. These procedures were further modified to reflect the 2022 Act of the General Assembly<sup>2</sup> to transfer the Board’s authorities not related to promulgation of regulations to the Department of Environmental Quality (DEQ or the Department).

## Section I. Purpose

This guidance document sets forth the public participation procedures that DEQ should follow in connection with development of 305(b)/303(d) Integrated Reports, TMDLs, implementation plans, and non-TMDL based WLAs<sup>3</sup> in order to provide the public and stakeholders with an adequate opportunity to participate in their development and implementation and also sets out the procedures necessary to comply with the exemption provisions of § 2.2-4006 A 14 of the APA for adoption, amendment, or repeal of WLAs in the WQMPR.

## Section II. Public participation of 305(b)/303(d) Integrated Report actions

**A. Public notice.** The Department gives public notice of the following 305(b)/303(d) Integrated Report actions:

1. The draft guidance for developing the 305(b)/303(d) Integrated Report for assessing water quality and defining impaired waters has been prepared under § 62.1-44.19:5 C of the State Water Control Law and is available for public review and comment (Water Quality Assessment Guidance Manual published biannually). The public notice for the draft guidance availability should contain the applicable information on the action pursuant to Section IV of this guidance and the requirements for a 30-day informal comment period. This public notice should be given by: (i) posting a general notice on the Virginia Regulatory Town Hall website; and (ii) posting on DEQ's Water Quality Assessment webpage. After incorporating comments from this initial 30-day informal comment period, the guidance document shall be subject to a 30-day public comment period to meet the requirements of the Administrative Process Act § 2.2-4002.1 B after publication in the Virginia Register and prior to its effective date.
2. The draft 305(b)/303(d) Integrated Report has been prepared under § 62.1-44.19:5 C of the State Water Control Law and is available for public review and comment. The public notice for the draft Integrated Report should contain: (i) information on the action pursuant to Section IV of this guidance; (ii) requirements for a 30-day comment period; and (iii) details for in-person or virtual public information session(s). Public notice should be given by: (i) posting a general notice on the Virginia Regulatory Town Hall website; (ii) publication in the

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<sup>1</sup> See [Chapter 202](#) of the 2014 Acts of Assembly ([House Bill 445](#)).

<sup>2</sup> See [Chapter 356](#) of the 2022 Acts of Assembly ([Senate Bill 657](#)).

<sup>3</sup> This refers to those WLAs included in part B of the Basin sections of the WQMPR that are generally developed via a comprehensive water-quality based model.

Virginia Register as a general notice; and (iii) posting on DEQ's Water Quality Assessment webpage. Public notices which include an announcement of public information session (s) shall contain the following details: (i) date, time, and location of the session(s); and (ii) a brief description of the nature and purpose of the session(s), including any applicable rules and procedures. In addition, the information session shall be noticed by posting on the Virginia Regulatory Town Hall website at least seven working days prior to the date and posting to DEQ's Water Quality Assessment webpage and the DEQ Calendar webpage.

3. An impaired water has attained water quality standards and is to be removed from the Environmental Protection Agency (EPA) approved 303(d) list prior to EPA approval of the subsequent 303(d) list. The public notice for the removal should contain information on the action pursuant to Section IV of this guidance and the requirements for a 30-day comment period. Public notice should be given by: (i) posting a general notice on the Virginia Regulatory Town Hall website; (ii) publication in the Virginia Register as a general notice; and (iii) posting on DEQ's Water Quality Assessment webpage. As an alternative to issuing a separate public notice, actions to remove impaired waters may also be combined with the 305(b)/303(d) Integrated Report public notice as described in Section II.A.2.

**B. Multiple actions.** Public notices may describe more than one 305(b)/303(d) Integrated Report action.

### **Section III. Public participation for TMDL (cleanup study) and Implementation Plan (cleanup plan) actions**

**A. Public notice.** For the TMDL (cleanup study) and Implementation Plan (cleanup plan) processes under § 62.1-44.19:7 of the State Water Control Law, the Department gives public notice when:

1. A TMDL development process is beginning under § 62.1-44.19:7 of the State Water Control Law (see Section V.B)<sup>4</sup>. The TMDL development's initial public notice shall contain: (i) information on the action pursuant to Section IV of this guidance (ii) requirements for a 30-day comment period; (iii) details for the public meeting in accordance with Section V.A of this guidance; and (iv) information regarding a TMDL Advisory Group (TAG) or Community Engagement meeting<sup>5</sup>. Public notice shall be given by publication in the Virginia Register and should also be given by posting on DEQ's TMDL Public Notices webpage, DEQ public calendar, and mailing to the persons listed in Section VI of this guidance. Notice of any associated public meeting(s) shall also be given by posting on the Virginia Regulatory Town Hall website as specified in Section V.A of this guidance.

2. A draft TMDL report has been prepared and is ready for public review and comment. The public notice for the draft report availability should contain: (i) information on the action pursuant to Section IV of this guidance; (ii) requirements for a 30-day comment period; and (iii) details for the public meeting in accordance with Section V.A of this guidance. Public notice should be given by (i) publication in the Virginia Register; (ii) posting on DEQ's TMDL Public Notices webpage and DEQ's public calendar; and (iii) mailing to the persons listed in Section VI of this guidance. Notice of any associated public meeting(s) shall also be given by posting on the Virginia Regulatory Town Hall website as specified in Section V.A of this guidance.

3. A draft TMDL report modification has been prepared and is ready for public review and comment.<sup>6</sup> The public notice for this modification shall<sup>7</sup> contain: (i) information on the action pursuant to Section IV of this guidance; (ii) requirements for a 30-day comment period; (iii) details for the public meeting in accordance with Section V.A of this guidance; and (iv) information regarding the TAG or Community Engagement meetings. Public notice shall be given by (i) publication in the Virginia Register and should also be given by posting on DEQ's TMDL Public Notices webpage, DEQ public calendar, and mailing to the persons listed in

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<sup>4</sup> Required in accordance with [§ 2.2-4006 A 14](#) of the APA.

<sup>5</sup> A TMDL Advisory Group (TAG) is a panel of individuals assembled and approved by DEQ for TMDL development to provide information and advise DEQ on the actions being undertaken. A Community Engagement meeting is an informational and feedback meeting that any member of the public can attend to learn about project development and provide input to DEQ on the actions being undertaken. Refer to Section III.A.7, III.A.8 and Section V.B of this guidance for additional requirements for TMDL Advisory Groups or Community Engagement meetings.

<sup>6</sup> The requirement pertains only to TMDL report modifications where the overall waste load allocation is being increased or decreased.

<sup>7</sup> Required in accordance with [§ 2.2-4006 A 14](#) of the APA.

Section VI of this guidance. Notice of any associated public meeting(s) shall also be given by posting on the Virginia Regulatory Town Hall website as specified in Section V.A of this guidance.

4. An implementation plan (IP), also known as a cleanup plan, development process is beginning. The public notice for commencement of the IP development process should contain: (i) information on the action pursuant to Section IV of the guidance; (ii) requirements for a 30-day comment period; (iii) information regarding Community Engagement meetings; and (iv) details for the public meeting in accordance with Section V.A of the guidance. Public notice should be given by: (i) publication in the Virginia Register; (ii) posting on DEQ's Cleanup Plans Public Notices webpage; and (iii) mailing to the persons listed in Section VI of this guidance. Notice of any associated public meeting(s) shall<sup>8</sup> also be given by posting on the Virginia Regulatory Town Hall website as specified in Section V.A of this guidance.

5. A draft IP or IP modification has been prepared and is ready for public review and comment. The draft IP public notice should contain: (i) information on the action pursuant to Section IV of this guidance; (ii) requirements for a 30-day comment period; and (iii) details for the public meeting in accordance with Section V.A of this guidance. Public notice should be given by: (i) publication in the Virginia Register; (ii) posting on DEQ's Cleanup Plans Public Notices webpage; and (iii) mailing to the persons listed in Section VI of this guidance. Notice of any associated public meeting(s) shall<sup>8</sup> also be given by posting on the Virginia Regulatory Town Hall website as specified in Section V.A of this guidance.

6. A priority ranking for TMDL development and TMDL alternatives has been prepared, pursuant to § 62.1-44.19:7 C of the State Water Control Law and is available for public review and comment. The public notice of the priority schedule should contain the descriptive information on the action and the requirements for a 30-day comment period. Public notice should be given by publication in the Virginia Register and posting on DEQ's TMDL Public Notices webpage. Notice of any associated public meeting(s) shall<sup>8</sup> also be given by posting on the Virginia Regulatory Town Hall website as specified in Section V.A of this guidance. The priority ranking may be contained within the draft 305(b)/303(d) Integrated Report and included as part of the public notice as described in Section II.A.2.

7. The public notice of a TAG meeting shall<sup>8</sup> include: (i) the date, time, and location of meeting; and (ii) a brief description of the nature and purpose of the meeting, including any applicable rules and procedures. This notice shall<sup>8</sup> be posted on the Virginia Regulatory Town Hall website and should be posted on DEQ's Public Notices webpage and the DEQ public calendar. The proposed agenda and minutes of TAG meetings shall be drafted and posted on the Virginia Regulatory Town Hall website in accordance with § 2.2-3707 and § 2.2-3707.1 of the FOIA, respectively. All materials furnished to members of a TAG meeting shall be made available to the public by posting on DEQ TMDL webpages in accordance with § 2.2-3707 of the FOIA. See Section V.B of this guidance for additional information on TAG meetings.

8. The public notice of a Community Engagement meeting should include: (i) the date, time, and location of meeting; and (ii) a brief description of the nature and purpose of the meeting, including any applicable rules and procedures. This notice should be posted on the Virginia Regulatory Town Hall website, DEQ's Public Notices webpage, and the DEQ public calendar. The proposed agenda and a meeting summary of Community Engagement meetings should be drafted and posted on the Virginia Regulatory Town Hall website. All materials furnished for a Community Engagement meeting should be made available to the public by posting on the DEQ TMDL or IP webpages. See Section V.B of this guidance for additional information on Community Engagement meetings.

**B. Multiple actions.** Public notices may describe more than one TMDL or TMDL actions.

#### **Section IV. Public notice contents**

The public notice information describing the action being taken for the water quality management planning under Sections II and III of this guidance should contain the following minimum information:

1. Description of the action being taken.

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<sup>8</sup> Required in accordance with [§ 2.2-3707](#) of the FOIA.

2. If applicable, the name of the water or stream segment, location description (including the name of the county), and watershed for which the action is being taken.
3. A brief description of the procedures for submitting comments and the time and location of any public meeting that may be held.
4. Name and address of the Department's office(s) responsible for the action for which public notice is being given. If the study or action will involve multiple regions, each regional office affected should be listed, and
5. Name, address, telephone number and e-mail address of the DEQ staff person(s) from whom interested persons may obtain information.

## **Section V. Meetings**

### **A. Public meetings**

Public meetings are held to provide the public with information pertaining to the specific water quality action, such as the introduction of a new clean-up study or a TMDL/IP draft report. These meetings are called public meetings and are normally held in conjunction with a public comment period. The purpose of the public meeting is to clarify and provide information to interested persons on the action.

A public meeting shall<sup>9</sup> be held when: (i) the TMDL development process is initiated as provided in Section III.A.1; (ii) a TMDL report modification is drafted where the overall WLA is being increased or decreased as provided in Section III.A.3; or (iii) a non-TMDL WLA is being adopted, amended, or repealed as provided in Section X.B.1. Public meetings should also be held when: (i) a draft TMDL report is ready for public review as described in Section III.A.2, (ii) the IP development process is initiated as described in Section III.A.4, and (iii) a draft IP is ready for public review as described in Section III.A.5 of this guidance.

Public notices which include an announcement of a public meeting shall<sup>11</sup> also contain the following details: (i) date, time, and location of public meeting(s); and (ii) a brief description of the nature and purpose of the public meeting, including any applicable rules and procedures. In addition, all public meetings shall<sup>10</sup> be noticed by posting on the Virginia Regulatory Town Hall website at least seven working days prior to the meeting date and posting on DEQ's Public Notices webpage and the DEQ public calendar. Public meetings held in conjunction with a comment period shall also be noticed by posting on the Virginia Register as described in Section III and Section X. Any public meeting convened pursuant to this section should be held in the geographic area of the proposed action.

Any person may photograph, film, record, or otherwise reproduce any portion of a public meeting as long as the use of the recording equipment does not physically interfere with the meeting, in accordance with the provisions of § 2.2-3707 of the FOIA.

### **B. TMDL Advisory Group (TAG) meetings and Community Engagement meetings**

To adhere to the requirements of § 2.2-4006 A 14(ii) of the APA, DEQ will invite the public to comment on the establishment of a TAG to assist in TMDL development, as provided in Section III.A.1. One or more requests to establish a TAG during the public comment period will require DEQ to formally establish a TAG with membership determined by DEQ. Persons requesting the Department use a TAG must notify the DEQ contact person by the end of the initial comment period. If a TAG is convened, all individuals who wish to participate on the TAG will be considered on a case-by-case basis and membership is at the discretion of DEQ. Notification of the composition of the group will be sent to all individuals who requested participation. The Water Planning Division Director or Regional Director will approve the TAG member list prior to the initial meeting. Depending on the nature of specific TMDL projects, and at DEQ's discretion, the Department may also decide to establish a TAG without first inviting the public to comment on its establishment. In this situation, the initial public meeting notice should reflect that DEQ plans to establish a TAG and request participation from the public. After establishing the TAG, DEQ will hold meetings with the TAG during TMDL development to

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<sup>9</sup> Required in accordance with 2.2-4006 A 14 for adoption/amendment/repeal of any TMDL-based WLA in 9VAC25-720.

<sup>10</sup> Required in accordance with § 2.2-3707 of the FOIA.

present progress and solicit the group's input. Any member of the public may attend and observe TAG meetings. However, only group members who have been invited by the department to serve on the TAG may actively participate in the group's discussions. As warranted, DEQ should provide a means for those persons not on the group to make their concerns known to the group to ensure full consideration of all issues surrounding the TMDL in question, provided it is not disruptive or does not inhibit the advancement of the work of the group. This would include a portion of time set aside for public feedback typically held at the end of the meeting to solicit public feedback on the discussions during the meeting.

If DEQ does not receive a request to establish a TAG during the initial comment period (Section III.A.1), then the Department will proceed by conducting Community Engagement meetings during TMDL development to present progress and solicit feedback from the public (in addition to the initial and final public meetings). The purpose of these meetings is for the Department to provide information and receive public input on the actions being undertaken. But, in this scenario, the department does not establish a TAG with approved membership. Any individual who attends the Community Engagement meeting can participate and is encouraged to provide input.

A TAG may include, but is not limited to, representatives in the watershed from governments, VPDES permittees, environmental groups, industry, agriculture, silviculture, manufacturing, residential areas, or mining.

A TAG is a meeting of a public body and shall be duly noticed and held in accordance with the provisions of FOIA<sup>11</sup>. The notice for a TAG meeting shall also include the following details: (i) date, time, and location of the meeting(s); and (ii) a brief description of the nature and purpose of the meeting, including any applicable rules and procedures. In addition, these meetings shall<sup>12</sup> be noticed by posting on the Virginia Regulatory Town Hall website at least seven working days prior to the meeting date and shall be posted on DEQ's Public Notices webpage and the DEQ public calendar. The proposed agenda and minutes of a TAG meeting shall be drafted and posted on the Virginia Regulatory Town Hall website in accordance with § 2.2-3707 and § 2.2-3707.1 of the FOIA respectively. All materials furnished to members of a TAG meeting shall be made available to the public by posting on the DEQ TMDL webpages in accordance with § 2.2-3707 of the FOIA.

Minutes are required<sup>12</sup> for any TAG meeting or any subgroup (such as a working group). Minutes shall include: the date, time, and location of the meeting; the members of the TAG present and absent; a summary of matters discussed; and a record of any decisions made. In accordance with § 2.2-3707.1 of the FOIA, draft minutes of meetings must be posted to the Virginia Regulatory Town Hall website as soon as possible but no later than 10 working days after the conclusion of the meeting. Final approved meeting minutes must be posted on the Virginia Regulatory Town Hall website within three working days of final approval of the minutes. Minutes of a TAG do not have to be officially approved by the group unless the group establishes that requirement.

A Community Engagement meeting (or any subgroup) does not have a designated membership but should follow similar public notice procedures. The notice for a Community Engagement meeting should also include the following details: (i) date, time, and location of the meeting(s); and (ii) a brief description of the nature and purpose of the meeting, including any applicable rules and procedures. In addition, these meetings should be noticed by posting on the Virginia Regulatory Town Hall website at least seven working days prior to the meeting date and posted on DEQ's Public Notices webpage and the DEQ public calendar. The proposed agenda and meeting summary of a Community Engagement meeting should be drafted and posted on the Virginia Regulatory Town Hall website. All materials furnished for a Community Engagement meeting should be made available to the public by posting on the DEQ TMDL or IP webpages.

Any person may photograph, film, record, or otherwise reproduce any portion of a TAG or Community Engagement meeting as long as the use of the recording equipment does not physically interfere with the meeting, in accordance with the provisions of § 2.2-3707 of the FOIA.

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<sup>11</sup> See FOIA under Chapter 37 of Title 2.2 of the Code of Virginia.

<sup>12</sup> Required in accordance with § 2.2-3707 of the FOIA.

## **Section VI. Mailing of public notifications**

As described under Section III.A.1 through III.A.5 of this guidance, public notice should also be given by mailing<sup>13</sup> a copy of a notice to the following persons:

1. Any Planning District Commission that may have jurisdiction over the areas included in the action.
2. Federal and state agencies having jurisdiction (i.e., lands in the watershed) that may be affected by the action.
3. Soil and Water Conservation Districts having jurisdiction over areas included in the action.
4. Chief administrative officer or designee and chair of governing body or designee of any unit of local government having jurisdiction over the areas included in the action.
5. Any adjacent state that may be affected by the results of the action, and
6. Persons on the mailing list maintained by the Regional Office including DEQ permittees affected by TMDL development, as well as those who request to be on the list.
7. Representatives from each federally recognized Tribe in the Commonwealth that may be affected by the action.

Regional DEQ offices should be responsible for maintaining watershed-specific contact lists of persons and organizations.

## **Section VII. Other notification methods**

Announcement of the public notices as described under Sections II, III, IV and X of this guidance may also be given by any other method reasonably calculated to give actual notice to persons potentially affected, including press releases, or any other forum or medium to elicit public participation, such as posting a notice in a local newspaper or social media sites in accordance with Department policies.

## **Section VIII. Public comments and Department response**

During the public comment periods for the public notices under Sections II.A, III.A.1-6, and IV.A of this guidance, any interested person may submit written comments on the actions being public noticed. All relevant comments should be considered by the Department when developing the TMDL and by the Board when taking actions under Section IX of this guidance. The APA § 2.2-4006 A 14 also requires a summary of the response to written comments. A summary response to comments should be prepared and made available to the public.

## **Section IX. Board Adoption of TMDL WLAs**

Once DEQ completes a TMDL report, the State Water Control Board adopts the TMDL WLAs as part of WQMPR, in accordance with § 2.2-4006 A 14 of the APA. Prior to the Board adopting the TMDL WLA into the appropriate river basin section of 9VAC25-720, DEQ shall issue a public notice with a 30-day comment period after the Department has completed a draft TMDL. The notice and comment period should occur after the Department has received preliminary approval of the draft TMDL from the Environmental Protection Agency (EPA), and prior to the Board meeting where DEQ presents the WLA(s) for adoption. § 2.2-4006 A 14 of the APA requires a summary of the response to written comments which shall be provided to the Board prior to them adopting the WLA. The public notice should contain (i) information on the action pursuant to Section IV of this guidance (ii) information on the WLA(s) being adopted, amended, or repealed from the regulation; and (iii) requirements for a 30-day comment period. Public notice shall be given by publication of a General Notice in the Virginia Register.

## **Section X. Procedures and Public participation for non-TMDL waste load allocations**

### **A. Non-TMDL WLA Development procedures**

1. Part B of the river basin sections of the WQMPR contain WLAs and effluent limits (called non-TMDL WLAs) presented in stream segment classification tables. The WLAs provided in Part B were determined

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<sup>13</sup> The definition of mail means electronic or postal delivery pursuant to [§ 10.1-1183](#) of the Code of Virginia.



through watershed or stream segment analysis carried out through the Virginia Pollution Discharge Elimination System (VPDES) permit issuance process and supported by either segment modeling or past watershed modeling.

2. Updates to the Part B non-TMDL WLAs must adhere to the requirements of § 2.2-4006 A 14 of the APA. If a non-TMDL WLA, needs to be adopted, amended, or repealed, DEQ staff should notify the DEQ Water Permits Division, which will initiate the process for incorporating the WLA changes into the appropriate section of the WQMPR.

3. To adhere to the requirements of § 2.2-4006 A 14 of the APA, DEQ will invite the public to comment on the establishment of a non-TMDL WLA advisory group. One or more requests to establish an advisory group during the public comment period will require DEQ to formally establish the group with membership determined by DEQ. Persons requesting the Department use an advisory group must notify the DEQ contact person by the end of the initial comment period. All individuals who wish to participate on the advisory group will be considered on a case-by-case basis and membership is at the discretion of DEQ. Notification of the composition of the group will be sent to all individuals who requested participation. The Water Permitting Division Director approves the advisory group member list prior to the initial meeting. At DEQ's discretion, the Department may also decide to establish an advisory group without first inviting the public to comment on its establishment. In this situation, the initial public meeting notice should reflect that DEQ plans to establish an advisory group and request participation from the public. After establishing the group, DEQ will hold one or more meetings with the group to present progress and solicit input. Any member of the public may attend and observe meetings. However, only group members who have been invited by the Department to serve on the advisory group may actively participate in the group's discussions. As warranted, DEQ should provide a means for those persons not on the group to make their concerns known to the group to ensure full consideration of all issues surrounding the WLA in question, provided it is not disruptive or does not inhibit the advancement of the work of the group.

4. A public meeting shall<sup>14</sup> be held when a non-TMDL WLA is being adopted, amended, or repealed.

## **B. Public notice**

1. For non-TMDL based WLAs, the Department gives public notice when development or modification of a non-TMDL WLA is beginning. The initial public notice shall<sup>15</sup> contain: (i) information on the action pursuant to Section IV of this guidance; (ii) requirements for a 30-day comment period; (iii) details for the public meeting in accordance with Section V.A of this guidance; and (iv) information regarding the advisory group. The public notice information regarding the advisory group shall state one of the following:

- i. An advisory group to assist in development of this WLA was convened on [provide the date].
- ii. An advisory group to assist in development of the WLA will be established. Persons interested in assisting should notify the DEQ 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). Notification of the composition of the panel will be sent to all applicants; or
- iii. An advisory group to assist in development of the WLA will not be established. However, public comment on the use of an advisory group is invited. Persons requesting the agency use an advisory group and those interested in assisting should notify the DEQ contact person by the end of the comment period and provide their name, address, phone number, email address and their organization (if any). Notification of the composition of the panel will be sent to all applicants.

The initial public notice shall<sup>15</sup> be published in the Virginia Register and should also be given by posting on DEQ's website and mailed to the persons listed in Section VI of this guidance. Notice of any associated public meeting(s) shall<sup>16</sup> also be given by posting on the Virginia Regulatory Town Hall website as specified in Section V.A of this guidance.

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<sup>14</sup> Required in accordance with 2.2-4006 A 14 for adoption/amendment/repeal of any non-TMDL WLA in 9VAC25-720.

<sup>15</sup> Required in accordance with [§ 2.2-4006 A 14](#) of the APA.

2. Whenever an advisory group meets, the public notice of the advisory group meeting shall<sup>16</sup> include: (i) the date, time, and location of meeting; and (ii) a brief description of the nature and purpose of the meeting, including the applicable rules and procedures. This notice shall<sup>16</sup> be posted on the Virginia Regulatory Town Hall website and posted on DEQ's Public Notices webpage and the DEQ public calendar. Minutes of advisory group meetings shall be drafted and posted on the Virginia Regulatory Town Hall website in accordance with § 2.2-3707.1 of the FOIA. The proposed agenda and minutes of advisory group meetings shall be drafted and posted on the Virginia Regulatory Town Hall website in accordance with § 2.2-3707 and § 2.2-3707.1 of the FOIA respectively. In accordance with § 2.2-3707 of the FOIA, all materials furnished to members of an advisory group shall be made available to the public by posting on the DEQ webpage.

**C. Multiple actions.** Public notices may describe more than one non-TMDL WLA action.

### **Section XI. Delegation**

The Director or his/her designee may perform any action contained in this document except those prohibited by § 62.1-44.14 of the State Water Control Law.

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<sup>16</sup> Required in accordance with § 2.2-3707 of the FOIA.