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Periodic Review Report of Findings

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-610
Regulation title	Ground Water Withdrawal Regulations
Date this document prepared	Match 12, 2019

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 (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

Please define all acronyms used in this Report. 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 are used in this report.

Legal Basis

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

The basis for this regulation is provided for in Sections 62.1-44.15(10) and 62.1-266 of the Code of Virginia. The State Water Control Board promulgated this regulation to establish requirements for groundwater withdrawal permits.

Alternatives

Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

State statute is permissive concerning the issuance of groundwater permits. One alternative considered was the removal of requirements for withdrawals of groundwater to obtain a permit. This alternative was rejected since it would not be protective of human health and the environment. Groundwater aquifers are a valuable resource that need to be protected from being overdrawn. If withdrawals of groundwater are not regulated and monitored, aquifers may be overdrawn, causing other groundwater users to not be able to withdraw groundwater or reducing the aquifer's ability to store water. In 2017, DEQ reevaluated and reduced groundwater withdrawal permits due to data that demonstrated a future over allocation of the

Potomac Aquifer. Monitoring and permitting groundwater withdrawals protects the aquifer from being overdrawn, and allows for the safe withdrawal of groundwater.

Public Comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

An informal advisory group was not formed for the purpose of this periodic review.

The following comments were received from Mr. Scott J. Thomas, citizen during the public comment period.

Comments:

Water conservation and management plan requirements for the groundwater withdrawal regulations should also incorporate provisions to 1) attempt to preserve those NRCS hydrologic soil group A and B soils which serve as recharge areas within the groundwater management areas; and 2) attempt to preserve riparian buffers along perennial water bodies (streams, lakes, etc.) which are present in groundwater management areas and which also contribute to groundwater recharge. HSG A and B soil group locations are well documented by federal, state and local GIS tools, County Soil Surveys and the NRCS web soil survey tool, community comprehensive plans, and master plans or site specific development plans which require erosion and sediment control, stormwater management, and/or pollution prevention plans. Reducing withdrawals and requiring water conservation and management plans to lessen demand is great, but if we also destroy the interaction/interface zones where precipitation tries to infiltrate into soils and shallow or deep groundwater zones all across the Commonwealth, then we are also concurrently destroying the feeder systems to our shallow or deeper groundwater aquifers. One way to accomplish this is to expand Resource Management Area and Resource Protection Area type requirements similar to the Tidewater Chesapeake Bay Preservation Area program to the rest of the state. These types of CBPA protections are well documented to serve not only for reduction in nonpoint source pollution from surface water (runoff) sources but also for groundwater recharge purposes. The mass scale of implementation would have impact to maintain groundwater recharge (sources) instead of a slow strangling off of the contributing source. Thank you

Response:

DEQ agrees that protection of groundwater recharge areas is important to protecting the overall quality and quantity of the Commonwealth's groundwater resources. U. S. Geological Survey research indicates that aquifers recharge over the entire extent of the land surface overlying them. While there is aquifer recharge in outcrop and highly permeable soil areas, protection of groundwater protection areas has less impact on the total recharge of deep confined aquifers than the surficial aquifer in a coastal aquifer system. This regulation regulates the actual withdrawal of groundwater and the statute does not provide authority to manage other land use related issues that may affect groundwater. It establishes requirements that permitted withdrawers of groundwater are required to meet in order to minimize withdrawals from groundwater, and the vast majority of these withdrawals come from the confined aquifer.

Water conservation and management plans are required by Section § 62.1-262 of the Code of Virginia to include the following:

- (i) use of water-saving plumbing and processes including, where appropriate, use of 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; and (iv) 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 Code of Virginia also requires the Board to approve water conservation plans in compliance with the requirements listed in the Code of Virginia above. The commenter's suggestions for additional requirements to be included in water conservation and management program are inconsistent with the requirements for water conservation and management plans in state law and the regulation will not be revised.

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation is necessary for the protection of public health, safety and welfare and is clearly written and easily understandable. The regulation protects groundwater aquifers.

Decision

Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The requirements of the regulation continue to be needed. One citation was identified as incorrect in the regulation and the regulation will be amended to correct the citation.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

The regulation continues to be needed to protect groundwater resources in the Commonwealth.

Comments were received during the public comment period requesting additional requirements be included in Water Management and Conservation Plans to address the protection of water recharge areas. The Code of Virginia specifies the components of the Water Management and Conservation Plans and requires the Board to approve Water Conservation and Management Plans meeting the requirements of state law. Protection of water recharge areas is addressed through other regulatory programs and no change is needed to this regulation.

The regulation contains requirements concerning large withdrawals of groundwater. Groundwater withdrawal permits are required for withdrawals of 300,000 gallons per month or greater in designated groundwater management areas. In order to be protective of the aquifer, technical information concerning the withdrawal is needed in order to evaluate the impact the withdrawal has on the groundwater aquifer. DEQ's permitting staff works with applicants to assist the applicant with understanding the technical requirements of the regulation.

The requirement for groundwater withdrawal permits is a state requirement and there is no equivalent federal requirement for a groundwater permit to be issued. This regulation is consistent with current state law.

This regulation was last amended in 2014, 2016, and 2018. This regulation has been periodically updated to maintain consistency with requirements of state law.