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## Periodic Review Report of Findings

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9VAC25-380
<b>Regulation title</b>	Wetlands Policy
<b>Date this document prepared</b>	November 4, 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*.

### 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 State Water Control Board has promulgated this regulation under the authority found in § 62.1-44.15 (10) of the Code of Virginia to adopt regulations necessary "to enforce the general water quality management program of the Board."

### 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.*

Wetlands assist with absorbing flood waters, water purification, and provide wildlife habitat. The Wetland Policy recognizes the importance of wetlands and calls for their conservation. Repeal of the policy is not recommended because it would de-emphasize the role wetlands play. The current wetland policy adequately expresses the policy for preserving wetlands and wetland ecosystems and protecting them from destruction.

### 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 purposes of assisting in the periodic review.

Committer	Comment	
Virginia Transportation Construction Alliance (VTCA)	Supports the Wetlands Policy [9 VAC 25 - 380] be retained in its current form.	The agency agrees the policy should be retained.
Pamela Mason, Virginia Institute of Marine Science, collaboratively with the Virginia Coastal Policy Center	9 VAC 25-380-10(B): Suggest amending language to read “. . . preserve the wetland ecosystems <del>and</del> to protect them from destruction <u>and despoliation,</u> <u>and to plan for their persistence in the face of sea level rise by . . .</u> ”	The goal of the Wetland Policy is to recognize the importance of the wetlands and the conservation of them. Wetlands play a key role in moderating extremes in water flow as mentioned in 20B. Sea level rise would be one subset of flooding, which is already addressed in the policy.
Pamela Mason	9 VAC 25-380-20(B): Suggest adding language to read “. . . Such areas moderate extremes in water flow <u>and quantity,</u> aid in the natural purification of water . . .” and, at the end of the provision “. . . as well as wildfowl and other hunting <u>and non-harvest recreation such as bird watching.</u> ”	The current language in the policy "Moderate extremes in water flow" already addresses water "quantity". Bird watching is a type of recreation covered in 9VAC25-380-20 B. The regulation states "They are unique recreational areas, high in aesthetic value, that contain delicate and irreplaceable specimens of fauna and flora and support fishing, as well as wildfowl and other hunting." There is no need to amend the policy.
Pamela Mason	9VAC 25-380-30: Suggest referencing the Commonwealth's No Net Loss policy within this section. See Virginia Code § 62.1-44.15:21 and 9 Virginia Administrative Code § 25-210-116.	The Wetlands Policy is purposefully general, whereas the noted policy is more specific and separate from this policy. It is not necessary to duplicate the more specific policy here, nor reference all of the potential, external policies that may be associated with this general policy.
Pamela Mason	9 VAC 25-380-30(A): Suggest amending language to read “. . . to recognize the irreplaceable value and <del>man's</del> <u>the</u> dependence on them to maintain . . .”	The agency has noted the suggested editorial change and is retaining the current regulatory language.
Pamela Mason	9 VAC 25-380-30(A) "...and to protect them from damaging misuses". Reference the no net loss requirement of § 62.1-44.15:21 and 9 VAC 25-210-116 in this section.	The Wetlands Policy is purposefully general, whereas the noted policies are more specific and separate from this policy. It is not necessary to duplicate the more specific policy here, nor reference all of the potential, external policies that may be associated with this general policy.
Pamela Mason	9 VAC 25-380-30(C): Suggest adding language to read “. . . the construction of waste water treatment facilities, <u>stormwater best management practices,</u> or other waste treatment-associated appurtenances . . .”	Stormwater is a type of discharge and thus is addressed by this policy. There is no need to amend the policy to specify a particular type of discharge. No change will be made to the regulation.

### 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 policy recognizes the important role that wetlands play in protecting water quality, reducing water pollution, and the value of wetlands as a natural resource. It also encourages their conservation in order to maintain the quality of Virginia's waters. It is clearly written in non-technical language and is easily understandable by the individuals and entities it affects.

### 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 regulation continues to be needed and will be retained without changes.

### 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. The Wetland Policy establishes the importance of protecting wetlands from destruction and recognizes the unique role wetlands play in managing water quality.

Comments were received from Virginia Transportation Construction Alliance (VTCA) supporting retaining the Wetlands Policy in its current form. Comments with suggested edits to the policy were received from Pamela Mason, Virginia Institute of Marine Science in conjunction with the Virginia Coastal Policy Center.

The regulation is clearly written in non-technical language and is easily understandable by the individuals and entities it affects.

This policy compliments, but does not take the place of, the Virginia Water Protection Permit Program Regulation (9 VAC 25-210-10 *et seq.*). The regulation does not duplicate or conflict with federal or state law or regulation.

The regulation was last evaluated in 2011. The content of this policy remains current and applicable.

The Wetlands Policy is applicable throughout the state with the goal of encouraging the conservation of wetlands. Small businesses will not be adversely impacted by the wetlands policy.

### Family Impact

*Please assess the potential impact of the regulation's impact on the institution of the family and family stability.*

This regulation does not have a direct impact on the family or family stability.