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## Periodic Review and Small Business Impact Review Report of Findings

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9 VAC 25-740
<b>VAC Chapter title(s)</b>	Water Reclamation and Reuse Regulation
<b>Date this document prepared</b>	September 1, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

## Acronyms and Definitions

*Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

DPR – direct potable reuse  
GAR – groundwater aquifer replenishment  
IPR – indirect potable reuse  
VAMWA - Virginia Association of Municipal Wastewater Agencies, Inc. (VAMWA)

## 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 or 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.*

The legal basis for the Water Reclamation and Reuse Regulation (9 VAC 25-740-10 et seq.) is the State Water Control Law (Law) (Chapter 3.1 of Title 62.1 of the Code of Virginia). Section 62.1-44.15 authorizes the State Water Control Board (Board) to promulgate regulations necessary to carry out its powers and duties.

Specific to water reclamation and reuse, § 62.1-44.2 establishes the purpose of the Law to, among other things, promote and encourage the reclamation and reuse of wastewater in a manner protective of the environment and public health. More specifically, § 62.1-44.15(10) and § 62.1-44.15(15) give authority to the Board to adopt regulations as it deems necessary, to enforce the general water quality management program, and to promote and establish requirements for the reclamation and reuse of wastewater that are protective of state waters and public health as an alternative to directly discharging pollutants into state waters.

The State Water Control Board (Board) adopted the initial regulation in 2008 and amended it in 2014.

### Alternatives to Regulation

*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.*

In lieu of retaining the existing Water Reclamation and Reuse Regulation without change, the alternative considered was repealing the regulation. This alternative was rejected on the basis that repealing the regulation would not meet the purpose of the State Water Control Law established in § 62.1-44.2, which is to, among other things, promote and encourage the reclamation and reuse of wastewater in a manner protective of the environment and public health. This purpose of the Law embodied in the regulation is essential to engendering and maintaining consumer confidence in reclaimed water as a safe, predictable and reliable alternative water resource to support continued economic growth in Virginia.

The Code of Virginia and the Water Reclamation and Reuse Regulation do not mandate water reuse. Instead, Virginia uses a market-based approach that allows localities and other entities to choose to implement water reclamation and reuse contingent upon their unique water needs and available resources, which may be for economic or other reasons. This regulation provides requirements to entities that choose to implement water reclamation and reuse to ensure that these activities are conducted in a manner that is protective human health and the environment.

### Public Comment

*Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

An informal advisory group was not formed as part of this review.

Commenter	Comment	Agency response
Kevin Parker, Environmental Scientist, HRSD	<b><u>Develop a Comprehensive Potable Reuse Framework.</u></b> IPR and Groundwater Aquifer Replenishment projects are already active in Virginia. The technology	DEQ’s regulation currently allows indirect potable reuse via surface waters, but prohibits direct potable reuse (DPR). Since 2008 when the regulation first went into effect, technological advancements have

	<p>for DPR exists and can protect the environment and public health, while providing a valuable resource, high quality potable water. The regulation should consider developing a comprehensive indirect and direct potable reuse framework. At a minimum, the express prohibition in 9VAC25-740-50 against direct potable reuse should be removed to provide the flexibility for Virginia to respond effectively and quickly to water resource challenges.</p>	<p>been made to make DPR a more feasible, safe and reliable alternative potable water resource. Although DEQ does not intend to amend the regulation at this time, changes proposed by the comment will be considered among future amendments to the regulation and may warrant further discussion with stakeholders to determine the risks and benefits to public health that may result by allowing DPR.</p> <p>DEQ recognizes and supports Groundwater Aquifer Replenishment (GAR) projects as an innovative means to meet Virginia’s water resource management needs. However, GAR projects involve groundwater recharge with a water source, which may include reclaimed water, via a direct injection well authorized by the EPA Underground Injection Control Program (40 CRF, Part 144). This activity is specifically excluded from (or is not subject to) the requirements of this regulation in accordance with 9VAC25-740-50.A. No change is being proposed to the regulation in response to this comment.</p>
<p>Kevin Parker, Environmental Scientist, HRSD</p>	<p><b><u>Education and notification requirements for Level 1 reclaimed water.</u></b> The end use of the reclaimed water should dictate the reporting requirements, not the quality of the water. The regulation requires that an education and notification program be developed and submitted for reuses using Level 1 reclaimed water (9VAC25-740-170). A reuse facility may produce only Level 1 reclaimed water, yet distribute this water to an end user for consumptive industrial use with minimum human contact. An education-notification program would be required because the water is Level 1, but based on the use, the education-notification program is unnecessary.</p>	<p>The regulation, specifically 9VAC25-740-170.A, states that an “education and notification program shall be developed and submitted ... <u>for reuses that require Level 1 reclaimed water</u>”. Therefore, a reuse that would normally require a minimum of Level 2 reclaimed water in lieu of Level 1 reclaimed water, typically due to a lower potential for public or worker contact, <u>will not require an education and notification program whether Level 1 or Level 2 is used</u>. This would apply, for example, where Level 1 reclaimed water is used for a reuse that requires a minimum of Level 2 reclaimed water. No change is being proposed to the regulation in response to this comment.</p>
<p>Kevin Parker, Environmental Scientist, HRSD</p>	<p><b><u>Reclaimed water signage messaging.</u></b> The required language (9VAC25-740-170) on a reclaimed water sign is "CAUTION: RECLAIMED WATER – DO NOT DRINK." Signs should offer a positive messaging about reclaimed water while still informing people to not drink the water. Bold “CAUTION” warnings immediately</p>	<p>Although DEQ does not intend to amend the regulation at this time, changes proposed by the comment will be considered among future amendments to the regulation and may warrant further discussion with stakeholders to determine the risks and benefits to public health and the environment that may result by changing messaging requirements for reclaimed water signage.</p>

	<p>assign negative traits to this beneficial reclamation of water. If we want to encourage reuse and have people judge water by its quality rather than its history, signs should include less alarming language.</p> <p>Two examples of positive signage from the state of Florida:</p> <ol style="list-style-type: none"> <li>1. Reclaimed Water – A Recycled Resource (Not suitable for drinking)</li> <li>2. Watering with Reclaimed Water - St. Petersburg – conserving Florida’s water resources since 1977 – Not suitable for drinking.</li> </ol>	<p>In the interim, 9VAC25-740-55 allows any person or entity wishing to initiate a project for the production, distribution, or reuse of reclaimed water that is not excluded from the requirements of the Water Reclamation and Reuse Regulation to apply for a variance to design, construction or maintenance requirements of the regulation where requiring the project to comply with such requirements would be contrary to the purpose of State Water Control Law, specifically §621.-44.2. This could apply, for example, to identification, notification and signage requirements for reclamation systems, reclaimed water distribution systems, storage facilities and reuse areas. DEQ may grant a variance if it finds that the hardship imposed, which may be economic, outweighs the benefits of the project and that the granting of such variance would not adversely impact public health or the environment.</p>
<p>Kevin Parker, Environmental Scientist, HRSD</p>	<p><b><u>Reclaimed water filling stations.</u></b> Reclaimed water filling stations for the general public are common in other states (California Irvine Ranch Water District, California Ironhouse Sanitary District, etc.). These stations would provide public access to Level 1 reclaimed water, a beneficial supply of non-potable water, requiring the user to complete a simple application and provide their own container. Although the regulation does not prohibit filling stations in Virginia, the requirements are cumbersome and discouraging to suppliers and potential end-users. The regulation should encourage filling stations and provide a non-burdensome framework for public access to this beneficial water resource.</p>	<p>A non-burdensome framework for public access to reclaimed water via reclaimed water filling stations already exists. End users that receive reclaimed water for reuse from a DEQ-authorized reclaimed water filling station are not required to obtain a permit from DEQ unless the end user is also (i) the generator of the reclaimed water dispensed by the station; and/or (ii) a reclaimed water agent authorized to distribute reclaimed water to one or more end users. End users not requiring a permit from DEQ will be required to have a service agreement or contract with their provider of reclaimed water, which is to include instructions on the proper handling and use of the reclaimed water for the protection of public health and the environment. The content of service agreements or contracts is discussed in 9VAC25-740-100.C and can vary in complexity according to the end users volume and reuses of the reclaimed water, among other factors. DEQ does not believe that this process is or needs to be overly burdensome to a degree that would generally discourage water reuse; and meets the purpose of State Water Control Law, which is to “promote and encourage the reclamation of wastewater in a manner protective of the environment and public health. No change is being proposed to the regulation in response to this comment.</p>

<p>George Hayes, PE, President, Virginia Association of Municipal Wastewater Agencies, Inc. (VAMWA)</p>	<p><b><u>Rework Prohibition of Direct Potable Reuse.</u></b> The State’s current regulations are unduly burdensome to the regulated community and discourage pursuit of these [water reclamation and reuse] beneficial projects. Most of the regulatory changes made in 2013 appeared to contribute more to the regulator’s ability to administer the regulation, and less to the promotion and encouragement of reuse projects by the facility owners that consider whether to undertake a reuse project.</p> <p>For these reasons, VAMWA encourages the Board to open the regulations for further amendments. There are a number of issues that would come forward in a reexamination of the current regulation. For example, groundwater replenishment projects are underway in Virginia, providing valuable public health, aquifer stabilization and other public benefits. The regulation should be amended to more effectively support such projects, and at a minimum, the express prohibition in 9VAC25-740-50 against direct potable reuse should be reworked. VAMWA also requests that the Board consider any individual VAMWA member comments.</p>	<p>Although DEQ does not intend to amend the regulation at this time, VAMWA’s comments may be considered among future amendments to the regulation and may invite further discussion with stakeholders, including VAMWA, to determine in what ways the regulation may be made less burdensome to the regulated community while remaining protective of public health and the environment.</p> <p>Also, refer to responses to the first comment above regarding groundwater aquifer replenishment projects and direct potable reuse.</p>
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**Effectiveness**

*Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.*

In accordance with State Water Control Law, specifically § 62.1-44.15(15), the regulations promote and establish requirements for the reclamation and reuse of wastewater that are protective of state waters and public health as an alternative to directly discharging pollutants into state waters. The regulation accomplishes this with common-sense, implementable reclaimed water standards, and treatment, design, construction, operation and maintenance requirements for the reclamation and reuse of wastewater. As water reclamation and reuse is not mandatory in Virginia, requirements of the regulation only apply where a locality or other entity chooses to implement water reclamation and reuse contingent upon their unique water needs and resources, which may be for economic or other reasons.

This regulation, which is similar in content and organization to the water reuse regulations of many other states with successful, established water reclamation and reuse programs, is easy to read and understand.

**Decision**

*Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).*

*If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.*

The agency recommends that the Water Reclamation and Reuse Regulation (9VAC25-740) be retained without change. This regulation is necessary to ensure that the reclamation and reuse of wastewater, when implemented, is conducted in a manner protective of the environment and public health; and is essential to promoting and encouraging water reclamation and reuse by engendering and maintaining consumer confidence in reclaimed water as a safe, predictable and reliable alternative water resource to support continued economic growth in Virginia.

This regulation is a voluntary regulation. Water reclamation and reuse is not mandatory in Virginia, and the requirements of the regulation only apply where a locality or other entity chooses to implement water reclamation and reuse contingent upon their unique water needs and resources, which may be for economic or other reasons.

**Small Business Impact**

*As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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 applicable law, will minimize the economic impact of regulations on small businesses.*

The Water Reclamation and Reuse Regulation (9VAC25-740) remains necessary. Consistent with State Water Control Law, the regulation includes requirements for the reclamation and reuse of wastewater that are protective of state waters and public health as an alternative to directly discharging pollutants into state waters; and is essential to promoting and encouraging water reclamation and reuse by engendering and maintaining consumer confidence in reclaimed water as a safe, predictable and reliable alternative water resource to support continued economic growth in Virginia..

Public comments were received during periodic review of this regulation, and focused on the following:

- Develop a comprehensive framework for an indirect and direct potable reuse in Virginia. This would involve removing the prohibition on direct potable reuse (DPR) in the regulation, and the likely addition of numerous and more stringent and complicated requirements specifically for DPR to the regulation.
- Make the education and notification program requirement unnecessary for the distribution of Level 1 reclaimed water to reuses that normally require the less highly treated and disinfected reclaimed water, Level 2. The regulation already allows for the change proposed by the commenter; therefore, no changes are necessary.

- Make the messaging on signage for reclaimed water more positive while still informing people not to drink the water. This can be addressed without changes to the regulation through existing variance provisions of the regulation that may allow deviations from existing messaging requirements. Although the messaging requirements could be amended, it is unknown as to whether this would result in more or fewer signage messaging requirements in the regulation.
- Provide a non-burdensome framework for public access to reclaimed water via filling stations. Such a framework already exists in the regulation and is further described in agency guidance available to the public on the Virginia Regulatory Town Hall website.
- Amend the regulation to more effectively support groundwater aquifer replenishment. Any changes to the existing regulation to add requirements for direct injection of reclaimed water into an aquifer for groundwater replenishment would be redundant of EPA's Underground Injection Control Program (40 CFR, Part 144). Such regulatory duplication is unwarranted; therefore, no changes are necessary.

None of the commenters indicated that their suggested change would minimize the impact of the regulation on small business. See the Public Comment section of this document for more detailed agency responses to the individual comments.

The regulation is technical in nature and contains requirements that are complex, frequently mirroring or referencing other similarly complicated state regulations for wastewater and water treatment, and codes for indoor plumbing. The regulation also includes different reclaimed water standards and treatment requirements based on the type of wastewater to be reclaimed and the intended reuse of the reclaimed water.

There are federal guidelines but no federal regulations for the reclamation and reuse of wastewater. Therefore, the regulation is a state only regulation. Due to the fact that water reclamation and reuse is not mandatory in Virginia, requirements of the regulation only apply where a locality or other entity chooses to implement water reclamation and reuse contingent upon their unique water needs and resources, which may be for economic or other reasons.

Although changes in technology have occurred since the last amendment of the regulation in 2014, design and operational requirements of the regulation remain applicable and relevant. During this same period, more federal and state funding opportunities for water reuse have become available through the Water Infrastructure and Innovation Act and the Virginia Clean Water Revolving Loan Fund.

Consistent with § 62.1-44.2 of the Code of Virginia, the regulation promotes and encourages the reclamation and reuse of wastewater in a manner protective of the environment and public health, but does not require any person or party, including small businesses, to perform this activity. Consequently, the regulation does not adversely impact small businesses.

## Family Impact

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

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Since the adoption of this regulation in October 2008, there has been no known impact of this regulation on families. Provided the regulation is retained without change, it is anticipated that the regulation will continue to have no impact on families.