



Final Regulation Agency Background Document

Approving authority name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC 25-401
Regulation title	Sewage Treatment in the Dulles Area Watershed
Action title	- Adoption of New Regulation (9 VAC 25-401) - Repeal of Existing Regulation (9 VAC 25-400)
Document preparation date	July 9, 2004

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also alert the reader to changes made to the regulation since publication of the proposed. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

This regulatory action is the adoption of a new regulation entitled Sewage Treatment in the Dulles Area Watershed, 9 VAC-25-401. The regulation is an update and rewrite of 9 VAC 25-400, Policy for Waste Treatment and Water Quality Management for the Dulles Area Watershed, which the State Water Control Board adopted in 1975. The Board also repealed the old regulation when it adopted the new regulation.

The regulation limits the number of sewage treatment plants discharging to surface waters within the defined watersheds to two and requires state-of-the-science effluent requirements for the two plants. The affected area is primarily northwestern Fairfax County, eastern Loudoun County, and the very north west corner of Arlington County.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The State Water Control Board adopted the new regulation, Sewage Treatment in the Dulles Area Watershed, and repealed the old regulation on June 17, 2004.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

If the final text differs from the text at the proposed stage, please indicate whether the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

The regulation was adopted pursuant to authority vested in the State Water Control Board by 62.1-44.15(3) and 62.1-44.15(13) of the State Water Control Law. 62.1-44.15(3a) gives the State Water Control Board the authority to establish standards of quality and policies for state waters. 62.1-44.15(13) gives the Board authority to establish policies for area-wide water quality plans and to consider the feasibility of combined sewage treatment plants with consultation from local authorities.

The final text is unchanged from the proposed version that the Office of Attorney General certified.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

In general, the purpose for adopting the new regulation was that the original regulation needed to be updated. Specifically, the purpose was twofold:

1. To rewrite the regulation using regulatory language that is clear and concise so that all conditions are easily understood. The previous version was written as a planning document.

2. To update the technical requirements of the required effluent limitations so that they accurately reflect the state-of-the-science and the changes that have occurred to water quality regulations over the past 25 years.

The regulation addresses a significant public health, safety, and welfare issue. Its purpose is to provide additional protection of water quality in proximity to the drinking water intakes located on the Potomac River and on Goose Creek. The streams draining the Dulles area watersheds enter the Potomac River near the withdrawal points for three major Washington area water utilities, Washington Aqueduct Division, Fairfax County Water Authority, and Washington Suburban Sanitary Commission. These utilities serve over 3 million people in Washington D.C. and its surrounding suburbs in Northern Virginia and Maryland.

Sewage treatment discharges located upstream of drinking water intakes are not uncommon in Virginia. The Department of Health, Office of Water Programs (VDH) usually requires a minimum of 5 miles separation between a discharge and intake. When a discharge does occur to a public water supply the Department of Environmental Quality (DEQ) applies additional water quality standards (9 VAC 25-260-140) and may require additional wastewater treatment.

This regulation provides additional assurance that the drinking water supply is protected.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The regulation retains the two salient requirements of its predecessor: (1) a limit on the number of sewage treatment plants that can discharge in the watershed, and (2) very stringent effluent limits on the sewage treatment plants.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
3) *other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

The primary advantage of the new regulation is added protection to the drinking water supply. It is generally accepted that a few large regional sewage treatment plants provide better assurance of water quality protection than multiple smaller plants. The disadvantage is that the prohibition of other sewage treatment plants that discharge to surface waters is counter to how most of the

state is managed and removes an option often used to provide sewage treatment. The regulation does not provide any advantage or disadvantage to DEQ.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

There were no changes made to the regulation.

Public comment

Please summarize all public comment received during the 60-day period following the publication of the proposed stage, and provide the agency response. If no public comment was received, please so indicate.

Commenter	Comment	Agency response
Loudoun County Sanitation Authority	Supported the adoption of the new regulation.	Concur.
Town of Leesburg	Supported the adoption of the new regulation.	Concur.
Fairfax County Water Authority	(1) Supported the adoption of the new regulation. (2) Requested the addition of an independent monitoring program.	(1) Concur. (2) The Department of Environmental Quality did not believe the requested addition needed to be in the regulation; the entities are free to develop an independent program without the need for a regulation mandating it.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

The existing regulation needed to be updated and rewritten. Because the editing was so extensive, it was decided to repeal the existing regulation in its entirety and adopt a completely new version of the regulation. The following details the changes.

- The regulation clearly identifies the watersheds subject to the regulation.

- The regulation is divided into five distinct regulatory sections that are clearly discernable. The existing regulation has only one section, 9 VAC 25-400-10.
- The regulation clearly sets forth the condition that there shall only be two STPs discharging to the affected waters.
- The regulation removes the non-regulatory background discussion and staff recommendation language in the existing regulation since this information is no longer applicable.
- The regulation removes Attachment B - Interim Plan of the existing regulation since this language is no longer applicable.
- The most important and salient requirements of the existing regulation are in Attachment A - Long Range Policy. These requirements are maintained and made more clear in the new regulation. These requirements are:
 - The prohibition of new STPs discharging to surface waters within the defined watersheds except for two regional STPs.
 - The requirements that the effluent be at least 10 miles from the drinking water intake and meet very stringent maximum effluent limits for the two regional plants.
- The regulation sets forth the effluent limits for the two STPs. These effluent limits are modified from the existing regulation. The effluent limits in the regulation are the limits prescribed in the Occoquan Policy, 9 VAC 25-410. These changes use the experience gained from the Occoquan Policy and eliminate those limits in the existing regulation that are considered unachievable.
- The regulation requires the owners of the two STPs to know the nitrate levels in the vicinity of the Fairfax County Water Authority intake on the Potomac River and minimize any impacts the effluents are having on those nitrate levels.
- The regulation retains only those reliability, operation and maintenance, and design requirements that are not fully required by Virginia's Sewage Collection and Treatment Regulation; the other requirements in the existing regulation have been removed.
- The regulation includes two exception clauses to the prohibition of other discharges. These two clauses allow (1) grandfathering of existing STPs that discharge to surface waters and cannot hook-up to a regional plant and (2) entities with failing septic drainfields to obtain permits for a discharging STP when there are no other sewage treatment alternatives. This latter clause is to avoid having to close down a business or evicting homeowners from their homes.
- The regulation removes the restriction on the initial capacity of the existing regulation.
- The regulation requires the owners of the two STPs to conduct instream monitoring to determine what affects their effluent is having on downstream water quality.

- The regulation does not include the non-point source elements of the existing regulation since these elements are redundant to the regulations the state has adopted for control of non-point sources.

Impact on family

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The new regulation has no direct impact on the institution of the family and family stability.