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Periodic Review Report of Findings

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-230
Regulation title	Procedural Rule No. 1 - Public and Formal Hearing Procedures
Date this document prepared	October 1, 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.

Board- State Water Control Board

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.

Section 62.1-44.15 (10) of the Code of Virginia authorizes the State Water Control Board (board) to adopt regulations to enforce the general water quality management program of the board in all or part of the Commonwealth. Section 62.1-44.15 (7) of the Code of Virginia authorizes the board to adopt rules governing the board's procedures for hearings, filing reports, issuing certificates and special orders, and other procedures. Section 62.1-44.15:02 of the Code of Virginia sets forth the procedures for public hearing and permits before the board and this regulation must not conflict with the requirements of state law. The State Water Control Board's procedures for public and formal hearings must also be consistent with the requirements of the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

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.

One alternative considered was the removal of procedures for public hearings related to the issuance of permits from this regulation since those provisions are outlined in Section 62.1-44.15:02 of the Code of Virginia and procedures for public participation concerning permits are included in individual permit regulations as well. This would remove confusion concerning the different types of hearings and the

procedures for public hearings and permits before the board. The regulation will be amended in the future to maintain consistency with other regulations and state code.

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 assisting with the periodic review. No comments were received during the public comment period.

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.

The regulation establishes the process for requesting public and formal hearings, with the goal of having all requests for these hearings handled in a consistent manner. This promotes the fair and equal treatment of all requests for public and formal hearings. This regulation is effective in achieving this goal. The regulation protects the health, safety and welfare of citizens by establishing consistent procedures for requesting these hearings and allowing for public participation in the permitting process.

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 will be amended in the future to maintain consistency with other regulations and state code.

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.

This regulation continues to be needed but will be amended in the future to maintain consistency with other regulations and state code. The regulation establishes the procedures for public and formal hearings; however, other water permit regulations contain provisions concerning public hearings related to permit issuances.

No comments were received during the public comment period.

The current regulation is complex and discusses procedures for public hearings (informal hearings) and formal hearings. Multiple other permit regulations discuss the process for hearings related to a permit which can lead to confusion concerning the requirements that need to be met. In order to make the regulation less complex, this regulation will be amended in the future to maintain consistency with other regulations and state code.

As currently written, the regulation contains public hearing requirements for both formal and informal hearings. Other permit regulations, specifically 9VAC25-31 (Virginia Pollutant Discharge Elimination

System), 9VAC25-32 (Virginia Pollution Abatement regulation), 9VAC25-610 (Ground Water Withdrawal permit), 9VAC25-220 (Surface Water Withdrawals), 9VAC25-210 (Virginia Water Protection permit) contain specific requirements for public hearings that must be followed as part of the public comment process related to permits, including requirements for informal hearings.

The regulation was last amended in 2013 to address a statutory change allowing notifications to be delivered through postal or electronic means. Since this regulation was originally adopted, the number of water permitting programs has increased and additional water permit regulations have been adopted. When water permit program regulations were developed, details concerning hearings were included in the permit regulations. This may have led to confusion concerning the requirements for public hearings. Amending the regulation will minimize confusion concerning the requirements for hearings that are found in this regulation and other permit regulations. This change will benefit users of the regulation, including small businesses, since it will eliminate some confusion concerning the requirements concerning hearings.

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 impact the institution of the family or family stability.