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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Approving authority name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9 VAC 25-210-10 et seq.
<b>Regulation title</b>	Virginia Water Protection Permit Regulation
<b>Action title</b>	Virginia Water Protection Permit Regulation Amendments
<b>Document preparation date</b>	November 10, 2004

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://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](http://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](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The purpose of the proposed action is to amend and revise the Virginia Water Protection Permit (VWPP) Regulation and consider whether the following changes should be made: (1) to incorporate changes to the Code of Virginia relating to the emergency permitting of water withdrawal projects; (2) to incorporate the U.S. Supreme Court's ruling in *Virginia vs. Maryland*; (3) to include changes already made to the general permit regulations that corrected administrative procedures, clarified application and permitting requirements, and allowed for a more efficient application review process; (4) to implement a formal pre-application scoping process for water supply projects; (5) to clarify the requirement for cumulative impact assessment for water supply projects; (6) to clarify requirements for alternatives analysis for water supply projects; (7) to investigate ways to simplify, clarify and improve coordination of state agency reviews and comments for water supply projects; (8) to clarify who does and does not need a permit for a water withdrawal by more clearly defining certain terms in light of the statutory "grandfathering" of certain withdrawals; and (9) to clarify the process and criteria for establishing minimum instream flow requirements and evaluation of responses during drought conditions.

## 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.*

The basis for this regulation is provided for in Sections 62.1-44.15(10) and 62.1-44.15:5 of the Code of Virginia.

## Need

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

For last two years, DEQ's Water Policy Technical Advisory Committee (WP-TAC) has been evaluating ways to develop a more consistent approach to water supply planning in Virginia. This work was carried out under the auspices of SB 1221 (2003) which in addition to directing the development of draft regulatory criteria for local and regional water supply planning, also anticipated the identification of changes that should be considered to other water programs and processes. The WP-TAC has recommended that changes be considered to the VWPP process to provide greater predictability, increase state support for project need determinations, and gain a better understanding of the cumulative impacts to the beneficial uses of state waters. The proposed changes will allow for a more efficient and understandable application, review and issuance process. In turn, this will allow for greater consistency and predictability for the public.

## Substance

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

Proposed changes to the regulation being considered include:

A. Section 9 VAC 25-210-80.B.2, regarding information needed for Virginia Water Protection Permit (VWPP) applications involving surface water withdrawals will be amended to include:

- (1) a pre-application scoping meeting for informational purposes, at which the applicant presents the project and the public can speak;
- (2) an assessment of cumulative impacts to state waters and fish and wildlife resources; and
- (3) a clarification of requirements for an alternatives analysis.

B. The statutory provisions regarding the requirement to obtain a permit for a water withdrawal will be clarified by amending Section 9 VAC 25-210-10, by defining the terms "existing withdrawal", "new withdrawal" and "increased withdrawal."

C. Drought issues will be addressed by incorporating the changes made to section 62.1-44.15:5 of the Code of Virginia during the 2003 General Assembly session, regarding issuance of emergency water withdrawal permits for water supply during times of drought, and relief from minimum instream flow (MIF) conditions during drought, if any.

D. Housekeeping amendments will be considered to add or modify language in the regulation to reflect changes made during the VWPP General Permit revisions that were just completed. In addition, language will be added to clarify the ability to waive the need for an individual VWPP when local Wetland Boards (not just the Virginia Marine Resources Commission) issue tidal wetland permits.

### Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.*

Alternatives considered are limited. The proposed drought changes are the result of statutory changes made by the General Assembly and regulatory modifications are needed to implement this new provision of the Code. The other changes are recommendations resulting from recommendations of the WP-TAC to clarify and improve the permit process for water withdrawals under the VWPP regulation.

### Public Participation

*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also indicate whether a public meeting is to be held to receive comments on this notice. Indicate that 1) the agency is not holding a public meeting because the agency has authorized proceeding without holding a meeting or 2) the agency is holding a meeting. If a public meeting is to be held, indicate that the date, time and place of the meeting may be found in the calendar of events section of the Virginia Register of Regulations.*

The board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this notice or other alternatives, and 3) impacts of the regulation on farm and forest land preservation. Anyone wishing to submit written comments for the public comment file may do so at the public meeting or by mail, email or fax to Scott Kudlas, Virginia Department of Environmental Quality, 629 E. Main Street, 9<sup>th</sup> Floor, Richmond, VA 23219, phone 804-698-4456, fax 804-698-4347, email: [swkudlas@deq.virginia.gov](mailto:swkudlas@deq.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered comments must be received by 5:00 p.m. on the date established as the close of the comment period. A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

### Participatory Approach

*Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the*

*proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

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The board is using the participatory approach to develop this proposal. A work group has been established to assist in this process. Additional appointments to this work group may be considered. If you have an interest in serving on the work group, please submit your name and contact information to Scott Kudlas at the address specified above.

### Impact on family

*Assess the potential 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.*

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This regulation will have no affect on the institution of the family and family stability.