

NOTICE OF INTENDED REGULATORY ACTION
WATER QUALITY STANDARDS AMENDMENTS – DISSOLVED OXYGEN
ISSUED: December 20, 1999

Notice is hereby given in accordance with §9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: 9 VAC 25-260-5 et. seq. Water Quality Standards. Statutory authority for promulgating these amendments can be found in §62.1-44.15(3a) of the Code of Virginia.

SUBJECT: The purpose of the rulemaking will be to amend the Water Quality Standards to update numerical and/or narrative criteria for dissolved oxygen for certain waters of the Chesapeake Bay and other naturally occurring low dissolved oxygen waters where current criteria are not appropriate. Federal and state mandates in the Clean Water Act at 303(c), 40 CFR 131 and the Code of Virginia in §62.1-44.15(3a) allow for modifications of water quality standards.

INTENT: The intent of this rulemaking is to protect designated and beneficial uses in the Commonwealth by adopting regulations that are technically correct and reasonable. These standards will be used in setting Virginia Pollutant Discharge Elimination System Permit limits and for evaluating the waters of the Commonwealth for inclusion in the Clean Water Act 305(b) report and 303(d) list. Waters not meeting standards will require development of a Total Maximum Daily Load under the Clean Water Act 303(d).

NEED: This rulemaking is needed because the current dissolved oxygen criteria (4mg/l minimum and 5mg/l daily average) are not appropriate in waters where the naturally occurring dissolved oxygen levels are below the existing criteria. These types of water may include the deep trenches of the Chesapeake Bay, the deep waters of stratified lakes and wetlands. Changes to these criteria are needed to facilitate permitting, monitoring and Total Maximum Daily Load development.

ALTERNATIVES AVAILABLE TO MEET THE NEED: Many alternatives in the subject areas listed will become available as DEQ staff and the public begin to review scientific data and the needs of permitting and monitoring. DEQ will work in conjunction with other state and federal agencies to consider various alternatives. Alternatives provided by the public will also be considered.

The Department has not accepted nor rejected any alternatives as of yet. Some alternatives being considered by the agency now include, but are not limited to, the following:

- whether we should include alternative dissolved oxygen criteria for the Chesapeake Bay, wetlands and lakes;
- whether we should consider for adoption the Chesapeake Bay Living Resources Goals or Environmental Protection Agency criteria or some other criteria;
- whether zones for application of the criteria should be included and what these zones should be (i.e. application of a lower dissolved oxygen criterion one meter off the bottom (for the Bay), in the hypolimnion or below the thermocline (lakes), throughout the column (wetlands) or should some other zone be considered for application of the alternative criteria);
- whether to improve the specific narrative criterion that recognizes natural background differences for all waters. Currently natural conditions in surface water are recognized in the following sections of the regulation: 9 VAC 25-260-10.G, 9 VAC 25-260-50 and 9 VAC 25-260-250;

REQUEST FOR COMMENTS: Comments are requested on the intended regulatory action, including any ideas to assist the agency in the development of the proposal. Comments are requested on the costs and benefits of the stated alternatives or other alternatives. DEQ also requests comments as to whether the agency should use the participatory approach to assist the agency in the development of the proposal. The participatory approach is defined as a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with groups or individuals registering interest in working with the agency, or (iv) any combination thereof.

PUBLIC MEETING: A public meeting will be held on January 27, 2000 at 2:00 p.m. at the Virginia War Memorial, 621 South Belvidere Street, Richmond, Virginia 23220. Public comments on the intended regulatory action will be accepted until February 18, 2000. Please submit comments to Eleanore Daub, Office of Water Quality Programs, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219.

The agency intends to hold a public hearing on the proposed regulation after publication. This has not been scheduled yet.