

Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

9 VAC 25-260 – Water Quality Standards
Department of Environmental Quality
Town Hall Action/Stage: 4754/8151
February 14, 2018

Summary of the Proposed Amendments to Regulation

Pursuant to a petition for rulemaking, the State Water Control Board (Board) proposes to designate a portion of Laurel Fork in Highland County, Virginia as Exceptional State Waters (ESW).

Result of Analysis

There is insufficient information to ascertain whether benefits will outweigh costs.

Estimated Economic Impact

In September 2016, the Board received a petition for rulemaking¹ requesting that the Board “designate a segment of Laurel Fork in Highland County, the majority of which is within the property boundary of Rifle Ridge Farm, LP as Exceptional State Waters.” The Board now proposes to designate a segment of Laurel Fork “from the Rifle Ridge Farm property line near Collins Run (N38.49270, W79.66611) downstream to a point approximately 0.5 miles upstream from the confluence of Mullenax Run (N38.508322, W79.652757) as ESW. The petitioner, who owns Rifle Ridge Farm, initially requested ESW status for a longer stretch of Laurel Fork “from approximately 0.33 miles upstream of the confluence with Collins Run (Lat. N38.490051, Long. W79.666039) downstream to a point approximately 0.5 miles upstream from the confluence of

¹ <http://townhall.virginia.gov/1/ViewPTransmittal.cfm?petitionid=250&version=new>

Mullenax Run (Lat. N38.508322, Long. W79.652757)”² This longer stretch, however, ran partly through land owned by Tamarack of Highland, LLC. Because of concerns raised by Tamarack, LLC about possible adverse impacts to their property value and use, the Board’s proposal limits the ESW designation only to Laurel Fork as it runs within the boundaries of Rifle Ridge Farm, LP.

Board staff reports, “Upon permanent regulatory designation of a water body as an ESW, the quality of that water body will be maintained and protected by not allowing any degradation except on a very short term basis. No new, additional or increased point source discharge of sewage, industrial wastes or other pollution will be allowed in waters designated as ESW. In addition, no new mixing zones³ would be allowed in ESW and mixing zones from upstream or tributary waters could not extend into the Exceptional State Waters sections.” The Board found that the stretch of Laurel Fork that is the subject of this regulatory action met the criteria to be designated ESW because it was an “exceptional environmental setting” with “exceptional aquatic communities”. Specifically, this nominated waterway was found to house a self-sustaining brook trout population.

Board staff reports that this action will provide a benefit by preserving this section of waterway in its current state. By filing the petition that lead to this regulatory action, the petitioner has indicated that he believes that the benefits of having the ESW designation for Laurel Fork within his land boundaries outweigh any costs that he might incur. Board staff reports that affected landowners might be adversely affected by the prohibition against new or additional point source discharge of pollution and further reports that affected landowners may incur increased direct costs associated with wastewater or storm water treatment. The ESW designation might also have the effect of limiting or eliminating land use and development adjacent to the designated stretch of Laurel Fork. Commenters at the NOIRA stage of this action, for instance, expressed concern that future energy development might be negatively impacted by this ESW designation. Board staff reports that there are no landowners upstream within the mixing zone length of the proposed ESW who currently have point source discharge permits.

² See page two of the Agency’s background document submitted at the NOIRA stage of this regulatory action here: http://townhall.virginia.gov/1/GetFile.cfm?File=C:\TownHall\docroot\103\4754\7824\AgencyStatement_DEQ_7824_v2.pdf

³ DEQ’s glossary defines mixing zone as “a segment of a river or stream where pollution from a point source mixes with water and may exceed the recommended concentrations for some pollutants”. DEQ’s glossary can be found at: <http://www.deq.virginia.gov/Resources/Glossary/GlossaryM.aspx>

Landowners within the mixing zone length may be adversely impacted in the future if they have reason to seek point source discharge permits because they would not be able to discharge into the mixing zone.⁴ There is insufficient information about all possible benefits and costs for this action to ascertain whether benefits will outweigh costs.

Businesses and Entities Affected

This action will directly affect the owner of Rifle Ridge Farm. Although there are currently no point source permit holders within the mixing zone length of this proposed ESW, any landowners within that length have the potential to be adversely affected in the future.

Localities Particularly Affected

The waterway affected by this regulatory action is in Highland County, Virginia.

Projected Impact on Employment

This proposed regulatory change is unlikely to affect employment in the Commonwealth.

Effects on the Use and Value of Private Property

This proposed regulatory change will likely lower the market value of affected land as it limits land use.

Real Estate Development Costs

This proposed regulatory change would likely impede real estate development on land adjacent to the ESW.

Small Businesses:

Definition

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

Costs and Other Effects

Rifle Ridge Farm may incur additional costs on account of this regulatory action.

⁴ Board staff reports that alternatives to a point source permit might include installing a septic tank, pumping waste into a temporary receptacle and having it periodically hauled away or negotiating an easement to lay a pipe across neighboring land that would be outside of the mixing zone length. All of these options would have costs attached.

Alternative Method that Minimizes Adverse Impact

There is likely no alternative method that would both allow this designation as requested by the affected small business and minimize adverse impacts.

Adverse Impacts:

Businesses:

Rifle Ridge Farm may incur additional costs on account of this regulatory action.

Localities:

Localities in the Commonwealth are unlikely to see any adverse impacts on account of this proposed regulatory change.

Other Entities:

No other entities are likely to be adversely affected by this proposed change.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order Number 17 (2014). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.