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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	Primary Action: 9VAC25-910 Secondary Action: 9VAC25-610
Regulation title(s)	9VAC25-910 - General Permit for Use of Surficial Aquifer on the Eastern Shore 9VAC25-610 - Groundwater Withdrawal Regulations
Action title	Creation of a General Permit for Use of the Surficial Aquifer on the Eastern Shore
Date this document prepared	May 22, 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 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

There is significant non-potable groundwater use from the confined aquifer system for agricultural activities such as irrigation and cooling for poultry houses. Various parties on the Eastern Shore, including the Eastern Shore Groundwater Committee propose that use of the surficial aquifer or water table aquifer for non-potable uses achieves greater long-term aquifer sustainability. This regulatory proposal will amend the existing groundwater withdrawal regulation to authorize the development of a general permit and create a new general permit regulation to promote use of the surficial aquifer on the Eastern Shore.

Acronyms and Definitions

Please define all acronyms or technical definitions used in the Agency Background Document.

Board - State Water Control Board

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

This regulatory action is in response to the directive created by Chapter 755 of the 2019 Acts of Assembly that requires the Board to adopt regulations to provide incentives for the withdrawal of ground water from the surficial aquifer in the Eastern Shore Groundwater Management Area rather than from the deep aquifer in such management area.

Legal basis

Please identify: (1) the agency (includes any type of promulgating entity); and, (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should 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's overall regulatory authority.

Section 62.1-256 authorizes the Board to adopt such regulations as it deems necessary to administer and enforce the provisions of this chapter. Section 62.1-262.1 of the Code of Virginia requires the Board to adopt regulations to provide incentives for the withdrawal of ground water from the surficial aquifer in the Eastern Shore Groundwater Management Area rather than from the deep aquifer in such management area.

Purpose

Please describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of these regulatory actions is to provide incentives for the use of the surficial aquifer on the Eastern Shore for non-potable purpose through the creation of a general permit. The adoption of a general permit protects the health, safety or welfare of citizens by providing incentives for non-potable water needs to be met by the surficial aquifer, thus conserving groundwater in the lower aquifers for potable needs.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

Amendments to the Groundwater Withdrawal Regulations will establish the framework for the issuance of a general permit under the Groundwater Withdrawal Regulation. The new general permit regulation will include the establishment of permit terms, withdrawal limitations, and reporting requirements necessary to permit withdrawals.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

One alternative to the regulatory action is to not initiate a rulemaking to adopt a general permit. This alternative was rejected as the Board has been directed to adopt regulations to provide incentives for the use of the surficial aquifer on the Eastern Shore. Specific incentives that will be considered include extended permit terms of as long as 20 years, discounted permit fees, other subsidies or incentives that may be suggested by interested persons. t

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Please indicate how the public should contact the agency to submit comments on this regulation, including ideas to assist the agency in the development of the regulation and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments.

The Board is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. The Board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Scott Kudlas, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, (804) 698-4456, and scott.kudlas@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the [Virginia Regulatory Town Hall website](http://www.townhall.virginia.gov) (<http://www.townhall.virginia.gov>). Written comments must include the name and address of the commenter. In order to be considered, comments must be received before midnight on the last day of the public comment period.

Public Hearing at Proposed Stage

A public hearing will not be held following the publication of the proposed stage of this regulatory action unless requests for a public hearing are received during the NOIRA public comment period from at least 25 persons.

Regulatory Advisory Panel

Please indicate, to the extent known, if advisers (e.g., regulatory advisory panel or negotiated rulemaking panel) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using a panel in the development of the proposal; 2) the agency is using a panel in the development of the proposal; or 3) the agency is inviting comment on whether to use a panel to assist the agency in the development of a proposal.

The Board is using a panel to develop a proposal. Persons interested in assisting in the development of a proposal should notify the Department’s contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). The primary function of the panel is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the panel will be sent to all applicants.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, 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.

No impact on the institution of the family and family stability is expected as a result of this regulatory action.