



townhall.virginia.gov

## Exempt Action - Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation(s)</b>	9 VAC 25-720
<b>Regulation title(s)</b>	Water Quality Management Planning Regulation
<b>Action title</b>	Amendment to add one new TMDL waste load allocation in the James River Basin (9VAC25-720-60.A)
<b>Final agency action date</b>	September 6, 2019
<b>Date this document prepared</b>	August 6, 2019

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, 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*.

### Brief Summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The amendments to the state's Water Quality Management Planning Regulation (9VAC25-720) include adding one new TMDL waste load allocation in the James River Basin (9VAC25-720-60.A).

### Acronyms and definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

**Allocation:** That portion of a receiving water's loading capacity that is attributed to one of its existing or future pollution sources (nonpoint or point) or to natural background sources.

**Allocation Scenario:** A proposed series of point and nonpoint source allocations (loadings from different sources), which are being considered to meet a water quality planning goal.

**Background levels:** Levels representing the chemical, physical, and biological conditions that would result from natural geomorphological processes such as weathering and dissolution.

**Best Management Practices (BMP):** Methods, measures, or practices that are determined to be reasonable and cost-effective means for a land owner to meet certain, generally nonpoint source,

pollution control needs. BMPs include structural and nonstructural controls and operation and maintenance procedures.

**Calibration:** The process of adjusting model parameters within physically defensible ranges until the resulting predictions give a best possible good fit to observed data.

**Direct nonpoint sources:** Sources of pollution that are defined statutorily (by law) as nonpoint sources that are represented in the model as point source loadings due to limitations of the model. Examples include: direct deposits of fecal material to streams from livestock and wildlife.

**Failing septic system:** Septic systems in which drain fields have failed such that effluent (wastewater) that is supposed to percolate into the soil, now rises to the surface and ponds on the surface where it can flow over the soil surface to streams or contribute pollutants to the surface where they can be lost during storm runoff events.

**HSPF (Hydrological Simulation Program-Fortran):** A computer-based model that calculates runoff, sediment yield, and fate and transport of various pollutants to the stream. The model was developed under the direction of the U.S. Environmental Protection Agency (EPA).

**Hydrology:** The study of the distribution, properties, and effects of water on the earth's surface, in the soil and underlying rocks, and in the atmosphere.

**Instantaneous or Single Sample criterion:** The instantaneous criterion or instantaneous water quality standard is the value of the water quality standard that should not be exceeded at any time. For example, the Virginia instantaneous water quality standard for *E. coli* is 235 cfu/100 mL. If this value is exceeded at any time, the water body is in violation of the state water quality standard.

**Load allocation (LA):** The portion of a receiving water's loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background.

**Margin of Safety (MOS):** A required component of the TMDL that accounts for the uncertainty about the relationship between the pollutant loads and the quality of the receiving waterbody. The MOS is normally incorporated into the conservative assumptions used to develop TMDLs (generally within the calculations or models).

**Model:** Mathematical representation of hydrologic and water quality processes. Effects of land use, slope, soil characteristics, and management practices are included.

**Nonpoint source:** Pollution that is not released through pipes but rather originates from multiple sources over a relatively large area. Nonpoint sources can be divided into source activities related to either land or water use including failing septic tanks, improper animal-keeping practices, forest practices, and urban and rural runoff.

**Pathogen:** Disease-causing agent, especially microorganisms such as bacteria, protozoa, and viruses.

**Point source:** Pollutant loads discharged at a specific location from pipes, outfalls, and conveyance channels from either municipal wastewater treatment plants or industrial waste treatment facilities.

Point sources can also include pollutant loads contributed by tributaries to the main receiving water stream or river.

**Pollution:** Generally, the presence of matter or energy whose nature, location, or quantity produces undesired environmental effects. Under the Clean Water Act for example, the term is defined as the man-made or man-induced alteration of the physical, biological, chemical, and radiological integrity of water.

**Reach:** Segment of a stream or river.

**Runoff:** That part of rainfall or snowmelt that runs off the land into streams or other surface water. It can carry pollutants from the air and land into receiving waters.

**Septic system:** An on-site system designed to treat and dispose of domestic sewage. A typical septic system consists of a tank that receives liquid and solid wastes from a residence or business and a drainfield or subsurface absorption system consisting of a series of tile or percolation lines for disposal of the liquid effluent. Solids (sludge) that remain after decomposition by bacteria in the tank must be pumped out periodically.

**Simulation:** The use of mathematical models to approximate the observed behavior of a natural water system in response to a specific known set of input and forcing conditions. Models that have been validated, or verified, are then used to predict the response of a natural water system to changes in the input or forcing conditions.

**Straight pipe:** Delivers wastewater directly from a building, e.g., house, milking parlor, to a stream, pond, lake, or river.

**Total Maximum Daily Load (TMDL):** The sum of the individual wasteload allocations (WLA's) for point sources, load allocations (LA's) for nonpoint sources and natural background, plus a margin of safety (MOS). TMDLs can be expressed in terms of mass per time, toxicity, or other appropriate measures that relate to a state's water quality standard.

**Urban Runoff:** Surface runoff originating from an urban drainage area including streets, parking lots, and rooftops.

**Validation (of a model):** Process of determining how well the mathematical model's computer representation describes the actual behavior of the physical process under investigation. This follows the calibration of the model and ensures that the calibrated values adequately represent the watershed.

**Wasteload allocation (WLA):** The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.

**Water quality standard (WQS):** Law or regulation that consists of the beneficial designated use or uses of a water body, the numeric and narrative water quality criteria that are necessary to protect the use or uses of that particular water body, and an anti-degradation statement.

**Watershed:** A drainage area or basin in which all land and water areas drain or flow toward a central collector such as a stream, river, or lake at a lower elevation.

### Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

At its meeting on September 6, 2019 the State Water Control Board adopted the amendments to the Water Quality Management Planning Regulation (9 VAC 25-720 et seq.).

### 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, internal staff review, petition for rulemaking, periodic review, board decision, etc.). "Mandate" is defined as "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."*

Section 303(d) of the Clean Water Act (CWA) and the United States Environmental Protection Agency's (EPA) Water Quality Planning and Management Regulations require states to develop Total Maximum Daily Loads (TMDLs) for waterbodies that exceed water quality standards (WQS). The Commonwealth's Water Quality, Monitoring, Information and Restoration Act (WQMIRA) also requires DEQ to develop and implement TMDLs for the impaired waters.

### 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.*

DEQ developed the TMDL(s) in accordance with Federal Regulations (40 CFR § 130.7) and are exempt from the provisions of Article II of the Virginia Administrative Process Act. The TMDL report(s) were subject to the TMDL public participation process and the waste load allocations were adopted as part of 9 VAC 25-720 in accordance with Virginia's "Public Participation Procedures for Water Quality Management Planning."

### Purpose

*Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

Federal and state law require that DEQ develop a TMDL for a waterbody that exceeds water quality standards. A TMDL helps to establish water quality-based controls to reduce pollution from both point and nonpoint sources to restore and maintain the quality of Virginia's water resources.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

This TMDL adopts a new TMDL waste load allocation in the James River Basin.

**Public Comment Received**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. Ensure to include all comments submitted: including any received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.*

Commenter	Comment	Agency response

The comment period for the regulation amendment with the TMDL waste load allocations extended from August 5 – September 4, 2019.

**Detail of All Changes Made in this Regulatory Action**

*Please list all changes proposed in this exempt action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \*Please put an asterisk next to any substantive changes.*

**[For changes to existing regulation(s), please use the following chart otherwise delete:]**

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
60.A		James River Basin	Adopting one new TMDL waste load allocation in the James River Basin.

**Family Impact**

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

The amendment of the Water Quality Management Planning Regulation is for the protection of public health, safety, and welfare and the Board does not anticipate any direct impact on the institution of the family and family stability.