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Fast-Track Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-260-400; 420; 440; and 510
VAC Chapter title(s)	Water Quality Standards
Action title	Amending the Water Quality Standards regulation to designate four waters as Public Water Supply (PWS).
Date this document prepared	September 11, 2020

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

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 proposed substantive amendments to sections 9VAC25-260-400; 420; 440; and 510 of the State's Water Quality Standards would place a public water supply (PWS) notation in the Special Standards column next to the appropriate section of the river basin where the water supply intake is located.

Typically, more stringent criteria apply to numerous pollutant parameters to protect the designated use of public water supply for human consumption.

Three of the four water supplies are proposed and withdrawal structures are either currently in construction or are planned to be in the immediate future. One is active and all withdrawal structures and appurtenances have been constructed and are currently in use.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

Department -	Department of Environmental Quality
Board -	State Water Control Board
EPA -	Environmental Protection Agency
PWS -	Public Water Supply

Statement of Final Agency Action

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 December 9, 2020, the State Water Control Board authorized the Department to:

1. Promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The board’s authorization also constituted its amendment of the Water Quality Standards (9VAC25-260 et seq.) regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.

2. Set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal. (Note: effective date may not be established until U.S. Environmental Protection Agency approval of the amendments. Notice of approval will be published in the Virginia Register of Regulations.)

Mandate and Impetus

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, or board decision). 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.”

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

Section 62.1-44.15(3a) of the Code of Virginia, as amended, mandates and authorizes the State Water Control Board to establish water quality standards and policies for any State waters consistent with the purpose and general policy of the State Water Control Law, and to modify, amend or cancel any such standards or policies established. The federal Clean Water Act at 303(c) mandates the State Water Control Board to review and, as appropriate, modify and adopt water quality standards.

A PWS designation may require more stringent effluent limits for discharges from permitted facilities within a 5-mile distance beyond the locality that controls the PWS intake. However, Department staff have determined there are no permitted facilities within that 5-mile distance for any of the four facility intakes

for which a PWS designation is proposed. Also, a PWS designation protects source water that is used for human consumption. Given the above mentioned factors, the rulemaking is assumed to be noncontroversial.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The promulgating entity is the State Water Control Board.

The corresponding federal water quality standards regulation at 40 CFR 131.6 describes the minimum requirements for water quality standards. The minimum requirements are use designations, water quality criteria to protect the designated uses and an antidegradation policy. All of the citations mentioned describe mandates for water quality standards.

The Environmental Protection Agency (EPA) Water Quality Standards regulation (40 CFR 131.11) is the regulatory basis for the EPA requiring the states to establish water quality criteria to protect designated uses and the criteria are used to assess whether or not a waterbody is meeting those uses.

The State Water Control Law authorizes protection and restoration of the quality of state waters, safeguarding the clean waters from pollution, prevention and reduction of pollution and promotion of water conservation. The State Water Control Law (Code of Virginia) at §62.1-44.15(3a) requires the Board to establish standards of quality and to modify, amend or cancel any such standards or policies. It also requires the Board to hold public hearings from time to time for the purpose of reviewing the water quality standards, and, as appropriate, adopting, modifying or canceling such standards.

The correlation between the proposed regulatory action and the legal authority identified above is that the amendments being considered are modifications of criteria that will protect designated uses and criteria and designated uses are requirements of the Water Quality Standards.

The authority to adopt standards as provided by the provisions in the previously referenced citations is mandated, although the specific standards to be adopted or modified are discretionary to the EPA and the state.

Purpose

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's intended to solve.

The Department has concluded that the proposed amendments to the regulation are essential to protecting the health, safety and welfare of the citizens of the Commonwealth by protecting the water quality of source water for public water supplies.

Substance

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.

The proposed substantive amendment to sections 9VAC25-260-400; 420; 440; and 510 of the State's Water Quality Standards would create a new subdivision in the respective river basins and place a "PWS" notation in the Special Standards column next to that subdivision of the river basin where the water supply intake is located. A PWS notation indicates that criteria under the column heading "Public Water Supply" in the table located at 9VAC25-260-140.B apply in waters designated as such.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

There are no primary advantages or disadvantages to the public. The primary advantage to the agency and the Commonwealth is having improved protection for waters used as source water for public water supply. There is no disadvantage to the agency or the Commonwealth that will result from the adoption of this amendment.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

The proposed amendment does not exceed applicable federal minimum requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected
No other State agencies are particularly affected.

Localities Particularly Affected
Counties of Cumberland, Greene, Rockingham, and Washington.

Other Entities Particularly Affected
No other entities are particularly affected.

For purposes of "Locality Particularly Affected" under the Board's statutes

There is no locality particularly affected under the Board's statutes. None of the 4 counties affected by the amendments bear an identified disproportionate material water quality impact not experienced by any other county with public water supply designations.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>The proposed regulatory amendment should not cause any additional financial impact to the state. The water quality standards program is funded by EPA 106 grants as well as State general fund budget.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>It is not expected that these PWS designations will impose a cost on other state agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>N/A</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>It is not expected that these PWS designations will impose a cost on localities.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Protection of source water for public water supplies.</p>

Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>It is not expected that these PWS designations will impose a cost on other entities.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>The Department does not expect the proposed amendments to have any direct effect on small businesses.</p>

<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements. 	<p>N/A</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Protection of source water for public water supplies.</p>

Alternatives to Regulation

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.

The primary alternative considered to date was to leave the regulation unchanged. This was not the alternative chosen because it has been determined that waters that are being used, or will imminently be used, for potable drinking water should be provided commensurate protection by being designated as a Public Water Supply.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

Analysis not performed as no small businesses are affected.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for

publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the Department shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal and the potential impacts on the regulated community. Also, the board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reported, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to David C. Whitehurst, VA Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218; Phone: 804-698-4121; Fax: 804-698-4178; Email: David.Whitehurst@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC				Change, intent, rationale, and likely impact of new requirements
		Sec.	Class	Sp. Stds.	Section Description	
9VAC25-260-400		3	IV	pH-6.5-9.5, ESW-16	South Fork Shenandoah River from 5 miles above the Town of Shenandoah's raw water intake to its confluence with the North and South Rivers and its tributaries to their headwaters in this section, and the South River and its tributaries from its confluence with the South Fork Shenandoah River to their headwaters, unless otherwise designated in this chapter.	Amending section 9VAC25-260-400 to add new section 3d and the notation "PWS" in the special standards column to indicate the described
			
		<u>3d</u>	<u>IV</u>	<u>PWS</u>	<u>South Fork Shenandoah River and its tributaries from the City of Harrisonburg water supply intake</u>	

		<table border="1"> <tr> <td data-bbox="467 191 558 291"></td> <td data-bbox="558 191 657 291"></td> <td data-bbox="657 191 810 291"></td> <td data-bbox="810 191 1334 291"> <p><u>near the confluence of Big Run to points 5 miles upstream.</u></p> </td> </tr> </table>				<p><u>near the confluence of Big Run to points 5 miles upstream.</u></p>	<p>waters are afforded Public Water Supply protections. Water quality criteria in the Public Water Supply column at table 9VAC25-260-140.B apply to waters designated as "PWS".</p>												
			<p><u>near the confluence of Big Run to points 5 miles upstream.</u></p>																
<p>9VAC25-260-420</p>		<table border="1"> <thead> <tr> <th data-bbox="467 583 558 625">Sec.</th> <th data-bbox="558 583 657 625">Class</th> <th data-bbox="657 583 810 625">Sp. Stds.</th> <th data-bbox="810 583 1334 625">Section Description</th> </tr> </thead> <tbody> <tr> <td data-bbox="467 625 558 743">10</td> <td data-bbox="558 625 657 743">III</td> <td data-bbox="657 625 810 743"></td> <td data-bbox="810 625 1334 743"> <p>James River and its tributaries from a point at latitude 37°40'32"; longitude 77°54'08" to, and including the Rockfish River, unless otherwise designated in this chapter.</p> </td> </tr> <tr> <td data-bbox="467 743 558 890"><u>10t</u></td> <td data-bbox="558 743 657 890"><u>III</u></td> <td data-bbox="657 743 810 890"><u>PWS</u></td> <td data-bbox="810 743 1334 890"> <p><u>Cobbs Creek (Cumberland County) and its tributaries from the public water supply intake on Cobbs Creek Reservoir upstream to their headwaters.</u></p> </td> </tr> </tbody> </table>	Sec.	Class	Sp. Stds.	Section Description	10	III		<p>James River and its tributaries from a point at latitude 37°40'32"; longitude 77°54'08" to, and including the Rockfish River, unless otherwise designated in this chapter.</p>	<u>10t</u>	<u>III</u>	<u>PWS</u>	<p><u>Cobbs Creek (Cumberland County) and its tributaries from the public water supply intake on Cobbs Creek Reservoir upstream to their headwaters.</u></p>	<p>Amending section 9VAC25-260-420 to add new section 10t and the notation "PWS" to indicate the described waters are afforded Public Water Supply protections. Water quality criteria in the Public Water Supply column at table 9VAC25-260-140.B apply to waters designated as "PWS".</p>				
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<p>9VAC25-260-440</p>		<table border="1"> <thead> <tr> <th data-bbox="467 1218 558 1260">Sec.</th> <th data-bbox="558 1218 657 1260">Class</th> <th data-bbox="657 1218 810 1260">Sp. Stds.</th> <th data-bbox="810 1218 1334 1260">Section Description</th> </tr> </thead> <tbody> <tr> <td data-bbox="467 1260 558 1344">4</td> <td data-bbox="558 1260 657 1344">III</td> <td data-bbox="657 1260 810 1344">ESW 17,18</td> <td data-bbox="810 1260 1334 1344"> <p>Free flowing tributaries of the Rappahannock from Blandfield Point to its headwaters, unless otherwise designated in this chapter.</p> </td> </tr> <tr> <td data-bbox="467 1344 558 1428">.....</td> <td data-bbox="558 1344 657 1428">.....</td> <td data-bbox="657 1344 810 1428">.....</td> <td data-bbox="810 1344 1334 1428">.....</td> </tr> <tr> <td data-bbox="467 1428 558 1554"><u>4n</u></td> <td data-bbox="558 1428 657 1554"><u>III</u></td> <td data-bbox="657 1428 810 1554"><u>PWS</u></td> <td data-bbox="810 1428 1334 1554"> <p><u>From the dam of the White Run pumped storage reservoir on an unnamed tributary to White Run upstream to its headwaters.</u></p> </td> </tr> </tbody> </table>	Sec.	Class	Sp. Stds.	Section Description	4	III	ESW 17,18	<p>Free flowing tributaries of the Rappahannock from Blandfield Point to its headwaters, unless otherwise designated in this chapter.</p>	<u>4n</u>	<u>III</u>	<u>PWS</u>	<p><u>From the dam of the White Run pumped storage reservoir on an unnamed tributary to White Run upstream to its headwaters.</u></p>	<p>Amending section 9VAC25-260-440 to add new section 4n and the notation "PWS" in the special standards column to indicate the described waters are afforded Public Water Supply protections. Water quality criteria in the Public Water Supply column at table 9VAC25-260-140.B apply to waters</p>
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4	III	ESW 17,18	<p>Free flowing tributaries of the Rappahannock from Blandfield Point to its headwaters, unless otherwise designated in this chapter.</p>																
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<u>4n</u>	<u>III</u>	<u>PWS</u>	<p><u>From the dam of the White Run pumped storage reservoir on an unnamed tributary to White Run upstream to its headwaters.</u></p>																

9VAC25-260-510						designated as "PWS". Amending section 9VAC25-260-510 to add new section 6b and the notation "PWS" in the special standards column to indicate the described waters are afforded Public Water Supply protections. Water quality criteria in the Public Water Supply column at table 9VAC25-260-140.B apply to waters designated as "PWS".
		Sec.	Class	Sp. Stds.	Section Description	
		6	IV	ESW-10	South Fork Holston River and its tributaries, unless otherwise designated in this chapter.	
		6b	IV	PWS	South Fork Holston River and its tributaries from Washington County Service Authority intake near the confluence of the Middle and South Fork Holston Rivers to points 5 miles upstream.	

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.

No impact on the institution of the family and family stability is anticipated as a result of these PWS designations. The development of water quality standards is for the protection of public health and safety, which has only an indirect impact on families.