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Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-720
VAC Chapter title(s)	Water Quality Management Planning Regulation
Action title	Amendment to add six new TMDL wasteload allocations in the James River Basin (9VAC25-720-60 A) and Roanoke River Basin (9VAC25-720-80 A).
Final agency action date	November 30, 2023
Date this document prepared	September 15, 2023

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code. 30, 2023*

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 amendments to the state's Water Quality Management Planning Regulation (9 VAC 25-720) include adding two new Total Maximum Daily Load (TMDL) wasteload allocations (WLA) in the James River Basin (9VAC25-720-60 A) and four new TMDL WLAs in the Roanoke River Basin (9VAC25-720-80 A).

The TMDL WLAs were developed in accordance with Federal Regulations (40 CFR § 130.7) and are exempt from the provisions of Article II of the Virginia Administrative Process Act (§2.2-4006 A 14). The TMDL reports where WLAs are developed are subject to the TMDL public participation

process, and the WLAs are adopted as part of 9 VAC 25-720 in accordance with the Department of Environmental Quality’s (DEQ’s) “Public Participation Procedures for Water Quality Management Planning”.

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, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “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.”

The Clean Water Act (“CWA”) and the U.S. EPA Water Quality Management and Planning Regulation (40 CFR §130) require states to identify waters that are in violation of water quality standards and to place these waters on the state’s 303(d) List of Impaired Waters. Also, the CWA and EPA’s enabling regulation require that a TMDL be developed for those waters identified as impaired. In addition, the Code of Virginia, §62.1-44.19:7.C requires DEQ to develop TMDLs for impaired waters. A TMDL is a determination of the amount of a specific pollutant that a water body is capable of receiving without violating water quality standards for that pollutant. TMDLs are required to identify all sources of the pollutant and calculate the pollutant loads from each source that are necessary for the attainment of water quality standards.

The U.S. EPA’s Water Quality Management and Planning Regulation 40 CFR §130.7(d) (2) directs the states to incorporate TMDLs in the state’s Water Quality Management Plan (9 VAC 25-720). Also, U.S. EPA’s Water Quality Management and Planning Regulation 40 CFR §122.44(d) (1) (vii) (B) requires that new or reissued VPDES permits be consistent with the TMDL WLA. This means that the WLA component of the TMDL incorporated into the regulation will be implemented through the requirements specified in the VPDES permits, for example through numeric water quality based effluent limitations or in certain cases best management practices (“BMPs”).

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.

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.

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.

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.

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: 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.

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 November 30, 2023, the State Water Control Board (SWCB) adopted the amendments to the Water Quality Management Planning Regulation (9 VAC 25-720 et seq.).

Legal Basis

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.

§62.1-44.15 of the State Water Control Law authorizes the State Water Control Board to promulgate regulations controlling water pollution to protect public health and welfare. The U.S. EPA’s § 62.1-44.19:7 directs the Board to develop plans to address impaired waters. Water Quality Management and Planning Regulation 40 CFR §130.7(d) (2) directs the states to incorporate TMDLs in the state’s Water Quality Management Plan (9VAC25-720). Changes to this chapter of the Virginia Administrative Code are exempt from Article 2 of the Administrative Process Act – §2.2-4006 A 14

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 regulatory changes are needed to meet the mandates of the federal Clean Water Act and the implementing Water Quality Management and Planning Regulation (40 CFR §130) to protect public health and welfare by requiring states to identify waters that are in violation of water quality standards and to place these waters on the state’s 303(d) List of Impaired Waters. Also, the CWA, EPA’s enabling regulation, and the Code of Virginia, §62.1-44.19:7.C require Virginia to develop a TMDL for impaired waters. The U.S. EPA’s Water Quality Management and Planning Regulation 40 CFR §130.7(d) (2) directs the states to incorporate TMDLs in the state’s Water Quality Management Plan (9VAC25-720). This regulatory change contributes to achieving the pollution reductions needed from point source dischargers to remove a stream from the impaired waters list and improve water quality to the benefit of citizens to take advantage of all beneficial uses available from State Waters.

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 amendments to the state’s Water Quality Management Planning Regulation (9 VAC 25-720) include adding two new TMDL wasteload allocation in the James River Basin (9VAC25-720-60.A) and four new TMDL wasteload allocation in the Roanoke River Basin (9VAC25-720-80.A).

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.

Public: The regulatory change broadly benefits the public by improving the water quality of impaired waters by identifying the maximum amount of pollutant load a stream can assimilate and meet Water Quality Standards (9VAC25-260), to support all designated uses of waters, and ultimately be removed from Virginia’s 303(d) list of impaired waters. Improved water quality will protect human health and aquatic life, resulting in healthier fisheries, safer and reliable public water supplies, and contribute to economic benefits from tourism, economic development, and commercial and recreational fishing industries.

Agency or Commonwealth: The agency and commonwealth will benefit because the change to the regulation meets the legal mandate in state and federal law to incorporate the WLA into the Water Quality Management Planning Regulation to meet State Water Control Law § 62.1-44.19:7. Additionally, this meets the Clean Water Act 40 CFR 130.7 requirement to include the approved TMDL loads in the state’s waters quality management plans and VPDES permits.

There are no disadvantages associated with this regulatory action to either the public or the Commonwealth. No cost to the public is anticipated because the proposed WLAs do not exceed the existing permit requirements of existing facilities which already discharge well below their permit requirements and the WLA.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change that 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.

This regulatory change has no requirements that exceed applicable federal 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:

This regulatory change will not particularly affect other state agencies

Localities Particularly Affected:

This regulatory change will not particularly affect any localities

Other Entities Particularly Affected:

This regulatory change will not particularly affect other entities

Public Comment

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.

The comment period for the regulation amendment with the TMDL wasteload allocations extended from September 25 – October 25, 2023. No comments were received.

Details of All Changes Proposed in this Regulatory Action

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

Current section number	New section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
60 A	N/A	James River Basin section does not include WLA for these impaired sections of Moores Creek and Mill Creek	Adding two new TMDL WLA in the James River Basin to reduce sediment discharges into these impaired sections of Moores Creek and Mill Creek
80 A	N/A	Roanoke River Basin section does not include WLA for these impaired sections of Fryingpan Creek, Pigg River, Poplar Branch and Beaverdam Creek	Adding four new TMDL WLA in the Roanoke River Basin to reduce sediment discharges into these impaired sections of Fryingpan Creek, Pigg River, Poplar Branch and Beaverdam Creek

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please 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.

These regulation amendments meet the requirements of federal and state law and regulation. The regulatory amendment does not directly impose any direct compliance requirement, reporting requirement, or performance standard that could be lessened or substituted for small business. Any delays in adopting the standards or exemption of small businesses from these requirements will not meet the minimum requirements of federal law and regulation. No alternative approach to developing a TMDL and the associated WLA was considered since State Water Control Law § 62.1-44.19:7 and the Clean Water Act 40 CFR 130.7(c) requires DEQ to develop a TMDL for each impaired water body to address pollutants that may enter the water. The regulation only lists the TMDLs and WLA, along with the impaired streams where it applies, but does not identify any facilities affected or mandate any direct measures, compliance, reporting, or standard that facilities must take to meet the WLA.

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.