



Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC 25-260-5 et seq
Regulation title	Water Quality Standards
Action title	Amendment to designate a one mile segment of the Dan River as a public water supply (PWS)
Date this document prepared	June 30, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The Board proposes to amend the Water Quality Standards, Section 9 VAC 25-260-450, by designating as Public Water Supply (9 VAC 25-260-380.D.1) an approximately one mile segment of the Dan River in Virginia and its tributaries in Virginia near the VA/NC state line. A raw water intake intended to serve Roxboro, North Carolina and the NC counties of Person and Caswell is proposed by the state of North Carolina for the Dan River near the town of Milton, NC approximately 10 miles downriver from Danville, Virginia. North Carolina water quality standards require public water supply protections to extend 10 miles upriver from the intake. The State Water Control Board (Board) received a petition to designate as public water supply (PWS) a sufficient portion of the Dan River and its tributaries to complete the 10-mile run of the river as required by North Carolina water quality standards.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 62.1-44.15(3a) of the Code of Virginia, as amended, mandates and authorizes the 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. 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.

Web Address sites where citations can be found:

Federal Regulation web site

http://www.access.gpo.gov/nara/cfr/waisidx_99/40cfr131_99.html

Clean Water Act web site

<http://www4.law.cornell.edu/uscode/33/1313.html>

State Water Control Law (Code of Virginia) web site

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+62.1-44.2>

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+62.1-44.15>

The proposed amendments do not exceed the minimum requirements of any legally binding state or federal mandates, nor are they more stringent than federal requirements which require, as a minimum, that states have a process whereby states may designate the uses for a water body. The EPA Water Quality Standards regulation (40 CFR 131.10) is the regulatory basis for the EPA requiring the states to specify designated uses. EPA retains approval/disapproval oversight, but delegates to the states the election and designation of specific public water supplies.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The proposed amendments to the regulation are necessary to protect health, safety or welfare by providing appropriate water quality protection for a downstream public water supply. Although the majority of the water supply users would be citizens of North Carolina, the water supply (Dan River) is shared by Virginia and North Carolina. Federal regulation (40 CFR 131.10(b)) states "...the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters." North Carolina water quality standards require public water supply protection for a 10-mile distance upriver from a drinking water supply intake that includes tributaries as well as the river main stem. The Dan River and some of its tributaries exit North Carolina and enter Virginia before this 10-mile limit from the North Carolina-proposed intake is reached.

Substance

Please briefly identify and explain the new substantive provisions (for new regulations), the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The proposed amendment adds a public water supply (PWS) notation in the special standards column of section 9VAC25-260-450 and associated narrative language describing that portion of the Dan River and tributaries to which the PWS special standard applies.

Issues

Please identify the issues associated with the proposed regulatory action, 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantage to the public is providing appropriate water quality protection to a public drinking water supply source. The primary disadvantage is that PWS criteria listed in the parameter table of section 9VAC 25- 260-140.B apply to waters designated as PWS and may lead to more stringent effluent limits for affected dischargers. There are 2 permitted facilities within the proposed PWS segment. One is an individual permit with several stormwater discharges and the other is a Stormwater Industrial General Permit. Agency water permits staff is not aware of any impacts the designation would have on these facilities. The City of Danville North Side waste water treatment facility discharge point (with a diffuser) to the Dan is a little over one tenth of a mile upstream of the terminus of the proposed PWS segment. Low flow conditions are utilized at the point of discharge when permit limits are calculated. A downstream water withdrawal would not affect calculation of permit limits for Danville's discharge.

This regulatory action poses no disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include 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 statement to that effect.

The proposed amendment does not exceed applicable federal minimum requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

Pittsylvania County, City of Danville

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal, the impacts on the regulated community and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal, the potential impacts of this regulatory proposal and any impacts of the regulation on farm and forest land preservation. Also, the agency/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 reporting, 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 may do so by mail, email or fax to: David C. Whitehurst, Office of Water Quality Programs, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, email: David.Whitehurst@deq.virginia.gov, phone: 804-698-4121, fax: 804-698-4116. 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 DEQ by the close of the comment period.

A formal hearing will be held on a date and time and at a place to be determined if a request for a formal hearing is received by the contact person listed above within 30 days of publication of the notice of public comment period in the Virginia Register of Regulations.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	There are no costs to the state to implement or enforce the proposed amendment.
Projected cost of the new regulations or changes to existing regulations on localities	There are no projected costs for localities.
Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations	Individuals, businesses, or other entities that are likely to be affected by the regulation are those with permitted outfalls that would discharge to the PWS designated segment.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means 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.	There are 2 permitted facilities within the proposed PWS. Goodyear - Danville (VA0001201) on Hogans Creek which is a tributary to the Dan River and Blue Ridge Fiberboard (VAR050210) on the Dan River. Both may be considered small businesses. Goodyear is an individual permit with several stormwater discharges while Blue Ridge Fiberboard is a Stormwater Industrial General Permit. Permits staff is not aware of any impacts the designation would have on permit limits for these facilities.
All projected costs of the new regulations or	The PWS designation is not expected to result in

<p>changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>any new or increased costs. An assessment of “likely-to-be-affected” facilities indicated no significant economic impacts to the facilities in regards to capital investments, operational costs, recordkeeping or even use of other resources (time, labor).</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The proposed amendment is designed to provide water quality protection for a public water supply source.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

In compliance with the State Water Control Board’s Public Participation Guidelines (9 VAC 25-10-20 C), the Board will consider all alternatives which are considered to be less burdensome and less intrusive for achieving the essential purpose of the amendment, and any other alternatives presented during the proposed rulemaking.

The primary alternative considered to date was to leave the regulation unchanged.

Regulatory flexibility analysis

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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

Analysis not performed as no small businesses are affected and PWS designations do not have a direct effect on compliance or reporting schedules and/or reporting requirements. There are no other regulatory methods that would accomplish the same objective as a PWS designation.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Danville - Division of Water & Wastewater Treatment	Opposes the manner and location in which the withdrawn water is ultimately returned to the river. The existing wastewater treatment facility discharge that would accommodate the removed water returns it via a tributary to the Dan River approximately 30 miles downriver of the point of withdrawal. They maintain that interbasin transfer of water will result in a significant loss of a natural resource to communities in the Dan River watershed and stated concerns of future increase in the withdrawal amount.	The agency recognizes the comments received address issues directly related to designating a portion of the Dan River in Virginia as a PWS as well as issues not directly related to the designation. A downstream water withdrawal would not affect calculation of permit limits for Danville’s discharge. The withdrawal may be more likely to affect downstream dischargers because critical flows could be reduced for the Dan River below the intake which may be deducted from historical low flow conditions. The agency also understands that issues regarding water resources within the Roanoke River basin have been a subject of discussion for years via the Roanoke River Bi-State Commission. In the interest of maintaining the on-going interstate cooperation, staff expects that North Carolina officials would indicate their commitment to taking similar action in their state if Virginia would ever need additional protection of a public water supply within the Commonwealth should the PWS designation originate in North Carolina.
Larry Lawson	Agrees that a PWS designation may be desirable to North Carolina and designation may be an appropriate action by the State Water Control Board (SWCB) but the SWCB would not benefit from this action. If modification to the Water Quality Standards results in a requirement that the Danville sewage treatment plant or any other discharger must be upgraded to produce a higher quality effluent that will result in negative financial impacts to the dischargers and the Commonwealth. He believes NC should be willing to provide some incentive to the SWCB by their being agreeable to provide the monies to any wastewater discharger(s) in Virginia that are required to upgrade their wastewater facilities and provide for costs to maintain and operate these upgraded facilities.	

Family impact

Please assess the 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 development of water quality standards is for the protection of public health and safety, which has only an indirect impact on families.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, rationale, and consequences
9VAC25-260-450 Roanoke River Basin		Section 3 of the Roanoke River Basin table delineates as Class III waters with no special standards the Dan River and its tributaries from the Virginia-North Carolina state line just east of the Pittsylvania-Halifax County line upstream to the state line just east of Draper, N. C., unless otherwise designated in this chapter.	Adds the following language describing that portion of the Dan River and its tributaries to which the PWS designation would apply: "Dan River and its tributaries from the Virginia-North Carolina state line just south of Danville to points 1.34 miles upstream and the first unnamed tributary to Hogans Creek from the Virginia-North Carolina state line to a point 0.45 miles upstream." The notation "PWS" would be placed in the special standards column to the left. The consequence is that Public Water Supply numerical water quality criteria for specific parameters in the table of parameters in section 9VAC25-260-140 B apply to the above named waters.

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.

- PWS – public water supply
- SWCB – State Water Control Board