



Notice of Intended Regulatory Action (NOIRA) 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	September 29, 2009

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*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The State Water Board (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 downriver of Danville near the VA/NC state line and any tributaries within the segment as Public Water Supply (PWS). A PWS intake on the Dan River near the town of Milton, NC has been proposed that would provide drinking water for the city of Roxboro, NC and other localities. The amendment is a response to the city of Roxboro, North Carolina petitioning the Commonwealth of Virginia to designate a sufficient length of the river to complete the 10-mile PWS designation required by NC water quality standards. The designation necessary to maintain and protect water quality in this portion of the Dan River is for its use as a public drinking water supply.

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., 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.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The Department has concluded that the proposed amendments to the regulation are necessary to protect a 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."

A PWS designation may have the potential to impose more stringent permit limits for upstream dischargers. There are currently no discharges within the segment proposed for PWS designation.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The proposed amendment to section 9 VAC 25-260-450, part of the state's Water Quality Standards, would designate a one mile segment of the Dan River for special protection as a Public Water Supply (9 VAC 25-260-380.D.1. The Public Water Supply 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.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

In compliance with the State Water Control Board's Public Participation Guidelines (9 VAC 25-10-20 C), the Department 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.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal 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 on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives, 3) potential impacts of the regulation and 4) impacts of the regulation on farm and forest land preservation. The agency 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) 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, Office of Water Quality Programs, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, email: David.Whitehurst@deq.virginia, phone: 804-698-4121, fax: 804-698-4116. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall website 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 5:00 p.m. on the date established as the close of the comment period.

Public Hearing at Proposed Stage

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

Regulatory 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 does not intend to establish a panel to assist in the development of the proposal. However, in response to requests received during the NOIRA public comment period the Board will consider establishing a panel. Persons requesting the agency use a panel and interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and their organization (if any). Notification of the composition of the panel will be sent to all applicants

Family impact

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