

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY**

Subject: Land Protection and Revitalization Division, Office of Water Supply
Guidance Memo No. LPR WS 2013-01
Incorporation of Water Supply Planning in VWP Permit Decisions for Surface Water
Withdrawals

To: Regional Directors

From: Jeffery Steers, Director of the Division of Land Protection and Revitalization

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Copies: Virginia Water Protection Permit Program Managers; David Davis, Director, Office of
Wetlands and Water Protection; Scott Kudlas, Director, Office of Water Supply

Summary: This guidance provides information and procedures as to how staff should incorporate review of water supply plans into the application process and give consideration to such plans in a permit decision of a Virginia Water Protection (VWP) permit for a surface water withdrawal. This guidance is in response to an amendment to the State Water Control Law.

Electronic Copy:

An electronic copy of this guidance in PDF format is available for staff internally on DEQNET, and for the general public on DEQ's website at:

<http://www.deq.virginia.gov/Programs/Water/LawsRegulationsGuidance/Guidance.aspx>.

Contact Information:

Please contact Sarah Marsala at (703) 583-3898 or Sarah.Marsala@deq.virginia.gov with any questions regarding the application of this guidance.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate any particular method nor does it prohibit any alternative method. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

I. Introduction

The use of local or regional water supply plans and the State Water Resources Plan¹ in a permit decision for a VWP permit provides better consistency and more detailed information to support decision-making by the Department of Environmental Quality (DEQ) with regard to managing the Commonwealth's surface waters. While DEQ has been informally incorporating relevant information from water supply plans currently available into their review of an application for a surface water withdrawal project, this guidance formalizes the process staff will follow to ensure such a review occurs for every water withdrawal project.

This guidance addresses an amendment to the State Water Control Law resulting from House Bill 1158 (2012 Session). The law was amended to require the State Water Control Board consult with and give full consideration to any relevant information contained in the state water supply plan when determining whether to issue a VWP Permit. The intent of the amendment is that such reviews only apply to VWP permit applications for surface water withdrawals. The State Water Control Law clarifies that when DEQ considers the water supply plan, nothing shall be construed to limit the operation or expansion of an electric generation facility located on a man-made lake or impoundment built for the purpose of providing cooling water to such facility. This language was intended to avoid a situation in which a local or regional water supply plan excluded a future water need by an electric power generation facility and that omission resulted in grounds for a denial of a VWP permit to meet that need.

II. Authority and Background

Section 62.1-44.15:20.C of the Code of Virginia, as amended and reacted by the General Assembly of Virginia, directs the State Water Control Board to incorporate the state water supply plan into review of an application for and permit decision of a VWP permit for a surface water withdrawal. Authority to conduct such a review is supported by existing regulations for the Local and Regional Water Supply Plan, State Water Resources Plan and the VWP Permit Program. The relevant sections of these regulations are summarized below.

- Local and Regional Water Supply Plan:
 - 9 VAC 25-780-100 (Projected water demand information)
 - 9 VAC 25-780-110 (Water demand management information)
 - 9 VAC 25-780-120.A.3 (Drought response and contingency plans)
 - 9 VAC 25-780-130 (Statement of need and alternatives)
- State Water Resources Plan
 - 9 VAC 25-780-140.G (Continuous planning)
 - State Water Resources Plan cumulative impact analyses (see SB1221 (Chapter 227, 2003) and 62.1-44.38)
- VWP Permit Program, Surface Water Withdrawal Informational Requirements:

¹ The State Water Resources Plan is not final as of the date of this Memorandum. In the interim, staff shall consult the local and regional water supply plans.

- 9 VAC 25-210-80.B.2.g (Need and demand justification as it relates to major surface water withdrawals and in-stream flow requirement projects)
- 9 VAC 25-210-110.A.3.a (Minor surface water withdrawals demand justification)
- 9 VAC 25-210-115.B. (Local water supply need)
- 9 VAC 25-210-115.C.2 and 3 (Alternatives analysis)

III. Use of Water Supply Planning in VWP Permit Decisions for Surface Water Withdrawals

A. Review of Water Supply Plans during VWP Permit Application Process

In support of the amended State Water Control Law, applicable sections of the Joint Permit Application and minor water withdrawal application have been revised to request applicants submit information from the applicable water supply plan as it relates to demand projection and alternatives analysis. The application also requests applicants discuss how their proposal relates to the water supply plan. Submittal of the relevant information will facilitate staff review and provide staff with the applicant's justification of how their project relates to the water supply plan.

Following receipt of a VWP permit application for a surface water withdrawal, the assigned VWP Permit Writer will coordinate the withdrawal request with the Office of Water Supply's Water Supply Planning (WSP) Program Coordinator. The WSP Program Coordinator may choose to delegate review to a Water Supply Planner, who will review the appropriate local or regional water supply plan and the State Water Resources Plan (collectively referred to as "water supply plan" hereafter), for applicable information. The sections of the water supply plan the WSP Program Coordinator /Water Supply Planner will consult are as follows:

- Projected water demand information (9 VAC 25-780-100);
- Water demand management information (9 VAC 25-780-110);
- Drought response and contingency plans (9VAC25-780-120; and
- Statement of need and alternatives (9 VAC 25-780-130).

The WSP Program Coordinator/Water Supply Planner will respond back to the VWP Permit Writer with any relevant information within forty-five (45) days of receiving the request for coordination from the VWP Permit Writer. The Office of Water Supply's Surface Water Withdrawal Project Manager should be copied on all correspondence.

The VWP Permit Writer will review the information for consistency between the application and the water supply plan and consider the following:

- Demand projection (9 VAC 25-780-100). Is the applicant's demand reasonable and did the applicant submit information to justify the amount requested? Is the demand requested for this project identified in the plan?
- Alternatives analysis (9 VAC 25-780-130). Did the applicant review all alternatives available to them, including those identified in the local or regional water supply plan?
- Analysis of available water supply and needs (9 VAC 25-780-110 and 9 VAC 25-780-130). Is there sufficient water supply to meet the applicant's proposed demand over

the permit period? Did the applicant propose conservation measures consistent with the water supply plan or measures in addition to the plan?

- Drought response and contingency plans (9 VAC 25-780-130). Did the applicant submit a drought response and contingency plan? Are the proposed measures consistent with the water supply plan?

Any inconsistencies between the information provided in the application and the appropriate water supply plan, if not already explained and justified in the applicant's application, should be included in a request for additional information from the applicant. Review of the appropriate sections of the water supply plan concludes when the VWP Permit Writer has reviewed the available information and has no further comments. Staff conclusions will inform DEQ's permit decision.

B. Incorporation of Review of Water Supply Plan in Permit Decision

A VWP permit decision for a surface water withdrawal project should be informed by staff review of the application and the relevant information in both the local or regional water supply plan and the State Water Resources Plan. Any inconsistencies identified between the proposed surface water withdrawal project and the water supply plan should be adequately addressed with the applicant prior to recommending issuance or denial of a VWP permit. If the inconsistency cannot be adequately explained or justified, DEQ may consider a recommendation to deny issuance of a VWP permit. However, inconsistency with the water supply plan shall not be the sole basis for a recommendation to deny issuance of a permit.

Staff must document their evaluation and consideration of the appropriate water supply plan during the permit process in the fact sheet of the permit decision.