



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC 25 – 610
Regulation title	Ground Water Withdrawal Regulations
Action title	Amendment to the Ground Water Withdrawal Regulations
Date this document prepared	February 3, 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 purpose of this regulatory action is to consider amending the regulation to address the increasing demand on limited groundwater resources, changes to the administrative review process, and regulatory changes necessitated by new information on the coastal plain aquifer system.

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.

The basis for this regulation is provided for in Sections 62.1-44.15(10) and § 62.1-256.8 of the Code of Virginia.

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.

Ground water levels in parts of the coastal plain are declining to the point that they are nearing aquifer tops in a number of localities along the fall line. In addition, levels are declining generally throughout the rest of the coastal plain. The declines in ground water levels in the current South East Virginia Ground Water Management Area have created a situation in which many existing permitted users are unable to renew their withdrawal permits at permitted amounts when they exceed current use. Also, new or expanded applications are a challenge to permit. Withdrawing ground water to the point that it falls below the top of the aquifer can lead to subsidence or impair the aquifer’s ability to store water in the future, potentially impacting the availability of ground water for existing users and severely compromising growth and development potential throughout the Management Area.

Our understanding of the coastal plain aquifer system has changed; this new understanding is not accounted for in the current regulation and hence some regulatory requirements are in conflict with information on the aquifers. With limits to ground water availability, we need to address for which users and for what purposes this finite resource should be allocated. In addition, we need to address what constitutes an adequate margin of safety and what technical criteria are defensible for determining whether or not to issue a permit and for what amounts.

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 agency will consider the following changes to the existing regulation:
 1) improve organization and structure , 2) evaluate current administrative procedures, clarify application and permitting requirements, and allow for a more efficient application review process, 3) evaluate the appropriateness of the current application of 80% drawdown criterion, 4) refine the appropriate priority of application review, 5) evaluate the appropriateness of prohibiting the use of ground water for non-agricultural irrigation, including whether the use of reclaimed water should be required for any non-agricultural irrigation associated with a facility that has a ground water withdrawal permit, 6) evaluate the appropriateness of limiting ground water withdrawal permits to essential (as compared to beneficial) uses, including whether to define essential use, 7) evaluate the appropriateness of limiting ground water withdrawal permits for agricultural irrigation to withdrawals from the water table aquifer, including whether all water table withdrawals should be exempt from permit requirements, 8) reconcile the new hydrogeologic framework of the Virginia Coastal Plain with current requirements to place all pumps above aquifer tops.

Additional regulatory changes may be considered based on public comment or the work of the technical advisory committee.

The regulation will also be reviewed, and changes proposed as necessary, to address consideration of (1) the continued need for the rule; (2) the complexity of the regulation; (3) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation; (5) the need to amended or repealed the

regulation, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

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.

One alternative would be not to conduct a review and revision of the subject regulation. This would allow the status quo to continue, which would result in unsustainable ground water declines and an inability to re-issue existing withdrawal permits. The Department will solicit public input and consider other alternatives and issues presented by the public which also meet the goals of the regulation and of the agency.

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 may do so at the public meeting or by mail, email or fax to Melissa Porterfield, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, phone: 804-698-4238, melissa.porterfield@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 5:00 p.m. on the last day of the public comment period.

A public meeting will be held and notice of the meeting may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov). Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board is using the participatory approach to develop a proposal. Persons 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 the organization you represent (if any). Any persons who want to be on the advisory committee are encouraged to attend the public meeting mentioned above. The primary function of the advisory committee is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the advisory committee 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.

This regulation will have no affect on the institution of the family and family stability.