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## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9 VAC 25-720-50.B.
<b>Regulation title</b>	Water Quality Management Planning Regulation
<b>Action title</b>	Amendments to Water Quality Management Planning Regulation; Potomac-Shenandoah River Basin non-TMDL waste load allocation modification
<b>Date this document prepared</b>	February 2, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

The Town of Middletown has plans to expand and upgrade its facility on Meadow Brook, a tributary to Cedar Creek and the North Fork Shenandoah River. The CBOD5 limit for the Middletown STP (VA0020982) currently included in the Water Quality Management Planning (WQMP) regulation is proposed for modification to reflect a revised waste load allocation that has been shown to be protective of water quality at the expanded 0.4 MGD flow tier. The current section of the WQMP regulation was adopted by the State Water Control Board at its September 28, 2005 meeting. As expressed in the regulation, the Middletown STP is limited to a CBOD5 waste load allocation of 20.8 kg/d. During the permit re-issuance process, the discharge was remodeled using the Regional Stream Model (v.4.11) because new stream information was available. The limits outlined in the following table were demonstrated to be protective of water quality conditions in Meadow Brook. The amended WQMP should appear as such,

Water body	Permit No	Facility Name	Outfall No	Receiving Stream	River Mile	Parameter Description	WLA	Units WLA
VAV-B53R	VA0020982	Middletown STP	001	Meadow Brook	2.19	CBOD5	<del>20.8</del> 24	KG/D

**Statement of final agency action**

*Please 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 their March 2007 meeting, the State Water Control Board adopted the following recommendations by staff of the Department of Environmental Quality:

1. That the Board authorize the Department to promulgate the proposed amendment to 9 VAC 25-720-50.B of the Water Quality Management Planning Regulation for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization should also be understood to constitute its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
2. That the Board authorize the Department to set an effective date 30 days after close of the 60-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.
3. Should the proposal fail to complete the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act or changes to the proposal be needed, it is recommended that the Board authorize the Director to make the decision under 9 VAC 25-10-30.C. concerning the use of the participatory approach or alternatives.

**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 General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

State mandate in the Code of Virginia, §62.1-44.15, is the source of legal authority identified to promulgate these amendments. The promulgating entity is the State Water Control Board.

The scope and purpose of the State Water Control Law is to protect and to restore the quality of state waters, to safeguard the clean waters from pollution, to prevent and to reduce pollution and to promote water conservation. The State Water Control Law (Code of Virginia) at §62.1-44.15(10) mandates the Board to adopt such regulations as it deems necessary to enforce the general water quality management program of the Board in all or part of the Commonwealth. In addition, §62.1-44.15(14) requires the

Board to establish requirements for the treatment of sewage, industrial wastes and other wastes that are consistent with the purposes of this chapter. The specific effluent limits needed to meet the water quality goals are discretionary.

The correlation between the proposed regulatory action and the legal authority identified above is that the amendment being considered will result in a modified waste load allocation that has been shown to be protective of water quality and that will contribute to the attainment of the Virginia Water Quality Standards.

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The amendment is needed to allow for the planned expansion of the Middletown STP while ensuring that the expanded discharge remains protective of water quality in the receiving stream, Meadow Brook. The modified waste load allocation reflects a CBOD5 limit that is protective at the expanded flow tiers.

## Rationale for using fast track process

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

*Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

The proposed amendment is expected to be non-controversial, and therefore justifies using the fast-track process. The amendment will reflect effluent limitations outlined in the current VPDES permit. These have been shown to be protective of water quality for the receiving stream, Meadow Brook. The current VPDES permit for the Middletown STP was issued with the original WQMP limits, with the proposed revised effluent limits outlined as available to the facility once the WQMP is amended. This permit has been reviewed by EPA and public noticed with all public comment issues addressed. The effective date of the permit was October 2, 2006.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)*

In 9 VAC 25-720-50. B., for the Middletown STP (VA0020982), change the CBOD5 waste load allocation from 20.8 kg/d to 24 kg/d.

## 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 there are no disadvantages to the public or the Commonwealth, please indicate.*

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The public will benefit, as the proposed amendment will ensure the attainment and preservation of water quality standards in the receiving stream downstream of the Middletown STP discharge, Meadow Brook. There is no disadvantage to the agency or the Commonwealth that will result from the adoption of this amendment.

## Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is 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.*

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The amendment does not include requirements exceeding applicable federal 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.*

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Only the Town of Middletown (owners of Middletown STP) is particularly affected by the proposed amendments.

## 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.*

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Analysis not performed as no small businesses are affected.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<b>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</b>	None.
<b>Projected cost of the regulation on localities</b>	None.
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	Sewage Treatment Plant
<b>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.</b> 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.	One.
<b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b>	None.

**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.*

No viable alternative approach, less burdensome or intrusive, identified.

**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.*

No direct impact expected.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes 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:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
9 VAC 25-720-50.B.		For Middletown STP (VA0020982), CBOD5 WLA = 20.8 kg/d	For Middletown STP (VA0020982), change CBOD5 WLA from 20.8 kg/d to 24 kg/d to accommodate flow expansion