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Fast-Track Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9VAC25-610, Part I (General)
Regulation title(s)	Groundwater Withdrawal Regulations
Action title	Amendment to the Groundwater Withdrawal Regulations (Rev. A15)

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

Chapter 465 of the 2015 Virginia Acts of Assembly amended § 62.1-258 of the Code of Virginia, in part, to add a requirement that private wells constructed in a ground water management area be registered with the Board by the certified water well systems provider within 30 days of the completion of well construction.

The proposed amendments to 9VAC25 Chapter 610 include (i) a new section that requires registration of private wells as specified in law by submission of a form to be provided by the Department and provides the minimum information needed by the Department for registration purposes, and (ii) an amended section that adds definitions necessary to implement the new requirements.

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.

GWMA Ground Water Management Area.

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.

On October 1, 2015 the State Water Control Board:

1. Authorized the Department to promulgate the attached proposal 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 constituted 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. Authorized the Department to set an effective date 15 days after close of the 30-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.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Section 62.1-44.15 of the State Water Control Law (Title 62.1, Chapter 3.1 of the Code of Virginia) and section 62.1-256, subdivision 8 of the Virginia Ground Water Management Act of 1992 (Title 62.1, Chapter 25 of the Code of Virginia) authorize the State Water Control Board to adopt such regulations as it deems necessary to administer and enforce the provisions of these chapters. Written assurance from the Office of the Attorney General that the State Water Control Board possesses the statutory authority to promulgate the proposed regulation amendments is available upon request.

Promulgating Entity

The promulgating entity for this regulation is the State Water Control Board.

State Requirements

Section 62.1-256, subdivision 3 of the Code of Virginia provides that the State Water Control Board shall study, investigate, and assess ground water resources and all problems concerned with the quality and quantity of ground water located within the Commonwealth.

Section 62.1-256, subdivision 4 of the Code of Virginia allows the Board to require any person withdrawing ground water for any purpose anywhere in the Commonwealth, whether or not declared to be a ground water management area, to furnish to the Board such information with regard to such ground water withdrawal and the use thereof as may be necessary to carry out the provisions of Chapter 25.

Section 62.1-256, subdivision 9 of the Code of Virginia provides that the Board has the power to delegate to its Executive Director, with some exceptions, any of the powers and duties invested in it to administer and enforce the provisions of Chapter 25.

Chapter 465 of the 2015 Acts of Assembly amended section 62.1-258 of the Code of Virginia to require that each private well, as defined in section 32.1-176.3 of the Code of Virginia, that is constructed in a ground water management area (GWMA) be registered by the certified water well systems provider with the Board within 30 days of the completion of the construction and that such registration shall be in a format prescribed by the Board. It further requires the Board and the Board of Health to develop joint registration forms and processes.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe 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 purpose of this regulation is to protect the water quality and quantity in aquifers within the Commonwealth of Virginia, and thereby to protect the health, safety and welfare of its citizens.

The purpose of this regulatory action is to incorporate the statutory changes in Chapter 465 of the 2015 Acts of Assembly, which amended section 62.1-258 of the Code of Virginia to require registration of private wells constructed in ground water management areas. Private well withdrawals make up an estimated one third of all groundwater withdrawn from the aquifer system. These withdrawals are growing at a faster rate than all other uses of groundwater. The information provided will identify the location of the wells and the aquifer from which the private wells are taking groundwater, allowing the impact of these withdrawals to be evaluated and taken into consideration in future groundwater management decisions. The proposed amendment will also provide some necessary implementation and information provisions.

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?

Except for the specific information to be required on the registration form and some minor implementation provisions, the language of the law in Chapter 465 of the 2015 Acts of Assembly allows little leeway in developing the regulatory requirements. Certified water well systems providers are already familiar with the types of registration information required of other types of wells and the Department and the Department of Health have already reached agreement concerning the information to be required for registration of private wells. Controversy is not expected.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

A new section is added to 9VAC25 Chapter 610 to require registration of private wells, to specify who must submit the registration and to whom it must be submitted, to specify in what time period the registration must be submitted, and to list the minimum information that the Department needs to identify the wells in the field and to evaluate the impact of private well water withdrawals. In addition, two definitions are added to an existing section, which are necessary to support the new requirements.

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.

1. Public: There are no advantages or disadvantages for the public at large resulting from this amendment. The amendment will ensure that the resource is better managed for all users and the public in areas where the sustainability of groundwater is threatened.
2. Department: The advantage to the Department is better information about the potential for private well water withdrawals resulting in better management of groundwater resources. There is no disadvantage to the Department resulting from 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.

There are no federal requirements applicable for the registration of private wells, so all of these proposed regulatory requirements are more restrictive than applicable legal federal requirements. The management of groundwater quantity is a state mandated responsibility.

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.

No localities will bear a disproportionate material impact due to the proposed regulation which would not be experienced by other localities.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

The proposed amendment applies to the registration of private wells. It also applies to small businesses engaged in constructing private wells as water well systems providers. Any (1) establishment of less stringent compliance or reporting standards; (2) establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) consolidation or simplification of compliance or reporting requirements; (4) establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; or (5) exemption of small businesses from all or any part of the requirements contained in the proposed regulation for all small businesses would directly, significantly and adversely affect the benefits that would be achieved through the implementation of the regulation and would not meet the requirements of law.

Public participation

Please include a statement that in addition to any other comments on the regulation, the agency is seeking comments on the costs and benefits of the proposal, the potential 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 is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and on any impacts of the regulation on farm and forest land preservation. Also, the 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 reported, 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 Gary Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia, 23218 (email gary.graham@deg.virginia.gov, phone 804-698-4103, fax 804-698-4510). 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 11:59 pm on the last day of the public comment period.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-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; or the Department finds it necessary, based on public comments or for any other reason, to make any changes to the proposal, the

agency shall: 1) file notice of the objection/reason with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

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.

<p>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</p>	<p>It is not expected that the regulation will result in any cost to the Department beyond that currently in the budget. The sources of Department funds to carry out this regulation are the general fund. The activities are budgeted under the following program (code)/subprogram: (604)/51225.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>The projected cost of the regulation on localities is not expected to be beyond that of other affected entities.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Water well systems providers that construct private wells are the businesses likely to be affected.</p>
<p>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: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There may be as many as 1800 private wells constructed in a GWMA each year that will be affected by the new registration requirements. There are approximately 50 small businesses and approximately 150 certified water well systems providers in the Commonwealth that may be affected.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) 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>Some cost savings may be realized from streamlining registration information requirements and instituting an online registration process that meets the registration requirements of two agencies (this Department and the Department of Health). Registration that will be provided through on-line access will reduce or eliminate postage costs related to registration.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>This amendment enables the Department to track the growth of private well water withdrawals and evaluate the relative impact of private wells on the aquifer system. This will result in a more robust understanding of the demands on the aquifers in areas where the sustainability of groundwater is threatened, and it will ensure that the resource is better managed for all users and the public. Use of a single form and on-line registration will halve the number of submissions that must be made by the</p>

	water well systems providers and will reduce duplicate information errors that hinder the tracking of private wells and their impacts on the aquifer system.
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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.

Alternatives to the proposed regulation amendments were considered by the board. The board determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulation. The alternatives considered by the board, along with the reasoning by which the board has rejected any of the alternatives being considered, are discussed below.

1. Amend the regulations to satisfy the provisions of the law and associated regulations and policies. This option was chosen because it meets the stated purpose of the regulation; to incorporate the law into regulation, to provide implementation provisions, and to specify the registration information necessary to properly locate and identify private wells and to evaluate the impact of private well water withdrawals.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option was not chosen because the law is prescriptive and does not provide for such alternatives.
3. Take no action to amend the regulations. This option was not chosen because the requirements of law would still apply to certified water well systems providers, who would then lack important information concerning implementation of the law.

The impacts on small businesses will be limited to private water well systems providers and are the least burdensome requirements allowed by law.

Family impact

Please assess the impact of this 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.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation.

*If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency** regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
9VAC25-610 (Groundwater Withdrawal Regulations)			
10.		Terms used in the regulation are defined.	A definition of the term "private well" is added that is consistent with the same term defined in § 32.1-176.3 of the Code of Virginia. This is necessary to provide consistency with law concerning the Department of Health and to provide clarity concerning use of the same term within this regulation.
10.		Terms used in the regulation are defined.	A definition of the term "water well systems provider" is added that is consistent with provisions of § 54.1-1128 et seq. of the Code of Virginia. This is necessary to provide consistency with law applicable to the Board of Contractors and to provide clarity concerning use of the same term within this regulation.
	42 A.	None.	Registration of private wells constructed in groundwater management area by the certified water well systems provider is required. A start date for this requirement is provided so that the requirement is only applicable to new wells. This is necessary in order to implement § 62.1-258 of the Code of Virginia.
	42 B.	None.	Registration within 30 days of completion of well construction. This is necessary in order to implement § 62.1-258 of the Code of Virginia.
	42 C.	None.	Submission of the registration form to the Department is required. This is necessary in order to implement § 62.1-258 of the Code of Virginia.
	42 D.	None.	The minimum information required for registration with the Department is listed. This information will be the basis for developing joint and future forms with the Department of Health. This is necessary in order to implement § 62.1-258 of the Code of Virginia.