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## Periodic Review and Small Business Impact Findings Where Result is "Retain the Regulation As Is" Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9VAC25-220
<b>Regulation title</b>	Surface Water Management Area Regulation
<b>Date</b>	June 17, 2015

This information is required pursuant to Executive Order 17 (2014) and 58 (1999).

### Legal basis

*Please identify the state and/or federal legal authority for the regulation, including: 1) the most relevant law and/or regulation; and 2) promulgating entity, i.e., agency, board, or person.*

The State Water Control Board is authorized by 62.1-44.15 (10) to adopt regulations to enforce the general water quality management programs of the Commonwealth. Chapter 24 of Title 21 of the Code of Virginia provides details concerning requirements for Surface Water Management Areas.

### Alternatives

*Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.*

The Board believes that the regulation, as currently written, is the least burdensome alternative available for achieving the purpose of the regulation

## Public comment

*Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

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No comments were submitted during the public comment period. An informal advisory group was not formed to assist with the periodic review.

## Effectiveness

*Please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

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This regulation is necessary for the protection of public health, safety and welfare and is clearly written and easily understandable.

## Result

*Please state that the agency is recommending that the regulation should stay in effect without change and provide the reason why.*

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The agency is recommending the Surface Water Management Area Regulation stay in effect. The department will recommend making minor revisions to the regulation to the State Water Control Board in the near future. These changes will update citations referenced in the regulation with current citations.

## Small business impact

*In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: 1) the continued need for the regulation; 2) the nature of complaints or comments received concerning the regulation from the public; 3) the complexity of the regulation; 4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and 5) 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. Also, include a discussion of the basis for the agency's determination to retain the regulation as is, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.*

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This regulation continues to be needed. It establishes requirements for the use of surface water in surface water management areas, including reporting requirements from those withdrawing surface water and when a permit is or is not required. Surface water withdrawals need to be regulated to prevent

negative impacts from occurring due to the over withdrawal of surface water. No comments were received during the public comment period.

The regulation is written to clearly describe the requirements within surface water management areas. The regulations in section 70 B. exclude certain scenarios from being required to obtain a permit. One of these exclusions is not requiring a permit for a surface water withdrawal of less than 300,000 gallons in any single month. Depending on the type of small business, this provision may exempt small businesses from being required to obtain a permit, while a larger business competing with the small business may be required to obtain a permit. This would provide the small businesses with some regulatory relief since their withdrawal would have a smaller impact on the environment.

This regulation is a state only regulation and there is no equivalent federal regulation. This regulation is part of a series of regulations utilized by the State Water Control Board to protect water in the Commonwealth. The Surface Water Management Area Regulation is closely related to the Virginia Water Protection Permit Program (VWPP) (9VAC25-210-10 et seq.) since both regulate impacts to surface waters. The Surface Water Management Area Regulation however specifically addresses surface water withdrawals regulated under the Surface Water Management Act of 1989. The Water Withdrawal Reporting Regulation (9VAC25-200) requires withdrawers of surface water (and groundwater) to report monthly and annual withdrawals of water. Collectively the regulations adopted by the State Water Control Board protect state waters including surface waters, and regulating withdrawals of surface water within surface water management areas plays a role in protecting surface waters from impacts caused from the withdrawals.

The regulation was last amended in 2013 in response to Chapter 348 of the 2013 Acts of Assembly. Prior to that, the regulation was amended in 2000 in response to an act of the 1999 General Assembly. In recent years technology has improved the monitoring of surface water levels and flows, and more accurate information concerning surface water availability has been available to assist with making decisions concerning the use of surface water. This is important since both groundwater and surface water withdrawals are used to meet water supply demands and the supply of groundwater available is decreasing, which will potentially impact demand for surface water withdrawals.

The department has determined that the regulation should be retained. The department plans to recommend making minor revisions to the regulation to the State Water Control Board in the near future. These changes will update the citations in the regulation to reference current citations.

### Family impact

*Please provide an analysis of the regulation's impact on the institution of the family and family stability.*

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It is not anticipated that this regulation will have a direct impact on the institution of the family or family stability.