

NOTICE OF PUBLIC COMMENT PERIOD
ISSUED: OCTOBER 12, 1998

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: **9 VAC 25-260-5 et seq. Water Quality Standards**. Statutory authority for promulgating this amendment can be found under § 62.1-44.15(3a).

SUBJECT MATTER: The agency is considering amending 9 VAC 25-260-350 to designate Stony Creek in Shenandoah County as a nutrient enriched water.

INTENT: This designation could have a significant impact on both point and non-point source activities in the watershed of this creek and the Department intends to provide the public every avenue of public participation, beginning with this Notice of Intended Regulatory Action, in order to ensure the amendment is necessary to protect aquatic life and human health and provide for the maintenance of water quality in the Commonwealth of Virginia.

NEED: The Department's evaluation of agency in-stream nutrient monitoring data for Stony Creek for the period of July 6, 1994 through May 6, 1997 indicates nutrient enriched conditions. Consequently, the Department proposes that the watershed (Stony Creek and its tributaries) qualifies for regulatory designation as a nutrient enriched water. The basis for this determination was monitoring data for total phosphorus, which is one of three indicators of nutrient enrichment used for regulatory designation of waters as nutrient enriched.

If the water is designated nutrient enriched, a companion regulation, the Board's Policy for Nutrient Enriched Waters (9 VAC 25-40-10 et seq.) requires certain municipal and industrial dischargers with a design flow of 1.0 MGD or greater and effluents containing phosphorus to maintain a monthly average total phosphorus concentration of 2 milligrams per liter (mg/l) or less. Rocco Farm Foods near Edinburg - based on a flow of 1.005 MGD - would be the only point source discharger impacted by this regulatory requirement to install a phosphorus removal system to control total phosphorus. The other three point source dischargers in the watershed, Stony Creek Sanitary District, Shrine Mont, and Edinburg Sewage Treatment Plant, have design flows below that covered in the Policy and thus would not be required to install phosphorus controls.

If Stony Creek is designated a nutrient enriched water, the Department of Conservation and Recreation would be required to target control measures for non-point source nutrient inputs.

ALTERNATIVES AVAILABLE TO MEET THE NEED: In compliance with the State Water Control Board's Public Participation Guidelines, § 9 VAC 25-10-10 et seq., the Department will consider all alternatives which are considered to be less burdensome and less intrusive for achieving the essential purpose of the proposed regulation, and any other alternatives presented during the proposed rulemaking. Several alternatives have already been considered. One alternative was to leave the regulation unchanged. This may appear to be the least intrusive approach; however, such an alternative would not provide a control strategy for the potential water quality degradation in Stony Creek from a documented excess of phosphorus.

There may be other less intrusive alternatives to consider. For example, other alternatives would be to designate only the mainstem or a portion of the mainstem of Stony Creek as a nutrient enriched water.

REQUEST FOR COMMENTS: Comments are requested on the intended regulatory action, to include any ideas to assist the Department in the development of the proposal. Comments are requested on the costs and benefits of the stated alternatives or other alternatives. DEQ also requests comments as to whether the Department should use the participatory approach to assist in the development of the proposal. The participatory approach is defined as a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with groups or individuals registering interest in working with the agency, or (iv) any combination thereof.

PUBLIC MEETING: A public meeting will be held on Tuesday, November 17, 1998 at 7:00 p.m. in the Shenandoah County Brick Building, 3rd Floor Courtroom, 112 South Main Street in Woodstock. Public comments on the intended regulatory action will be accepted until 4:30 p.m. on Friday, November 20, 1998. Please submit comments to Dr. Alan J. Anthony, Director, Office of Water Quality Standards, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240-0009.

The agency intends to hold a public hearing on the proposed regulation after publication. This has not been scheduled yet.

AGENCY CONTACT/INFORMATION: Jean Gregory at the address above or e-mail jwgregory@deq.state.va.us or phone (804) 698-4113, toll free 1-800-592-5482.

SUMMARY OF ITEMS:

Item 1: The Department's evaluation of agency in-stream nutrient monitoring data for Stony Creek for the period of July 6, 1994 through May 6, 1997 indicates nutrient enriched conditions. Consequently, the Department proposes that the watershed (Stony Creek and its tributaries) qualifies for regulatory designation as a nutrient enriched water. The basis for this determination was monitoring data for total phosphorus, which is one of three indicators of nutrient enrichment used for regulatory designation of waters as nutrient enriched.

If the water is designated nutrient enriched, a companion regulation, the Board's Policy for Nutrient Enriched Waters (9 VAC 25-40-10 et.seq.) requires certain municipal and industrial dischargers with a design flow of 1.0 MGD or greater and with effluents containing phosphorus to maintain a monthly average total phosphorus concentration of 2 milligrams per liter (mg/l) or less. Rocco Farm Foods near Edinburg - based on a flow of 1.005 MGD - would be the only point source discharger impacted by this regulatory requirement to install a phosphorus removal system to control total phosphorus.

Item 2: Statutory authority for promulgating this amendment can be found under § 62.1-44.15(3a). This regulation is mandated by State law as cited above and § 62.1-44.4 and 62.1-44(15)(14) and federal regulation under 40 CFR 131. The federal regulation mandates that the states must, at a minimum, include narrative and numerical water quality criteria to protect designated uses and an antidegradation policy. The State law provides for antidegradation of high quality waters and preservation and protection of uses of State waters as well as providing the Board the authority to establish water quality standards and policies for any State waters consistent with the purpose and general policy of the State Water Control Law, and to modify, amend, or cancel any such standards or policies. Section 62.1-44(15)(14) gives the Board the authority to establish requirements for the treatment of sewage.

Item 3: The contemplated proposed regulation is essential in protecting the health, safety and welfare of the citizens of the Commonwealth. It will enhance the Department's ability to protect the water quality and living resources of Stony Creek for consumption of fish, recreation uses and conservation in general.

Although nutrients such as phosphorus are necessary for the growth of algae which are an essential part of the food chain, problems occur when an overabundance of these nutrients cause excessive growths of algae. Excessive amounts of aquatic plants, particularly algae, can discolor the water, create taste and odor problems for water supply managers, reduce water clarity and block sunlight from submerged aquatic vegetation. Another side effect of excessive algal blooms is impairment of primary contact recreation due to the aesthetically displeasing appearance of the water. The most serious problem resulting from algal growth occurs when the plants die and decay; at that time they can deplete the oxygen level of the water to the point where fish and other aquatic organisms cannot survive. It is important, therefore, that there be nutrient controls so that the symptoms of nutrient enrichment, i.e. the excessive growth of plants and fluctuating levels of dissolved oxygen, be avoided.

The contemplated proposed regulation is also essential for the efficient and economical performance of an important governmental function. It contains the water quality standards that are used in calculating permit limits for point source discharges.

Item 4: In compliance with the State Water Control Board's Public Participation Guidelines, § 9 VAC 25-10-10 et. seq., the Department will consider all alternatives which are considered to be less burdensome and less intrusive for achieving the essential purpose of the proposed regulation, and any other alternatives presented during the proposed rulemaking. Several alternatives have already been considered. One alternative was to leave the regulation unchanged. This may appear to be the least intrusive approach; however, such an alternative would

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