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Periodic Review Report of Findings

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-220
Regulation title	Surface Water Management Area Regulation
Date this document prepared	September 24, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

Please define all acronyms used in this Report. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

ACP- Atlantic Coast Pipeline
Board- State Water Control Board
MVP- Mountain Valley Pipeline
VTCA - Virginia Transportation Construction Alliance (VTCA)

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

Section 62.1-249 of the Code of Virginia establishes the requirement for the State Water Control Board (Board) to adopt regulations that contain certain criteria applicable to surface water management areas. The regulation establishes the process for designating a surface water management area and criteria for issuing, modifying, revoking or denying a permit in order to protect beneficial uses of surface water during periods of drought.

Alternatives

Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

Section 62.1-249 of the Code of Virginia requires the regulation to address certain requirements for surface water management areas. The regulation establishes criteria to define the level of flow that would require surface water withdrawal permit conditions to be applicable, and for water restrictions to be put in place. Since this regulation is required by statute, repealing the regulation is not a viable option. The

regulation, as currently written, is the least burdensome alternative available for achieving the purpose of the regulation and meeting the requirements of state law.

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. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

An informal advisory group was not formed to assist with the periodic review.

Commenter	Comment	Agency response
Aggregate Producer members of the Virginia Transportation Construction Alliance (VTCA)	Supports retaining the Surface Water Management Area Regulation [9 VAC 25-220] in its current form.	The agency agrees the regulation should be retained.
William Davies, Willia Davies, Stephen Padgett	Expressed concern with the natural gas pipelines being installed by ACP (Atlantic Coastline Pipeline) and MVP (Mountain Valley Pipeline) that would span hundreds of miles of Virginia landscape and cross hundreds of streams. Request that the periodic review of Surface Water Management Regulations add new regulations that will enhance inspection procedures applicable to both the ACP and the MVP that will take into account the full scale of the projects.	This regulation establishes the procedures and requirements to be followed in connection with establishment of surface water management areas, the issuance of surface water withdrawal permits and the issuance of surface water withdrawal certificates by the board pursuant to the Code of Virginia. This regulation is not related to inspection procedures for the ACP and the MVP pipeline projects. The comments received are outside the scope of the regulation undergoing periodic review. If you would like more information concerning the ACP or MVP pipeline, please contact DEQpublicinfo@deq.virginia.gov.

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulation is necessary for the protection of public health, safety and welfare. The regulation addresses requirements that must be met in Surface Water Management Areas. The regulation also addresses the issuance of permits that include practices to protect beneficial uses of surface water during periods of drought. The regulation is clearly written and easily understandable.

Decision

Please explain the basis for the rulemaking entity’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The regulation continues to be needed and will be retained without changes.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, include 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, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

The regulation continues to be needed. As the demand for water increases and certain confined groundwater aquifers become threatened from becoming overdrawn, the dependence on surface water supplies is predicted to increase.

One comment was received from the regulated community supporting retaining the regulation without changes. Three identical comments were received from the general public requesting additional regulations that will enhance inspection procedures applicable to both the ACP and the MVP pipeline projects that will take into account the full scale of the projects. This regulation establishes the procedures and requirements to be followed in connection with establishment of surface water management areas, the issuance of surface water withdrawal permits and the issuance of surface water withdrawal certificates by the board pursuant to the Code of Virginia. This regulation is not related to inspection procedures for the ACP and the MVP pipeline project.

The regulation is complex in nature since it includes permit conditions for the protection of in stream uses, conservation of water by users of surface water, and monitoring requirements.

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 resources 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 the instream flow of surface waters. The Surface Water Management Area Regulation however specifically addresses surface water withdrawals during low flow periods 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. The Groundwater Withdrawal Regulations (9VAC25-610) address groundwater withdrawals in groundwater management areas and conjunctive uses of groundwater and surface water. The Local and Regional Water Supply Planning Regulations (9VAC25-25-780) require the development of plans that project long term water demand to determine long term availability 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 Surface Water Management Area regulation does not conflict with any federal or state regulation.

The regulation was last amended in 2016 to update citations and conform to statutory language. The content of the regulation is current and no changes are needed to the regulation.

Currently no surface water management areas have been designated. The regulation does exclude surface water withdrawals of less than 300,000 gallons in any single month from being required to obtain a permit. Depending on the type of small business, this provision may exempt small businesses from being required to obtain a permit. This would provide small businesses with some regulatory relief since their withdrawal would have a smaller impact on the environment.

Family Impact

Please assess the potential impact of the regulation's impact on the institution of the family and family stability.

This regulation does not have a direct impact on the family or family stability.