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## Proposed Regulation Agency Background Document

<b>Approving authority name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9 VAC 25-780
<b>Regulation title</b>	Local and Regional Water Supply Planning
<b>Action title</b>	Adoption of the Local and Regional Water Supply Planning Regulation
<b>Document preparation date</b>	December 28, 2004

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Brief Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

This is a proposed new regulation that establishes a planning process and criteria that all local governments will use in the development of local or regional water plans. These plans will be reviewed by DEQ and a determination will be made by the State Water Control Board whether the plans comply with this regulation. The plans will be reviewed every five years to assess adequacy and significant changes will require the submission of an amended plan and review by the Board.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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This regulation was developed to implement the mandate of § 62.1-44.38:1.A (2003, c. 227, SB1221), which requires that: "The Board, with the advice and guidance from the Commissioner of Health, local governments, public service authorities, and other interested parties, shall establish a comprehensive water supply planning process for the development of local, regional and state water supply plans consistent with the provisions of this chapter." This is a mandatory rather than discretionary action by the Board.

State Water Control Law (Code of Virginia) web site: <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+62.1-44.38C1>

Section 62.1-44.15 of the Code of Virginia is the source of legal authority identified to promulgate the proposed regulation. The promulgating entity is the State Water Control Board.

## 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.*

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The proposed regulation protects the health, safety and welfare of citizens by requiring local and regional water supply planning. The goal of the new regulation is to establish a basic set of criteria that each local or regional water supply plan must contain so that they may plan for and provide adequate water to their citizens in a manner that balances the need for environmental protection and future growth.

## 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.)*

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The proposed regulation establishes all the necessary provisions for application, plan contents, plan submittal and plan review.

## 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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Water supply is a critical factor for the economic vitality and public health of the Commonwealth, as well as its political subdivisions. The demand for water supply is constantly increasing and the amount available to meet these needs is finite. In fact, unmet needs for local and statewide water supply planning have been identified throughout the past quarter-century. The primary advantage to the public of this proposed regulation is the increased probability of a safe and adequate water supply for the citizens of the Commonwealth in the future as well as the continued enjoyment of all existing off-stream and in-stream beneficial uses. Other advantages to local and regional planners include:

- Improved information on resource issues that impact long-term plans and projects;
- Promotes focus on most viable water supply alternative;
- Improved coordination and preparation for permitting and regulatory processes;
- Economic development tool (i.e., documented plans for meeting water supply needs).

One disadvantage that may be perceived by the public may be the lack of a direct relationship between the planning required by the proposed regulatory action and the permitting of a particular water supply project.

Some advantages to the Commonwealth of this proposed regulation include:

- Greater understanding of water resources and water demands;
- Increased information for use in evaluating water supply projects;
- Increased public involvement in resource management decisions;
- Earlier opportunity to identify and address conflicts among users; and
- Improved responsiveness and preparation for drought.

There are no apparent disadvantages of this regulatory action to the Commonwealth.

Pertinent matters of interest to the regulated community, government officials, and the public are the potential costs to meet the requirements of this regulation.

## Requirements More Restrictive Than Federal

*Please identify and describe any requirement of the proposal which are 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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There are no federal requirements regarding local and regional water planning.

**Locality 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.*

All Virginia counties, cities, and towns will be affected by this regulation.

**Public Participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulation on farm or forest land preservation.*

In addition to any other comments, the State Water Control Board is seeking comments on the costs and benefits of the proposal and on any impacts of the regulation on farm and forest land preservation.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing, by mail to the Department of Environmental Quality (c/o Scott Kudlas), P.O. Box 10009, Richmond, VA 23240-0009, or by email to [swkudlas@deq.virginia.gov](mailto:swkudlas@deq.virginia.gov) or by fax at (804) 698-4347. Written comments must include the name and address of the commenter. In order to be considered comments must be received by 5:00 p.m. on the date established as the close of the comment period.

A series of public hearings will be held and notice of the public hearings can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

**Financial impact**

*Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:*

<p><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></p>	<p>General funds will be needed at DEQ to implement this proposed regulation. There will be some one-time funding and some recurring need at DEQ to implement this proposed regulation.</p> <p><b>Water Supply Planning Technical Assistance, (FY 2006)</b>                  The one-time costs associated with this portion of the proposal are the costs associated with professional facilitation services to develop consensus based revisions to the VWPP regulation regarding the permitting of intake structures and development of reservoirs to support the water supply planning activities of the Commonwealth are estimated at \$37,500. The one-time funding</p>
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	<p>associated with establishing telephone, office furniture, office wiring, and LAN connection for the 13 FTEs will be paid in FY 2005.</p> <p>In addition to the one-time costs identified above it is anticipated that the operational expenses associated with this activity are estimated to be \$850,000 during FY 2006 and per year in each year of future biennia. These estimates include personal and non-personal services for 13 FTEs including rent, training, travel, office supplies telecommunications and computer support. The 13 FTEs include 1 Water Supply Planning Manager, 1 Ground Water Data Management Position, 1 Stream Gauging Position, 8 Water Supply Planning positions, and 2 Ground Water Characterization positions.</p> <p>Ground Water Characterization Contractual Services funding of \$350,000 to support the completion of ground water characterization studies performed by federal agencies, other state agencies, universities, local governments, or private contractors. Negotiations have been initiated with the USGS to design a scope of work for FY 2006 to complete water budget analyses on a sub-basin level for the entire Commonwealth as a means of making a preliminary estimate of the amount of ground water that may be available to support water supply plans.</p> <p><b>Water Supply Planning Financial Assistance (FY 2006)</b></p> <p>There are no one-time costs associated with this activity. It is anticipated that between 7 and 17 water supply planning grants will be awarded to local governments during the next two years. This estimate is based on the assumption that award of grants will commence in mid FY 2006. It is anticipated that individual water supply planning grants will range between \$20,000 and \$50,000. The total cost of this activity during the FY 2006 is estimated to be \$350,000 and this effort will require \$500,000 per year in each year of future biennia.</p>
<p><b>Projected cost of the regulation on localities</b></p>	<p>The cost of developing a local or regional plan that complies with this regulation will vary due to a number of factors. These factors include the size of the locality or region, the complexity of the current sources of supply and delivery systems, the degree of local need for additional supply, and the types of strategies that are locally identified to address any need in the plans. Based on discussions with local and regional planning staff and a number of planning consultants, DEQ's best estimate is that the cost to develop a plan would range in cost from \$15,000 – \$100,000.</p>

<b>Description of the individuals, businesses or other entities likely to be affected by the regulation including specific information on the impact on small businesses as defined in § 2.2-2279</b>	No impact anticipated.
<b>Agency’s best estimate of the number of such entities that will be affected</b>	None.
<b>Projected cost of the regulation for affected individuals, businesses, or other entities</b>	No financial impact anticipated.

Enter any other statement here

**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.*

Alternatives considered for achieving the mandate were limited. The requirements of § 62.1-44.38:1 are relatively specific and the proposed regulation implements the Water Policy Technical Advisory Committee’s (Water Policy TAC) original concept that the state should be the lead for water policy and planning, but the role of localities must be recognized and that localities should develop plans according to criteria established by DEQ.

The following were alternatives and issues considered by DEQ staff and discussed with the Water Policy TAC that was formed as part of the participatory process:

- Roles of state and local government and water authorities
- Inter-basin transfer
- Incentives for regional approaches and alternative sources
- Funding and technical assistance needs
- Need for data for planning and analysis
- Cumulative impacts to beneficial uses
- Clarity of demand projections
- Opportunities to improve permit process
- State “advocacy” of local projects

The proposed regulation represents the essential content necessary to meet the mandate of § 62.1-44.38:1 and Chapter 227 of the 2003 Acts of Assembly.

**Public comment**

*Please summarize all public comment received during 30-day period following the publication of the NOIRA, and provide the agency response.*

Commenter	Comment	Agency response
Loudoun County Sanitation Authority	<p>The regulation should:</p> <ol style="list-style-type: none"> <li>1. Include annual feedback mechanism.</li> <li>2. Allow plan adjustments without significant regulatory red tape.</li> <li>3. Include research funding and assistance to Virginia universities on a number of issues related to water suppliers including ground water availability.</li> <li>4. Include funding for water suppliers to study alternative water sources during drought periods.</li> <li>5. Provide incentives for suppliers who want to achieve the highest level of goals established by the regulation.</li> <li>6. Create a program to promote, encourage, and coordinate use of igneous rock quarries for water storage.</li> <li>7. Provide guidance and tax incentives to owners of quarries and private water reservoirs to cooperate with municipal suppliers for conversion to public sources.</li> <li>8. Coordinate development of the planning regulation with Virginia regulations regarding the close-out and reclamation of quarries.</li> <li>9. Encourage regional cooperation such as that demonstrated by the CO-OP Program of the ICPRB.</li> <li>10. Emphasize the need to prepare security plans for all public water supplies.</li> <li>11. Establish a goal of updating the regulation every three years.</li> <li>12. Not require any new review or permit fees.</li> </ol>	<p>DEQ responds:</p> <ol style="list-style-type: none"> <li>1. While a formal annual feedback mechanism is not expressly contained in the regulation, the Water Policy TAC suggested that an annual status report within the State Water Resources Plan could serve the intended function.</li> <li>2. The regulations envision a process where plan adjustments can be approved by the Executive Director without a formal hearing with the State Water Control Board unless circumstances have changed or new information has been made available that will result in water demands that will not be met by alternatives contained in the water plan. These circumstances may be caused by changes in demands, the availability of the anticipated source, cumulative impacts, in-stream beneficial uses, or other factors.</li> <li>3. While state funding cannot be provided through a regulation, DEQ has committed to seek funding to address data needs for meaningful local and regional water planning, especially ground water availability.</li> <li>4. DEQ expects to be able to initiate a local grant program to assist in implementing this regulation. A study of alternative water sources during drought periods is an example of a project that may be funded under such a grant program.</li> <li>5. The proposed regulation doesn't have levels of compliance goals. DEQ hopes that local and regional planners will go beyond the level of planning anticipated by the regulation.</li> <li>6. While this may be a worthy goal, the Water Policy TAC did not discuss this and it is not included in the regulation.</li> <li>7. This is not a regulatory action. General Assembly action would be required to achieve this.</li> <li>8. While this may be a worthy goal, the Water Policy TAC did not discuss this and it is not included in the regulation.</li> <li>9. The regulation seeks to encourage regional approaches to water planning through the provision of additional time for compliance. In addition, the Water Policy TAC recommended</li> </ol>

		<p>that any grant program developed by DEQ to implement the regulation should target regional projects.</p> <p>10. Since these security plans have been required by federal law, the Water Policy TAC did not include any additional requirements in this regulation.</p> <p>11. DEQ will evaluate the regulation annually and updates will be made when warranted.</p> <p>12. Entities will not be charged a fee for the compliance review of the required plans. Additional permit fees to review specific water supply projects will not be changed to fund the planning program.</p>
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**Impact on family**

*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.*

The Board does not expect any direct impacts on the institution of the family and family stability.

**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.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
None	9 VAC 25-780.10	None	<p>Applicability.</p> <p>Indicates that all localities are subject to the regulation.</p> <p>Indicates that the regulation will not affect any water supply project for which a permit application was submitted or funding granted</p>



			<p>prior to January 1, 2003.</p> <p>Explains the extent of impact on existing property rights.</p> <p>Explains that the review of plans will not be a precondition for filing certain permit applications for water supply projects.</p>
None	9 VAC 25-780.20	None	<p>Authority.</p> <p>Describes the authority under which this regulation is being promulgated.</p>
None	9 VAC 25-780.30	None	<p>Purpose.</p> <p>Indicates that the purpose of this chapter is to establish a comprehensive water supply planning process for the development of local, regional, and state water supply plans. This process shall be designed to (i) ensure that adequate and safe drinking water is available to all citizens of the Commonwealth, (ii) encourage, promote, and protect all other beneficial uses of the Commonwealth's water resources, and (iii) encourage, promote, and develop incentives for alternative water sources, including but not limited to desalinization.</p>
None	9 VAC 25-780-40	None	<p>Definitions.</p> <p>This section defines terms used in the regulation.</p>
None	9 VAC 25-780-50	None	<p>Program development.</p> <p>This section establishes that local governments shall develop programs for local or regional water plans that are necessary to comply with this chapter.</p> <p>It also requires that local governments shall consult and coordinate with all community water systems in the planning area during the preparation of local or regional programs and those community water systems within the planning area shall cooperate and participate with the locality during preparation of the local program.</p> <p>The section encourages counties, cities, and towns to develop regional programs.</p> <p>Local programs shall be designed to (i) ensure that adequate and safe drinking water is available, (ii) encourage and protect all beneficial uses, (iii) encourage and promote</p>

			alternative water sources, and (iv) promote conservation.
None	9 VAC 25-780-60	None	Preparation and submission of a program.  This section defines the schedule for compliance, the elements required for a program, and the required process for five year updates and reviews.  The section requires a local public hearing to be conducted on the plan.
None	9 VAC 25-780-70	None	State role in program preparation.  This section establishes the state's commitment to provide financial and technical assistance and specifies the types of technical assistance that will be provided to help localities comply with the regulation.
None	9 VAC 25-780-80	None	Existing water source information.  This section establishes what information regarding existing water sources is required to be included in local or regional plans.
None	9 VAC 25-780-90	None	Existing water use information.  This section establishes what information regarding existing water use is required to be included in local or regional plans.
None	9 VAC 25-780-100	None	Existing resource information.  Requires a description of existing geologic, hydrologic, and meteorological conditions within the planning area, and in proximity to the point of withdrawal if it is outside the planning area.  Requires a description of existing environmental conditions that pertain to, or may affect in-stream flow, in-stream uses, and sources that provide the current supply and lists what conditions must be included.
None	9 VAC 25-780-110	None	Projected water demand information.  Defines generally accepted data sources and methods.  Establishes a 30 to 50 year planning period.  Establishes the required information to include in the plan's section on projecting future water demand.  Requires a description of how the projected needs of domestic consumption, in-stream uses, and economic development have been accounted for in the demand projection for

			the planning period.
None	9 VAC 25-780-120	None	<p>Water demand management information.</p> <p>Identifies the standards for the development of water conservation plans and requires that current conservation practices, techniques, and technologies shall be considered in projecting water demand pursuant to 9 VAC 25-780-110.D.</p>
None	9 VAC 25-780-130	None	<p>Drought response and contingency plans.</p> <p>Identifies the standards for the development of drought response and contingency plans for programs that include community water systems and self-supplied users who withdraw more than an average of 300,000 gallons per month of surface water and/or ground water.</p>
None	9 VAC 25-780-140	None	<p>Statement of need and alternatives.</p> <p>Requires the preparation of a clear statement of need that is derived from an evaluation of the information required by 9 VAC 25-780-80 through 9 VAC 25-780-120.</p> <p>This statement of need shall contain, at a minimum, a determination of whether the existing source(s) is adequate to meet current and projected demands.</p> <p>If the determination is that the existing source(s) is inadequate to meet projected demands during the planning period, the program shall include an alternative analysis of potential sources that includes the following information:</p> <ol style="list-style-type: none"> <li>1. A description of potential water savings from water demand management actions including an estimated volume for each action;</li> <li>2. A description of potential sources for new supplies including an estimated volume from each source;</li> <li>3. A description of potential resource issues or impacts, identified in accordance with 9VAC25-780-150.G, known for each potential new source that any future water project will need to consider in its development.</li> </ol> <p>The analysis may include traditional as well as non-traditional means of increasing supply</p>

			and shall be included in the submission required by 9 VAC 25-780-60.C.7.
None	9 VAC 25-780-150	None	<p>Review of local programs.</p> <p>Defines the standards that the Board will use to establish whether a local or regional program complies with the regulation.</p> <p>Describes the process to be used when a local or regional program is found to be noncompliant.</p> <p>Establishes the development of information for use in the State Water Resources Plan and for future local and regional planning.</p>
None	9 VAC 25-780-160	None	<p>Public notice and public comment period.</p> <p>Defines how public notice will be provided and to whom.</p> <p>Describes the process by which a commenter may request a public meeting.</p>
None	9 VAC 25-780-170	None	<p>Public meetings.</p> <p>Defines how public meetings held pursuant to 9 VAC 25-780-160, will be conducted.</p>
None	9 VAC 25-780-180	None	<p>Appeals.</p> <p>Specifies that appeals taken from actions of the board or the director will be governed by the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).</p>
None	9 VAC 25-780-190	None	<p>Enforcement.</p> <p>Establishes that enforcement of this regulation will be in accord with §§62.1-44.15, 62.1-44.23, and 62.1-44.32 of the Code of Virginia.</p>
None	9 VAC 25-780-200	None	<p>Delegation of authority.</p> <p>Authorizes the delegation of certain functions from the State Water Control Board to the Executive Director or his designee.</p>