



townhall.virginia.gov

Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-200
VAC Chapter title(s)	Water Withdrawal Reporting
Date this document prepared	July 26, 2022

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 (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

DEQ – Department of Environmental Quality

TMDL - Total Maximum Daily Load

VDH – Virginia Department of Health

VPDES - Virginia Pollution Discharge Elimination System

Legal Basis

Identify (1) the promulgating agency, 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 agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The State Water Control Board is authorized by §62.1-44.15 to promulgate regulations. Section 62.1-44.38 authorizes the Board to develop regulations requiring groundwater and surface water users that withdraw a daily average of more than 10,000 gallons per day for non-agricultural use, and those that withdraw more than 1,000,000 gallons in any month for agricultural use, to report water withdrawals on an annual basis for the preceding year. The State Water Control Board has promulgated this regulation to obtain information concerning withdrawals of surface water and groundwater necessary to assess the current conditions of surface water and groundwater capacities. This information is needed to assess potential future water availability for water supplies and future economic development projects.

Alternatives to Regulation

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.

There are no known alternatives to the current regulation for collecting water withdrawal data in Virginia for the majority of users that meet the threshold requiring reporting of withdrawals to DEQ. Withdrawal data reported to DEQ is the only significant statewide water use dataset in Virginia and is relied on by multiple DEQ programs as well as other state and federal agencies to inform resource management decisions, and is provided to localities as the primary dataset used to develop water supply plans. The information required by this regulation is needed to assess potential future water availability for water supplies and future economic development projects. Withdrawals have been reported to DEQ since 1982 with on average more than 1200 facilities reporting each year.

The current regulation only requires reporting of withdrawals on an annual basis and allows electronic and hardcopy reporting. The regulation limits the burden on many small businesses and private/domestic use as it exempts withdrawals below 10,000 gallons per day on average (or below 1 million gallons in any month for agriculture). It also exempts users who report withdrawals through groundwater withdrawals permits and exempts industrial facilities that report discharges through Virginia Pollution Discharge Elimination System (VPDES) permit that are volumetrically equivalent to the associated withdrawal. It allows users that report monthly withdrawals to the Virginia Department of Health (VDH) in compliance with a waterworks operations permit to provide those reports to DEQ in lieu of reporting. These exemptions limit the burden to users that might otherwise be required to report similar information to multiple programs. Requiring self-reporting through the Annual Water Withdrawal Reporting program for users not otherwise exempted and that do not report withdrawals through other means is the least burdensome alternative. There is no equivalent federal regulation that would provide this data.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Notice of Periodic Review was published in the Virginia Register on April 25, 2022 and the comment period concluded on May 16, 2022. No comments were received.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, 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.

Water withdrawal reporting received in compliance with 9VAC25-200 provides foundational data needed to protect public, health, safety, and welfare. The resulting reporting data allows DEQ to create an annual up-to-date water budget that provides predictability to water users. This information is necessary to develop state, regional, and local water supply plans, and is necessary for the evaluation of surface water and groundwater withdrawal permit applications and to maintain both the surface water and groundwater models used in these evaluations. Economic development requires predictability and certainty that a water supply allocated to them will be available for a 30-year period, even under drought conditions. The modeling conducted protects the surface water and groundwater resources from becoming overdrawn. Large withdrawals of surface water and groundwater require permits to be issued before these withdrawals can occur. The most common basis for a new or expanded water withdrawal is to support economic development. These tools inform existing and prospective users of state waters of potential water availability and protect existing user’s withdrawals from unaccounted for reductions in supply from drought or new upstream withdrawals. One example demonstrating the effectiveness of this approach is that no emergency withdrawal permit has been needed to meet existing permitted water need during any dry low flow period since 2010. Withdrawal reporting data is also used in developing Total Maximum Daily Load (TMDL’s) and TMDL implementation plans. It is the primary dataset relied on for the Annual Status of Virginia’s Water Resources Report, which DEQ produces annually to inform the General Assembly and the public about current water use in Virginia.

The regulation is clearly written and easily understandable by the regulated community. This self-reported data set continues to provide high quality data with little clarification of the regulatory expectations required. The regulation has not changed in many years and this long-term stability in the reporting requirement provides familiarity and comfort on the part of the regulated community in what the regulations require.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

DEQ proposes to retain the regulation 9VAC25-200 without making changes as the current regulation is necessary for protecting public health, safety, and welfare, as the resulting data is necessary to support water resource management programs that are required to fulfil DEQ's statutory obligations. The information required by this regulation is needed to assess potential future water availability for water supplies and future economic development projects. Having an accurate water balance that is updated annually ensures accurate assessments of available water for future use, providing predictability and certainty that the water supply will continue to be available for growth and development. The regulation currently includes numerous exemptions to reduce the burden on the regulated community and the program allows fast and simple electronic reporting to meet the single annual reporting requirement.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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 applicable law, will minimize the economic impact of regulations on small businesses.

Given there is no known alternative to collecting water withdrawal reporting data from users that do not otherwise report in compliance with a permit, the regulation continues to be necessary. The regulated community has not expressed concerns with this regulation. The regulation as written reduces the likelihood of users being required to report similar information more than once to DEQ or other agencies, and allows for multiple methods to submit reports including a web-based electronic reporting interface. Reporting is only required once per year. The regulation is clearly written, concise at under four pages in total, and requires no additional guidance. The information required by this regulation is needed to assess potential future water availability for water supplies and future economic development projects.

No public comments were submitted during the periodic review comment period.

The regulation provides the only means for collecting water withdrawal reporting from users that do not otherwise report in compliance with a withdrawal permit. Reporting of surface and groundwater withdrawals is required by 9VAC25-210 and 9VAC25-610 respectively, but exemptions have been included in 9VAC25-200 to limit any overlap of reporting. There are no known federal laws or regulations that overlap with this regulation. The information required by this regulation is needed to assess potential future water availability for water supplies and future economic development projects. As additional stress is placed on groundwater aquifers, this information is critical to be obtained to be able to model future groundwater withdrawals and the impact that those withdrawals would have on groundwater aquifers.

A periodic review of the regulation was completed in 2018 and the regulation was retained without change. During that time there have been no significant changes to technology, economic conditions, or other factors related to the requirements, which remain appropriate and reasonable when considering data collection practices and technology available to the regulated community.

The reporting requirements have minimal impacts on small businesses with most businesses unlikely to be supplying their own water at a level requiring reporting. For those that do, the requirements are not burdensome with once annual reporting through the electronic portal providing an efficient and user friendly experience, while hardcopy submissions are allowed for users that prefer that method.

