

Part V

Surface Water Withdrawals

9VAC25-210-300. Definitions for surface water withdrawals. *[note: gray highlighting attempts to show where text was moved from other sections of the regulation; no gray will appear in the final version]*

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The following words and terms when used in this part shall have the meanings as follows:

"Affected stream reach" means the portion of a surface water body beginning at the location of a withdrawal and ending at a point where effects of the withdrawal are not reasonably expected to adversely affect beneficial uses.

"Agricultural surface water withdrawal" means a withdrawal of surface water in Virginia or from the Potomac River for the purpose of agricultural, silvicultural, horticultural, or aquacultural operations. Agricultural surface water withdrawals include withdrawals for turf farm operations, but do not include withdrawals for landscaping activities, or turf installment and maintenance associated with landscaping activities.

"Consumptive use" means the use of water withdrawn from a surface water in such a manner that it is returned with substantial diminution in quantity at or near the point from which it was taken.

"Drought" means the declaration of a Drought Stage by the Virginia Drought Coordinator or the Governor of Virginia for a particular area or locality within Virginia. Drought stage declarations include Watch, Warning and Emergency, depending upon severity, as defined by the Virginia Drought Assessment and Response Plan dated March 28, 2003.

"Drought of Record" means the time period during which the most severe drought conditions occurred for a particular area or location, as indicated by the available hydrologic and meteorologic data.

"Emergency Virginia Water Protection Permit" means a Virginia Water Protection Permit issued pursuant to § 62.1-44.15:22 C of the Code of Virginia authorizing a new or increased surface water withdrawal to address insufficient public drinking water supplies that are caused by a drought and may result in a substantial threat to human health or public safety.

"Human consumption" means the use of water to support human survival and health, including drinking, bathing, showering, cooking, dishwashing, and maintaining hygiene.

"Instream flow" means the normal volume of water flowing in a stream or water body including any variations of water levels and flow occurring over time.

"Intake structure" means any device or combination of devices that is part of a withdrawal system used to withdraw surface water that is located within the surface water, such as, but not limited to, a machine, pump, pipe, culvert, hose, tube, screen, or fabricated concrete or metal structure.

"Major river basin" means the Potomac-Shenandoah River Basin, the Rappahannock River Basin, the York River Basin, the James River Basin, the Chowan River Basin, the Roanoke River Basin, the New River Basin, or the Tennessee-Big Sandy River Basin.

"Nonconsumptive use" means the use of water withdrawn from a surface water in such a manner that it is returned to the surface water without substantial diminution in quantity at or near the point from which it was taken and would not result in or exacerbate low flow conditions.

"Potomac River Low Flow Allocation Agreement" means the agreement among the United States of America, the State of Maryland, the Commonwealth of Virginia, the District of Columbia, the Washington Suburban Sanitation Commission, and the Fairfax County Water

Comment [A1]: Request inserting the phrase at the end "taking into account existing water uses".

Comment [A2]: Historically, the term "intake structure" has applied to the physical infrastructure and not the pump equipment which can be replaced more easily. We request removing "pump" from the definition as it is not necessarily a permanent feature of the intake structure.

Authority dated January 11, 1978, consented to by Congress in § 181 of the Water Resources Development Act of 1976, Public Law 94-587, as modified on April 22, 1986.

"Public water supply" means water from a surface water in Virginia or from the Potomac River used for the production of drinking water, distributed to the general public for the purpose of, but not limited to, domestic use and human consumption.

"Public water supply emergency" means a substantial threat to public health or safety due to insufficient public drinking water supplies caused by drought.

"Safe yield" means the highest average annual volumetric rate of water that can be withdrawn by a surface water withdrawal during the worst drought of record in Virginia since 1930 under specific operational conditions established in a Virginia Water Protection permit.

"Section for Cooperative Water Supply Operations on the Potomac (CO-OP)" means a section of the Interstate Commission on the Potomac River Basin designated by the Water Supply Coordination Agreement as responsible for coordination of water resources during times of low flow in the Potomac River.

"Surface water withdrawal" means a removal or diversion of surface water in Virginia or from the Potomac River for consumptive or nonconsumptive use thereby altering the instream flow or hydrologic regime of the surface water. Projects that do not alter the instream flow or that alter the instream flow but whose sole purpose is flood control or storm water management are not included in this definition.

"Surface water withdrawal system" means i) one or more surface water withdrawals located on the same or contiguous properties under common ownership for which the withdrawal is applied to the same beneficial use or (ii) two or more connected surface water withdrawals which are under common ownership but are not necessarily located on contiguous properties that are part of a single and complete project.

Comment [A3]: The term is currently defined in VDH Regulations (12VAC5-590-830) as it applies to waterworks operations. We request striking the proposed definition and retaining the definition in the current location in the VDH Regulations.

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"Variance" means a mechanism which allows temporary waiver of the generally applicable withdrawal limitation requirements or instream flow conditions of a VWP permit during a drought.

Comment [A4]: Request removal of "during a drought". This is consistent with the language initially proposed by DEQ and discussed by the advisory group and would provide flexibility to address non-drought emergencies. The state code does not limit variances to drought conditions.

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"Water Supply Coordination Agreement" means the agreement among the United States of America, the Fairfax County Water Authority, the Washington Suburban Sanitary Commission, the District of Columbia, and the Interstate Commission on the Potomac River Basin, dated July 22, 1982, which establishes agreement among the suppliers to operate their respective water supply systems in a coordinated manner and which outlines operating rules and procedures for reducing impacts of severe droughts in the Potomac River Basin.

"Water supply plan" means a document developed in compliance with 9VAC25-780 et seq.

Statutory Authority

§ 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act.

Historical Notes

Derived from VR680-15-02 § 1.1, eff. May 20, 1992; amended, Virginia Register Volume 16, Issue 25, eff. September 27, 2000; Volume 17, Issue 21, eff. August 1, 2001; Volume 23, Issue 21, eff. July 25, 2007; Volume 24, Issue 9, eff. February 6, 2008; Volume 25, Issue 5, eff. December 10, 2008.

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9VAC25-210-310. Exclusions from permits for surface water withdrawals.

A. The following surface water withdrawals are excluded from VWP permit requirements. Activities, other than the surface water withdrawal, which are contained in 9VAC25-210-50 and are associated with the construction and operation of the surface water withdrawal, are subject to VWP permit requirements unless excluded by 9VAC25-210-60 of this chapter. Other permits under state and federal law may be required.

- 1. Any surface water withdrawal in existence on July 1, 1989; however, a permit shall be required if a new § 401 certification is required to increase a withdrawal. To qualify for

this exclusion, the surface water withdrawal shall be deemed to be in existence on July 1, 1989, if there was an actual withdrawal on or before that date that has not been abandoned.

a. Abandonment of a surface water withdrawal. A surface water withdrawal shall be deemed to be abandoned if the owner of the withdrawal system (i) notifies the DEQ in writing that the withdrawal has been abandoned or (ii) removes or disables the withdrawal system with the intent to permanently cease such withdrawal. Transfer of ownership or operational control of the withdrawal system, a change in use of the water, or temporary cessation of the withdrawal shall not be deemed evidence of abandonment. The notification shall be signed by the owner of record or shall include evidence satisfactory to the DEQ that the signatory is authorized to submit the notice on behalf of the owner of record. Evidence may include, but shall not be limited to, a resolution of the governing body of the owner or corporate minutes.

b. Information to be furnished to the DEQ. Each owner or operator of a permanent withdrawal system engaging in a withdrawal that is subject to this exclusion shall provide the DEQ the estimated maximum capacity of the intake structure, the location of the existing intake structure and any other information that may be required by the board. Each owner or operator of a temporary withdrawal system engaging in a withdrawal that is subject to this exclusion, where the purpose of the withdrawal is for agriculture, shall provide to the DEQ the maximum annual surface water withdrawal over the last 10 years. The information shall be provided within one year of the date that notice of such request is received from the DEQ and shall be updated when the maximum capacity of the existing intake structure changes. The information provided to the DEQ shall not constitute a limit on the exempted withdrawal. Such information

shall be utilized by the DEQ and board to protect existing beneficial uses and shall be considered when evaluating applications for new withdrawal permits.

2. Any surface water withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal received a § 401 certification before January 1, 1989, with respect to installation of any necessary withdrawal structures to make such withdrawal; however, a permit shall be required before any such withdrawal is increased beyond the amount authorized by the certification.

3. Any existing lawful unpermitted surface water withdrawal initiated between July 1, 1989, and July 25, 2007 that has complied with the Water Withdrawal Reporting Regulations (9VAC25-200), and which is not subject to other exclusions contained in this section. Any increase in that withdrawal above the limited amount identified in subdivision 3 a of this subsection shall require an application for a permit for the withdrawal system.

a. The largest 12-consecutive month withdrawal that occurred in the 10 years prior to July 25, 2007 shall constitute a limit on the withdrawal that is excluded from permit requirements. For agricultural surface water withdrawals that did not report annually as required by the Water Withdrawal Reporting Regulations (9VAC25-200) prior to July 25, 2007, the limit excluded from permit requirements was established for the operations that were in existence during the 10 years prior to July 25, 2007 by estimating the largest 12-consecutive month withdrawal based upon the following information associated with that timeframe: the area irrigated, depth of irrigation, and annual number of irrigations; pumping capacity and annual pumping time; annual energy consumption for pumps; number and type of livestock watered annually; and number and type of livestock where water is used for cooling purposes.

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b. All owners and operators of surface water withdrawals excluded from permit requirements by this section shall annually report withdrawals as required by the Water Withdrawal Reporting Regulations (9VAC25-200). Failure to file annual reports either reporting actual withdrawals or the fact that withdrawals did not occur may result in the owner or operator being required to cease withdrawals, file an application, and receive a permit prior to resuming any withdrawal. Information regarding excluded withdrawal amounts shall be utilized by the DEQ and board to protect existing beneficial uses and shall be considered when evaluating applications for new withdrawal permits.

4. Agricultural surface water withdrawals that total less than:

a. one million gallons in a single month from nontidal waters.

b. 60 million gallons in a single month from tidal waters.

5. Surface water withdrawals from tidal waters for nonconsumptive uses.

6. Surface water withdrawals from nontidal or tidal waters, regardless of the volume withdrawn, for the following uses:

a. Firefighting or for the training activities related to firefighting, such as dry hydrants and emergency surface water withdrawals.

b. Hydrostatic pressure testing of water tight containers, pipelines, and vessels.

c. Normal single family home residential gardening, lawn, and landscape maintenance.

7. Surface water withdrawals placed into portable containers by persons owning property on, or holding easements to, riparian lands.

8. Surface water withdrawals that return withdrawn water to the stream of origin; do not divert more than half of the instantaneous flow of the stream; have the withdrawal point

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Historical Notes

Derived from VR680-15-02 § 1.6, eff. May 20, 1992; amended, Virginia Register Volume 17, Issue 21, eff. August 1, 2001; Volume 23, Issue 21, eff. July 25, 2007; Volume 24, Issue 9, eff. February 6, 2008; Volume 25, Issue 5, eff. December 10, 2008.

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9VAC25-210-320. Pre-application procedures for new or expanded surface water withdrawals.

A. Preapplication review panel. At the request of a potential applicant for a surface water withdrawal proposing to the Department of Environmental Quality (DEQ) to withdrawal 90 million gallons a month or greater, a preapplication review panel shall be convened prior to submission of a VWP application. The preapplication review panel shall assist potential applicants that are proposing surface water withdrawals with the early identification of issues related to the protection of beneficial instream and offstream uses of state waters and the identification of the affected stream reach. The DEQ shall notify the Virginia Marine Resources Commission, the Virginia Institute of Marine Science, the Virginia Department of Game and Inland Fisheries, the Virginia Department of Conservation and Recreation, the Virginia Department of Health, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. Environmental Protection Agency and any other appropriate local, state, and federal agencies of the preapplication review panel request. These agencies shall participate to the extent practicable in the preapplication review panel by providing information and guidance on the potential natural resource impacts and regulatory implications of the options being considered by the applicant and shall provide comments within 60 days of the initial meeting of the preapplication panel.

B. Preapplication public notice. For new or expanded surface water withdrawals requiring an individual VWP permit and proposing to withdrawal 90 million gallons a month or greater, a potential applicant shall provide information on the project, shall provide an opportunity for

public comment on the proposed project, and shall assist in identifying public concerns or issues prior to filing a VWP individual permit application.

1. Except as provided in this subsection, the potential applicant shall provide for publication of notice once a week for two consecutive weeks in a newspaper of general circulation serving the locality where the surface water withdrawal is proposed to be located.

2. If requested by any person, the potential applicant shall hold at least one public information meeting. Notice of any public information meeting held pursuant to this subsection shall be provided at least 14 days prior to the public information meeting date and shall be published in the same manner as required in subdivision 1 of this subsection. A potential applicant shall submit the notice to the DEQ for posting on the DEQ website. At a minimum, any notice required by this subsection shall include:

- a. A statement of the potential applicant's intent to apply for a VWP permit for a surface water withdrawal;
- b. The proposed location of the surface water withdrawal;
- c. Information on how the public may request a public information meeting or in the alternative, the date, time and location of the public information meeting;
- d. The name, address and telephone number of the potential applicant, or an authorized representative who can answer questions or receive comments on the proposed surface water withdrawal; and
- e. A statement of how any oral or written public comments will be used.

3. In accordance with the provisions of 9VAC25-780-50 C 11 and 9VAC25-780-150, a potential applicant shall not be required to publish public notice or provide an opportunity for a public information meeting if a public meeting has been held within two years prior

to the submittal of an application for a VWP permit on a local or regional water supply plan, which includes the proposed project.

4. The potential applicant shall maintain a list of persons and their addresses making comment and shall make a good faith effort to notify commenters, at the address provided by the commenter, when the public notice for the draft VWP individual permit is available.

Statutory Authority

§ 62.1-44.15 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 23, Issue 21, eff. July 25, 2007.

9VAC25-210-330. Coordinated review with the Virginia Marine Resource Commission on applications for surface water withdrawals.

A. The Department of Environmental Quality (DEQ) shall coordinate the review of an application for surface water withdrawals that also requires a Virginia Marine Resources Commission (VMRC) permit under Chapter 12 of Title 28.2 of the Code of Virginia with the VMRC in accordance with § 62.1-44.15:5.01 of the Code of Virginia.

B. The initial application for surface water withdrawals that requires both an individual Virginia Water Protection Permit and a VMRC permit shall be advertised concurrently by the DEQ and the VMRC. When appropriate, such advertisement may be in the form of a joint public notice of the application, prepared by VMRC with the assistance of DEQ, published once in a newspaper of general circulation in the area affected by the proposed activity in accordance with VMRC chapters and policy. Such advertising shall be paid for by the applicant.

Statutory Authority

§ 62.1-44.15 of the Code of Virginia.

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Historical Notes

Derived from VR680-15-02 § 3.1, eff. May 20, 1992; amended, Virginia Register Volume 17, Issue 21, eff. August 1, 2001; Volume 23, Issue 21, eff. July 25, 2007.

9VAC25-210-340. Application Requirements for Surface Water Withdrawals

A. Persons proposing to initiate a new or expanded surface water withdrawal not excluded from requirements of this chapter by 9VAC25-210-310, proposing to reapply for a current permitted withdrawal, or a Federal Energy Regulatory Commission (FERC) license or re-license associated with a surface water withdrawal, shall apply for a VWP permit.

B. In addition to requirements of 9VAC25-210-80, applications for surface water withdrawals or a Federal Energy Regulatory Commission (FERC) license or re-license associated with a surface water withdrawal, shall include:

1. As part of identifying the project purpose, the applicant shall provide a narrative describing the water supply issues that form the basis of the proposed project purpose.
2. The drainage area, the average annual flow and the median monthly flows at the withdrawal point, and historical low flows if available;
3. The average daily withdrawal, the maximum daily, monthly, annual and instantaneous withdrawals and information on the variability of the demand by season. If the project has multiple intake structures, provide for each individual intake structure and the cumulative volumes for the entire system.
4. The monthly consumptive use volume (in million gallons) and the average daily return flow (in million gallons per day) of the proposed project and the location of the return flow, including the latitude and longitude and the drainage area (in square miles) at the discharge point.

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5. Information on flow dependent beneficial uses along the affected stream reach. For projects that propose a transfer of water resources from a major river basin to another major river basin, this analysis should include both the source and receiving basins.

a. Evaluation of the flow dependent instream and offstream beneficial uses. Instream beneficial uses include, but are not limited to: the protection of fish and wildlife habitat; maintenance of waste assimilation; recreation; navigation; and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to: domestic (including public water supply); agricultural; electric power generation; and commercial and industrial uses.

b. The aquatic life, including species and habitat requirements.

c. How the proposed withdrawal will alter flows.

6. Information on the proposed use of and need for the surface water and information on how demand for surface water was determined (for example, per capita use, population growth rates, new uses, changes to service areas, and if applicable; acreage irrigated and evapotranspiration effects). If during the water supply planning process, the need for the withdrawal was established, the applicant may submit said planning process information, provided that the submittal address all requirements of 9VAC25-210-360. The board shall deem such a submittal as meeting the requirements of this subsection. For public-surface water supply withdrawal projects see also 9VAC25-780-100 and 9VAC25-780-130.

7. Information describing the intake structure, to include intake screen mesh size and intake velocity.

8. For withdrawals proposed from an impoundment, provide the following:

a. Description of the flow or release control structures, including the minimum rate of flow (in cubic feet per second), size and capacity of the structure and the mechanism to control the release.

b. Surface area (in acres), maximum depth (in feet), normal pool elevation, total storage capacity and unusable storage volume (in acre-feet).

c. The stage-storage relationship. For example, the volume of water in the impoundment at varying stages of water depth.

9. Identify if the proposed surface water withdrawal is addressed in the water supply plan that covers the area in which the withdrawal is proposed to be located. If the proposed withdrawal is included, provide a discussion as to how the proposed withdrawal is addressed in the water supply plan, specifically in terms of projected demand, analysis of alternatives, and water conservation measures. If all or a portion of the withdrawn water will be transferred to an area not covered by the plan, the discussion shall also include the water supply plan for the area of the receiving watershed.

10. An alternative analysis for the proposed surface water withdrawal, including at a minimum, the criteria in 9VAC25-210-360.

11. For new or expanded surface withdrawals proposing to withdraw 90 million gallons a month or greater, a summary of the steps taken to seek public input as required by 9VAC25-210-320 and an identification of the issues raised during the course of the public information meeting process.

12. For new or expanded surface water withdrawals that involve a transfer of water between major river basins that may impact a river basin in another state, a plan describing procedures to notify potentially affected persons, both in and outside of Virginia, of the proposed project.

13. For surface water withdrawals, other than public water supplies, information to demonstrate that alternate sources of water supply are available to support the operation of the facility during times of reduced instream flow.

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C. Applications for an Emergency Virginia Water Protection Permit to address a public water supply emergency:

1. Applications for an Emergency Virginia Water Protection Permit shall include the information noted below in subdivisions a through o. The JPA may be used for emergency applications purposes, provided that all of the information below is included:

- a. Name, mailing address, telephone number, and if applicable, fax number and electronic mail address of applicant;
- b. If different from applicant, name, mailing address, telephone number, and if applicable, fax number and electronic mail address of property owner;
- c. If applicable, name of authorized agent, mailing address, telephone number, and if applicable, fax number and electronic mail address;
- d. Name of water body or water bodies, or receiving waters, as applicable;
- e. Name of the city or county where the project occurs;
- f. Signed and dated signature page (electronic submittals containing the original signature page, such as that contained in a scanned document file are acceptable);
- g. Permit application fee in accordance with 9VAC25-20; *[note: revised from "Application processing fee in accordance with 9VAC25-20" per edits in -80 B]*
- h. The drainage area, the average annual flow and the median monthly flows at the withdrawal point, and historical low flows if available;
- i. Information on the aquatic life along the affected stream reach, including species and habitat requirements;

j. Recent and current water use including monthly water use in the previous calendar year and weekly water use in the previous six months prior to the application. The application shall identify the sources of such water and also identify any water purchased from other water suppliers;

k. A description of the severity of the public water supply emergency, including for reservoirs, an estimate of days of remaining supply at current rates of use and replenishment; for wells, current production; for intakes, current streamflow;

l. A description of mandatory water conservation measures taken or imposed by the applicant and the dates when the measures were implemented; for the purposes of obtaining an Emergency Virginia Water Protection Permit, mandatory water conservation measures shall include, but not be limited to, the prohibition of lawn and landscape watering, vehicle washing, the watering of recreation fields, refilling of swimming pools, the washing of paved surfaces;

m. An estimate of water savings realized by implementing mandatory water conservation measures;

n. Documentation that the applicant has exhausted all management actions that would minimize the threat to public welfare, safety and health and will avoid the need to obtain an emergency permit, and that are consistent with existing permit limitations; and

o. Any other information that demonstrates that the condition is a substantial threat to public health or safety.

2. Within 14 days after the issuance of an Emergency Virginia Water Protection Permit, the permit holder shall apply for a VWP permit under the other provisions of this regulation.

Statutory Authority

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[§ 62.1-44.15 of the Code of Virginia.](#)

[Historical Notes](#)

[Derived from VR680-15-02 § 2.1, eff. May 20, 1992; amended, Virginia Register Volume 17, Issue 21, eff. August 1, 2001; Volume 23, Issue 21, eff. July 25, 2007.](#)

[9VAC25-210-350. Duty to reapply for a permit for a continuation of a surface water withdrawal.](#)

[A. Any permittee with an effective permit for a surface water withdrawal shall submit a new permit application at least 270 days before the expiration date of an effective permit unless permission for a later date has been granted by the board. DEQ may administratively continue an expiring permit in accordance with 9VAC25-210-65.](#)

[B. The applicant shall provide all information described in 9VAC25-210-340 and applicable portions of 9VAC25-210-80 for any reapplication. The information may be provided by referencing information previously submitted to the department that remains accurate and relevant to the permit application. The board may waive any requirement of 9VAC25-210-340 and the applicable portions of 9VAC25-210-80 B, if it has access to substantially identical information.](#)

[Statutory Authority](#)

[§ 62.1-44.15 of the Code of Virginia.](#)

[9VAC25-210-360. Evaluation of project alternatives for surface water withdrawals.](#)

[A. The applicant shall demonstrate to the satisfaction of the board that the project meets an established local water supply need. In establishing local need, the applicant shall provide the following information:](#)

[1. Existing supply sources, yields and demands, including:](#)

[a. Peak day and average daily withdrawal;](#)

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Comment [A5]: Because this is increasing from 180 days to 270 days, some consideration needs to be given to existing permittees that are not currently planning to submit an application three months earlier than previously required. Request that a statement be added clarifying that this requirement only applies to permits issued after the effective date of the regulation.

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b. The safe yield and lowest daily flow of record;

c. Types of water uses; and

d. Existing water conservation measures and drought response plan, including what conditions trigger their implementation.

2. Projected demands over a minimum 30-year planning period, including the following:

a. Projected demand contained in the local or regional water supply plan developed in accordance with 9VAC25-780 or for the project service area, if such area is smaller than the planning area; or

b. Statistical population (growth) trends; and

c. Projected demands by use type; and

d. Projected demand without water conservation measures; and

e. Projected demands with long-term water conservation measures.

3. Any alternatives analysis conducted specifically for withdrawals for public surface water supply shall include:

a. The range of alternatives to be analyzed by the applicant as follows:

(1) All applicable alternatives contained in the local or regional water supply plan developed in accordance with 9VAC25-780;

(2) Alternatives that are practicable or feasible from both a technical and economic standpoint that had not been identified in the local or regional water supply plan developed in accordance with 9VAC25-780;

(3) Alternatives that are available to the applicant but not necessarily under the current jurisdiction of the applicant; and

(4) Water conservation measures that could be considered as a means to reduce demand for each alternative considered by the applicant.

b. The applicant shall provide a narrative description that outlines the opportunities and status of regionalization efforts undertaken by the applicant.

c. The criteria used to evaluate each alternative for the purpose of establishing the least environmentally damaging practicable alternative, which includes but is not limited to:

(1) Demonstration that the proposed alternative meets the project purpose and project demonstrated need as documented pursuant to this section;

(2) Availability of the alternative to the applicant;

(3) Evaluation of interconnectivity of water supply systems (both existing and proposed);

(4) Evaluation of the cost of the alternative on an equivalent basis;

(5) Evaluation of alternative safe yields;

(6) Presence and potential impact of alternative on state and federally listed threatened and endangered species;

(7) Presence and potential impact of alternative on wetlands and streams (based on maps and aerial photos for all alternatives, field delineation required for preferred alternative);

(8) Evaluation of effects on instream flow; and

(9) Water Quality Considerations, including:

(a) Land use within a watershed where the type of land use may impact the water quality of the source;

(b) The presence of impaired streams and the type of impairment;

(c) The location of point source discharges; and

(d) Potential threats to water quality other than those listed in subdivisions 3 c
(9) (a) through (c) of this subsection.

4. Any alternatives analysis conducted for surface water withdrawals other than for public surface water supply, shall include all applicable items included in subdivision 3 of this subsection.

Statutory Authority

§ 62.1-44.15 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 17, Issue 21, eff. August 1, 2001; amended, Virginia Register Volume 23, Issue 21, eff. July 25, 2007.

9VAC25-210-370. VWP permit conditions applicable to surface water withdrawal permits.

A. In addition to the conditions established in 9VAC25-210-90 and 9VAC25-210-100, each WWP permit shall include conditions meeting the requirements established in this section, where applicable.

B. Instream flow conditions. Subject to the provisions of Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 of the Code of Virginia, and subject to the authority of the State Corporation Commission over hydroelectric facilities contained in Chapter 7 (§ 62.1-80 et seq.) of Title 62.1 of the Code of Virginia, instream flow conditions may include but are not limited to conditions that limit the volume and rate at which surface water may be withdrawn at certain times, the safe yield, and conditions that require water conservation and reductions in water use.

1. In the development of conditions that limit the volume and rate at which surface water may be withdrawn, consideration shall be given to the seasonal needs of water users and the seasonal availability of surface water flow.

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Comment [A6]: Request removing "safe yield" here. Safe yield is redundant considering "conditions that limit the volume and rate at which surface water may be withdrawn".

2. Consideration shall also be given to the affected stream reach and the amount of water that is put to a consumptive use in the process.

3. In the development of instream flow conditions for new withdrawals, the board shall take into consideration the combined effect on the hydrologic regime of the surface water within an affected stream reach due to consumptive water uses associated with:

- a. All existing permitted withdrawals;
- b. The total amount of withdrawals excluded from VWP permit requirements; and
- c. Any other existing lawful withdrawals.

4. VWP Permits for surface water withdrawals, other than for public water supply, shall identify how alternate sources of water supply will be made available to support the operation of the permitted facility during times when surface water withdrawals will be curtailed due to instream flow requirements or shall provide for modification of the operation of the facility to assure compliance with permit conditions. Such modifications may include, but are not limited to, termination or reduction of activities at the facility that are dependent on the permitted withdrawal, increase capacity to capture and store higher flows or implementation of other potential management options.

C. VWP permits issued for surface water withdrawals from the Potomac River between the Shenandoah River confluence and Little Falls shall contain a condition that requires the permittee to reduce withdrawals when the restriction or emergency stage is declared in the Washington Metropolitan Area under the provisions of the Potomac River Low Flow Allocation Agreement; or when the operating rules outlined by the Drought-Related Operations Manual for the Washington Metropolitan Area Water Suppliers, an attachment to the Water Supply Coordination Agreement, are in effect. The department, after consultation with the Section for Cooperative Water Supply Operations on the Potomac (CO-OP) shall direct the permittee as to when, by what quantity and for what duration withdrawals shall be reduced.

D. The board may issue permits for new or expanded surface water withdrawals, which are not excluded from the requirements of this chapter by 9VAC25-210-310, based on the following criteria:

1. The amount of the surface water withdrawal is limited to the amount of water that can be put to beneficial use.
2. Based on the size and location of the surface water withdrawal, the withdrawal is not likely to have a detrimental impact on existing instream or off-stream uses.
3. Based on an assessment by the board, this withdrawal, whether individually or in combination with other existing or proposed projects, does not cause or contribute to, or may not reasonably be expected to cause or contribute to:
 - a. A significant impairment of the state waters or fish and wildlife resources;
 - b. Adverse impacts on other existing beneficial uses; or
 - c. A violation of water quality standards.
4. In cases where the board's assessment indicates that criteria contained subdivisions 2 and 3 of this subsection are not met, the board may issue a permit with any special conditions necessary to assure these criteria are met.

Statutory Authority

§ 62.1-44.15 of the Code of Virginia.

Historical Notes

Derived from VR680-15-02 § 2.4, eff. May 20, 1992; amended, Virginia Register Volume 16, Issue 25, eff. September 27, 2000; Errata, 17:3 VA.R. 433 October 23, 2000; amended, Virginia Register Volume 17, Issue 21, eff. August 1, 2001; Volume 23, Issue 21, eff. July 25, 2007.

9VAC25-210-380. Modifications to surface water withdrawal permits.

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A. In addition to the requirements of 9VAC25-210-180 B, VWP permits for surface water withdrawals may be modified when any of the following developments occur:

1. When the board determines that minimum instream flow levels resulting directly from the permittee's withdrawal of surface water are detrimental to the instream beneficial use, existing at the time of permit issuance, and the withdrawal of surface water should be subject to further net limitations or when an area is declared a surface water management area pursuant to §§ 62.1-242 through 62.1-253 of the Code of Virginia, during the term of the VWP permit.

2. Significant changes to the location of the withdrawal system are proposed such that DEQ determines a new review is warranted due to the potential effect of the surface water withdrawal to existing beneficial uses of the new location.

3. Changes to the permitted project or the surface water withdrawal, including increasing the storage capacity for the surface water withdrawal, that propose an increase in the maximum permitted withdrawal volumes or rate of withdrawal or that cause more than a minimal change to the instream flow requirements with potential to result in a detrimental effect to existing beneficial uses.

4. A revision to the purpose of the surface water withdrawal that proposes to include a new use(s) or modify the existing authorized use(s) that were not identified in the original permit application.

B. Minor modifications may be made in the VWP permit for surface water withdrawals without following the public involvement requirements of 9VAC 25-210-140, 9VAC 25-210-160, or 9VAC 25-210-170. Any request for a minor modification shall be in writing and shall contain the facts or reasons supporting the request. The board may request additional information as necessary to review a request for a minor modification. The board, at its discretion, may require that the changes proposed under a minor modification be processed as a modification in

Comment [A7]: This still could be read that any change in use, even if it is within the authorized category of use (e.g., electricity generation) could require a major modification. Request the provision read "...that proposes to include a new use(s) that was not identified in the permit application or a modification of the existing authorized use(s) such that the use description in the permit application and permit is no longer applicable."

accordance with 9VAC25-210-180 C. Minor modifications may only occur in accordance with 9VAC25-210-180 E and the following items specific to surface water withdrawals:

Comment [A8]: Request removing this language. This an addition since the last review and would remove certainty from the minor modification provisions.

1. Minor changes to the location of the withdrawal system, as determined by the DEQ, and thus not warranting a new review of the effect of the surface water withdrawal to existing beneficial uses.

2. Allow for temporary changes to instream flow requirements or operational permit requirements to address situations such as withdrawal system improvements, environmental studies, or as otherwise determined appropriate by DEQ.

3. Changes to the permitted project or the surface water withdrawal that will result in a decrease or no change in the permitted withdrawal volumes or rates or that cause no more than a minimal change to the instream flow requirements with no potential to result in a detrimental effect to existing beneficial uses.

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Comment [A9]: A minor modification should not be needed to decrease withdrawals. Request removing "in a decrease or".

4. Changes to the monitoring methods or locations of monitoring sites for instream flow requirements or surface water withdrawal requirements.

Statutory Authority

§ 62.1-44.15 of the Code of Virginia.

Historical Notes

Derived from VR680-15-02 § 4.1, eff. May 20, 1992; amended, Virginia Register Volume 17, Issue 21, eff. August 1, 2001; Volume 23, Issue 21, eff. July 25, 2007.

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9VAC25-210-390. Variance from surface water withdrawal permit conditions.

A. For public water supplies. The board may grant a temporary variance to any condition of a WWP permit for a surface water withdrawal for a public water supply to address a public water supply emergency during a drought. A permittee requesting such variance must provide all

information required in the application for an Emergency Virginia Water Protection Permit identified in 9VAC25-210-340 C.

B. For all other water supplies. The board may grant a temporary variance to any condition of a VWP permit for a surface water withdrawal during a drought. A permittee requesting such variance must affirmatively demonstrate:

1. Public health and safety interests are served by the issuance of such variance; and
2. All management actions consistent with existing permits have been exhausted.

C. As a condition of any variance granted, the permittee shall:

1. Modify operations or facilities to comply with existing VWP permit conditions as soon as practicable; or
 2. Provide new information to the board that alternate permit conditions are appropriate and either apply for a new VWP permit or a modification to their existing VWP permit.
- The board shall review any such application consistent with other sections of this regulation.

D. In addition, the board may require the permittee to take any other appropriate action to minimize adverse impacts to other beneficial uses.

E. Any variances issued by the board shall be of the shortest duration necessary for the permittee to gain compliance with existing permit conditions, apply for a new VWP permit, or request modification of existing permit conditions.

F. Public notice of any variance issued by the board shall be given as required for draft permits in 9VAC25-210-140 A, B, and C. Such notice shall be given concurrently with the issuance of any variance and the board may modify such variances based on public comment. Publication costs of all public notices shall be the responsibility of the permittee.

Statutory Authority

[§ 62.1-44.15 of the Code of Virginia.](#)

[Historical Notes](#)

[Derived from Virginia Register Volume 23, Issue 21, eff. July 25, 2007.](#)

[Part VI](#)

[Enforcement](#)

[9VAC25-210-500. Enforcement.](#)

[The board may enforce the provisions of this chapter utilizing all applicable procedures under the law and § 10.1-1186 of the Code of Virginia.](#)

[Statutory Authority](#)

[§ 62.1-44.15 of the Code of Virginia.](#)

[Historical Notes](#)

[Derived from VR680-15-02 § 5.1, eff. May 20, 1992; amended, Virginia Register Volume 17, Issue 21, eff. August 1, 2001.](#)

[Part VII](#)

[Miscellaneous](#)

[9VAC25-210-600. Delegation of authority.](#)

[The director, or a designee acting for him, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.](#)

[Statutory Authority](#)

[§ 62.1-44.15 of the Code of Virginia.](#)

[Historical Notes](#)

[Derived from VR680-15-02 § 6.1, eff. May 20, 1992; amended, Virginia Register Volume 17, Issue 21, eff. August 1, 2001.](#)

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9VAC25-210-610. Transition.

A. All applications received on or after [effective date of regulation], will be processed in accordance with these new procedures.

B. VWP individual permits issued prior to [effective date of regulation], will remain in full force and effect until such permits expire, are revoked, or are terminated, and during any period of administrative continuance in accordance with Section 65 of this regulation.

C. Section 401 Water Quality Certificates issued prior to December 31, 1989, have the same effect as a VWP permit. Water Quality Certificates issued after this date will remain in effect until reissued as Virginia Water Protection Permits.

Statutory Authority

§ 62.1-44.15 of the Code of Virginia.

Historical Notes

Derived from VR680-15-02 § 6.2, eff. May 20, 1992; amended, Virginia Register Volume 17, Issue 21, eff. August 1, 2001; Volume 23, Issue 21, eff. July 25, 2007.

FORMS (9VAC25-210) *[revised and alphabetized]*

Department of Environmental Quality Water Division Permit Application Fee Form (eff. 7/043/14).

Joint Permit Application for Projects in Tidewater Virginia (eff. 03/14).

Monthly Reporting of Impacts Less than or Equal to One-Tenth Acre Statewide (eff. ~~8/0711/14~~).

Standard Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. ~~07/0803/14~~).

~~Joint Permit Application for Projects in Tidewater Virginia (eff. 10/04).~~

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Virginia Department of Transportation DEQ Spreadsheet Reporting Permit Application (eff. 8/07/11/14). [note: missed on draft sent to cag 11/7/14]

Virginia Department of Transportation, Inter-Agency Coordination Meeting Joint Permit Application, ~~IACM Coordination Form~~ (eff. 6/08).

~~DEQ Application for New or Expanded Minor Surface Water Withdrawals Initiated On or After July 25, 2007.~~

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-210) *[revised and alphabetized]*

~~Virginia Stormwater Management Handbook, First Edition, 1999, Volume 1, Chapter 3, Department of Conservation and Recreation.~~ [note: moved below – missed on draft sent to cag 11/7/14]

Corps of Engineers Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (Version 2.0), April 2012.

Corps of Engineers Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0), November 2010.

Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, January 1987, Final Report.

Forestry Best Management Practices for Water Quality in Virginia Technical Guide, Fourth Edition, 2002, Department of Forestry.

Guideline for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230 (Federal Register December 24, 1980). [note: moved here from below – should not be stricken - missed on draft sent to cag 11/7/14]

Hydric Soils of the United States, updated annually, United States Department of Agriculture, Natural Resources Conservation Service.

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Potomac River Low Flow Allocation Agreement, January 11, 1978, § 181 of the Water Resources Development Act of 1976, Public Law 94-587, as modified on April 22, 1986. *[note: should not be stricken]*

Virginia Agricultural Best Management Practices (BMP) Manual, Revised June 2000, Department of Conservation and Recreation.

[Virginia Drought Assessment and Response Plan, March 28, 2003, Drought Response Technical Advisory Committee.](#) *[note: should be shown as a proposed revision]*

Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of Conservation and Recreation.

[Virginia Stormwater Management Handbook, First Edition, 1999, Volume I, Chapter 3, Department of Conservation and Recreation.](#)

~~[Guideline for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230 \(Federal Register December 24, 1980\).](#)~~

Water Supply Coordination Agreement, July 22, 1982, an attachment to the Drought-Related Operations Manual for the Washington Metropolitan Area Water Suppliers.