



## Water Board Proposes Amendments to Virginia's Water Withdrawal and Wetland Regulations

12.17.2015

The State Water Control Board ("Board") has proposed amendments to Virginia's Water Protection Permit ("VWP") regulations for the permitting and control of wetland impacts and surface water withdrawals. Many of the changes are intended to improve ease of use, but others are more fundamental.

The proposed revisions affect the main VWP regulation (9 VAC 25-210), as well as the VWP General Permits for: Impacts to Less than One-half Acre (9 VAC 25-660), Facilities and Activities of Utility and Public Service Companies (9 VAC 25-670), Linear Transportation Projects (9 VAC 25-680), and Impacts from Development and Certain Mining Activities (9 VAC 25-690). Major changes being proposed would:

- Impact surface water withdrawal permitting requirements and consolidate them in a new Part V of the main VWP regulation for ease of use. (Surface water withdrawals that are presently "grandfathered" would not change under the proposed amendments, as these are established by statute.)
- Include in Part V new definitions of "public water supply" and "public water supply safe yield" that will affect public water suppliers relying on surface water sources. Including a "safe yield" definition would effectively bring all aspects of water withdrawal permitting under Board and DEQ administration, even though the actual waterworks permit is still issued by the Virginia Department of Health.
- Add flexibility in the permit review process to account for updates made to delineation manuals used to make jurisdictional determinations about what does and does not qualify as a wetland.
- Incorporate more directly (i) the main elements of the U.S. Army Corps of Engineers' 2008 Mitigation Compensation Rule (33 C.F.R. Part 332) regarding the priority and sequencing of wetland mitigation options and (ii) recent additional "in lieu fee" mitigation programs authorized by the Virginia General Assembly.
- Revise or clarify (i) the demonstration of wetland functionality, (ii) compensatory mitigation requirements, (iii) the administrative continuance of a permit pending agency review of the renewal application, (iv) thresholds for triggering modifications of existing permits based on additional impacts to wetlands or streams, and (v) new requirements in connection with claiming a permit exemption or exclusion.
- Allow restrictive covenants to protect wetland mitigation projects to be recorded at any time prior to commencement of the work authorized by the permit.

- Revise VWP general permits to reflect many of the changes proposed in the main VWP regulation for consistency across the VWP program regulations.

The last major overhaul of the VWP regulations was about eight years ago, and it has taken time for stakeholders to adjust to that set of changes. Given the breadth of the proposed amendments, regulated parties and stakeholders now have much to consider yet again. The respective public comment periods for the proposed amendments end January 29, 2016.

**32 Va. Reg. 773 (November 16, 2015).**

## **Related People**

- Henry R. "Speaker" Pollard, V – 804.420.6537 – [hpollard@williamsmullen.com](mailto:hpollard@williamsmullen.com)

## **Related Services**

- Environment & Natural Resources