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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Virginia Soil and Water Conservation Board
<b>Virginia Administrative Code (VAC) citation</b>	4 VAC 50-60
<b>Regulation title</b>	Virginia Stormwater Management Program (VSMP) Permit Regulations
<b>Action title</b>	Amend Parts I, II, and III of the Virginia Stormwater Management Program Permit Regulations to address water quality and quantity and local stormwater management program criteria.
<b>Date this document prepared</b>	October 27, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

This NOIRA is being drafted to replace and clarify the intent of a regulatory action that was originally initiated in 2005 and to communicate the scope of this intended regulatory action clearly to the public.

#### Original NOIRA submitted for this action (has been withdrawn)

The Board initially authorized the development of a NOIRA related to the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations on July 21, 2005. The Department filed a NOIRA on November 15, 2005 that was published on December 26, 2005. The public comment period on the NOIRA closed on February 24, 2006 during which time the Department held two public meetings. The Department formulated a Technical Advisory Committee (TAC) that held approximately 17 meetings and subcommittee meetings between May 4, 2006 and August 21, 2007. The Department also contracted with the Center for Watershed Protection to assist the Department with water quality recommendations and to

determine acceptable nutrient removal requirements based on the best science available. The Department developed draft regulations with the input of the TAC and other technical experts.

However, on September 21, 2007, upon Department review and consideration and with advice from Agency Counsel within the Office of the Attorney General regarding the language of the original NOIRA, the Virginia Soil and Water Conservation Board authorized the Department of Conservation and Recreation to withdraw the existing action related to Parts I (Definitions, Purpose, and Applicability), II (Stormwater Management Program Technical Criteria), and III (Local Programs) of the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations, with the intent of filing a revised NOIRA in order to ensure that the intent and scope of the intended regulatory action was clearly communicated to the public. It is the intent of the Board and Department to continue to build on the regulatory foundation established over the last two years.

#### Purpose of this NOIRA

Generally, the purpose of this action is to amend the Virginia Soil and Water Conservation Board's Virginia Stormwater Management Program (VSMP) Permit Regulations to establish criteria to protect the quality and manage the quantity of stormwater runoff to state waters, criteria for the administration of a local stormwater management program, processes and procedures for Board approval of a qualifying local program, and local program oversight and implementation criteria for the Board and the Department.

It is the Virginia Soil and Water Conservation Board's intent to consider changes and solicit recommendations related to the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations including, but not limited to:

- 1) Amendments, deletions, or additions to Part I (Definitions, Purpose, and Applicability)
- 2) Amendments, deletions, or additions to Part II (Stormwater Management Program Technical Criteria) related to:
  - Development of water quality and quantity technical criteria, including but not limited to modifications to performance-based and technology-based standards for water quality and the inclusion of specific provisions addressing water quantity issues;
  - Determination of acceptable BMPs for necessary pollutant removals to address water quality;
  - Establishment of phosphorus and nitrogen load limits based on Tributary Strategies or other scientifically-based reduction strategies;
  - Specification of low impact development crediting strategies;
  - Development of revised flow-weighted mean concentrations for phosphorus and nitrogen related to site imperviousness values;
  - Development of strategies for onsite and offsite controls including comprehensive watershed plans or other practices and controls generally recognized as controlling stormwater quantity and quality;
  - Allowance for off-site controls financed through the use of pro-rata fees by localities; and
  - Development of procedures to address TMDL wasteload allocations.

- 3) Amendments, deletions, or additions to Part III (Local Programs) related to local program criteria and Board processes and procedures for authorizing a locality or the Department to administer a local program, including but not limited to:
  - Establishment of technical criteria for a local program, administrative requirements, stormwater plan review and approval procedures including stormwater management facility right-of-access and maintenance agreement requirements, VSMP General Permit coverage requirements, inspection procedures and requirements, program enforcement authorities including a Schedule of Civil Penalties, hearing procedures, exceptions processes, stormwater management facility maintenance requirements, and reporting and record keeping requirements.
  - The modifications to Part III shall also include procedures for the review of local programs as well as procedures and requirements for local program authorization by the Board to administer a stormwater management program.
- 4) Other technical amendments, deletions, or additions. This may also include amendments, deletions, or additions to forms, documents, or other materials necessary to supplement the regulations.

It is also the intent to revise the regulation, as needed, to improve the administration and implementation of the Virginia Stormwater Management Act (§10.1-603.1 et seq.) per the requirements set forth in the federal Clean Water Act and its attendant regulations.

**Legal basis**

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

The Virginia Stormwater Management Program was created by Chapter 372 of the 2004 Virginia Acts of Assembly (HB1177). This action transferred the responsibility for the permitting programs for MS4s and construction activities from the State Water Control Board and DEQ to the Virginia Soil and Water Conservation Board and DCR. This federally-authorized program is administered in accordance with requirements set forth in the federal Clean Water Act (33 USC § 1251 et seq.) as well as the Virginia Stormwater Management Act (§10.1-603.1 et seq.).

§10.1-603.2:1 of the Code of Virginia speaks to the powers and duties of the Virginia Soil and Water Conservation Board. Among those powers and duties, the Board:

*“...shall permit, regulate, and control stormwater runoff in the Commonwealth. In accordance with the VSMP [Virginia Stormwater Management Program], the Board may issue, deny, revoke, terminate, or amend stormwater permits; adopt regulations; approve and periodically review local stormwater management programs and management programs developed in conjunction with a municipal separate storm sewer permit; enforce the provisions of this article; and otherwise act to ensure the general health,*

*safety and welfare of the citizens of the Commonwealth as well as protect the quality and quantity of state waters from the potential harm of unmanaged stormwater.”*

Specifically, the Board may:

*“...(1) issue, deny, amend, revoke, terminate, and enforce permits for the control of stormwater discharges from Municipal Separate Storm Sewer Systems and land disturbing activities; and, (2) delegate to the Department or to an approved locality any of the powers and duties vested in it by this article except the adoption and promulgation of regulations. Delegation shall not remove from the Board authority to enforce the provisions of this article.”*

Subdivision 2 of § 10.1-603.2:1 of the Code of Virginia authorizes the Virginia Soil and Water Conservation Board to delegate to the Department or an approved locality the implementation of the Virginia Stormwater Management Program:

*§ 10.1-603.2:1 Powers and duties of the Virginia Soil and Water Conservation Board.  
(2) Delegate to the Department or to an approved locality any of the powers and duties vested in it by this article except the adoption and promulgation of regulations.  
Delegation shall not remove from the Board authority to enforce the provisions of this article.*

§10.1-603.3 of the Code of Virginia requires establishment of stormwater management programs by localities. The Board must amend, modify or delete provisions of the Virginia Stormwater Management Program (VSMP) Permit Regulations to allow localities to implement local stormwater management programs.

*§10.1-603.3. Establishment of stormwater management programs by localities.*

*A. Any locality located within Tidewater Virginia as defined by the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.), or any locality that is partially or wholly designated as an MS4 under the provisions of the federal Clean Water Act, shall be required to adopt a local stormwater management program for land disturbing activities consistent with the provisions of this article according to a schedule set by the Board but no sooner than 12 months and not more than 18 months following the effective date of the regulation that establishes local program criteria and delegation procedures.*

*B. Any locality not specified in subsection A may elect to adopt and administer a local stormwater management program for land disturbing activities pursuant to this article. Such localities shall inform the Board and the Department of their initial intention to seek delegation for the stormwater management program for land disturbing permits within six months following the effective date of the regulation that establishes local program criteria and delegation procedures. Thereafter, the Department shall provide an annual schedule by which localities can submit applications for delegation.*

*C. In the absence of the delegation of a stormwater management program to a locality, the Department will administer the responsibilities of this article within the given jurisdiction.*

Subsection E of §10.1-603.3 further stipulates minimum requirements for a local stormwater program.

*§10.1-603.3(E). Establishment of stormwater management programs by localities.*

*E. Each locality that is required to or that elects to adopt and administer an approved local stormwater management program shall, by ordinance, establish a local stormwater management program that may be administered in conjunction with a local MS4 program and a local erosion and sediment control program, which shall include, but is not limited to, the following:*

- 1. Consistency with regulations adopted in accordance with provisions of this article;*
- 2. Provisions for long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff; and*
- 3. Provisions for the integration of locally adopted stormwater management programs with local erosion and sediment control, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing construction in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.*

*F. The Board shall delegate a local stormwater management program to a locality when it deems a program consistent with this article.*

*G. Delegated localities may enter into agreements with soil and water conservation districts, adjacent localities, or other entities to carry out the responsibilities of this article.*

*H. Localities that adopt a local stormwater management program shall have the authority to issue a consolidated stormwater management and erosion and sediment control permit that is consistent with the provisions of the Erosion and Sediment Control Law (§ 10.1-560 et seq.).*

*I. Any local stormwater management program adopted pursuant to and consistent with this article shall be considered to meet the stormwater management requirements under the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) and attendant regulations.*

§10.1-603.4 also provides additional authority and guidance to the Board in the development of regulations, including authority to develop criteria associated with local program administration and implementation, criteria to control nonpoint source pollution, and to establish statewide standards for stormwater management from land disturbing activities.

*§10.1-603.4. Development of regulations.*

*The Board is authorized to adopt regulations that specify minimum technical criteria and administrative procedures for stormwater management programs in Virginia. The regulations shall:*

- 1. Establish standards and procedures for delegating the authority for administering a stormwater management program to localities;*
- 2. Establish minimum design criteria for measures to control nonpoint source pollution and localized flooding, and incorporate the stormwater management regulations adopted pursuant to the Virginia Erosion and Sediment Control Law (§ 10.1-*

560 et seq.), as they relate to the prevention of stream channel erosion. These criteria shall be periodically modified as required in order to reflect current engineering methods;

3. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;

4. Require as a minimum the inclusion in local programs of certain administrative procedures which include, but are not limited to, specifying the time period within which a local government that has adopted a stormwater management program must grant permit approval, the conditions under which approval shall be granted, the procedures for communicating disapproval, the conditions under which an approved permit may be changed and requirements for inspection of approved projects; .....

6. Establish statewide standards for stormwater management from land disturbing activities of one acre or greater, except as specified otherwise within this article, and allow for the consolidation in the permit of a comprehensive approach to addressing stormwater management and erosion and sediment control, consistent with the provisions of the Erosion and Sediment Control Law (§ 10.1-560 et seq.) and this article. However, such standards shall also apply to land disturbing activity exceeding an area of 2500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20 et seq.) adopted pursuant to the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.);

7. Require that stormwater management programs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition.....;

8. Encourage low impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater; .....

It should also be noted that localities may adopt more stringent criteria than the minimum criteria developed by the Board through this regulatory process.

§ 10.1-603.7. Authorization for more stringent ordinances.

A. Localities are authorized to adopt more stringent stormwater management ordinances than those necessary to ensure compliance with the Board's minimum regulations, provided that the more stringent ordinances are based upon factual findings of local or regional comprehensive watershed management studies or findings developed through the implementation of a MS4 permit or a locally adopted watershed management study and are determined by the locality to be necessary to prevent any further degradation to water resources or to address specific existing water pollution including nutrient and sediment loadings, stream channel erosion, depleted groundwater resources, or excessive localized flooding within the watershed and that prior to adopting more stringent ordinances a public hearing is held after giving due notice.

*B. Any local stormwater management program in existence before January 1, 2005 that contains more stringent provisions than this article shall be exempt from the requirements of subsection A.*

Also, requirements set forth in the federal Clean Water Act (33 USC § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto, and its attendant regulations set forth in 40 CFR Parts 122, 123, 124 and 125 requires states to establish a permitting program for the management of stormwater for municipal separate storm sewer systems (MS4s) and construction activities disturbing greater than or equal to an acre.

### Need

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

The Code of Virginia specifies that the Virginia Soil and Water Conservation Board shall permit, regulate, and control stormwater runoff in the Commonwealth. As noted above, the Code requires the Board to “act to ensure the general health, safety and welfare of the citizens of the Commonwealth as well as protect the quality and quantity of state waters from the potential harm of unmanaged stormwater”. Degraded water quality in the Chesapeake Bay and many of the Commonwealth’s streams and tributaries is well documented and is clearly an issue of concern to the citizens of the Commonwealth.

The January 2005 *Chesapeake Bay Nutrient and Sediment Reduction Tributary Strategy for the Commonwealth of Virginia* outlined Virginia’s commitment to improving local water quality and the water quality and living resources of the Chesapeake Bay through the reduction of nutrients (nitrogen and phosphorus) and sediment. The report noted that “[t]he Chesapeake Bay and many of the rivers and streams that flow into it are degraded. Excess amounts of nitrogen, phosphorus and sediment flow into the bay and its tributaries from the land, from the air, from wastewater treatment plants and from industrial facilities. These nutrients and sediment foul our waters and harm the finfish, shellfish, aquatic plants and other organisms that make up the bay’s fragile ecosystem. We also suffer economically from an impaired Chesapeake Bay. The Bay’s living resources and its economic potential are compromised by poor water quality. Commercial and recreational fisheries will benefit from cleaner water as will the broader economy.”

The “Tributary Strategies” documents were developed as a first step in meeting the necessary reductions of nutrients and sediments called for in the multi-state effort to improve our waters proposed in the Chesapeake Bay Agreement of 2000. According to the Environmental Protection Agency’s (EPA)s Chesapeake Bay Program, urban stormwater runoff is responsible for about 16% of phosphorus, 11% of nitrogen, and 9% of sediment loads to the Bay, for impairments in over 1,570 miles of assessed streams in the Bay watershed, and has caused flooding, streambank erosion, and habitat and living resource degradation in many areas

throughout the Chesapeake Bay watershed. The Tributary Strategies detail Virginia's approach to achieving nutrient and sediment reduction goals established through the Chesapeake Bay Program.

The 2006 Virginia Water Quality Assessment designates a significant portion of the Commonwealth's rivers, lakes, streams, and the Chesapeake Bay as impaired because they do not meet water quality standards. The water quality standards are established to protect drinking water supplies, aquatic life, production of edible and marketable fish and shellfish, wildlife, and recreational uses of state waters, including swimming, fishing and shellfish harvesting.

The January 2007 *Chesapeake Bay and Virginia Waters Clean-Up Plan* identifies as a key strategy to address water quality the need to "...[i]mplement a revised stormwater management program statewide." This is one strategy to address the Commonwealth's Tributary Strategy goals and to address impaired waters.

A recent EPA Office of the Inspector General report entitled *Development Growth Outpacing Progress in Watershed Efforts to Restore the Chesapeake Bay*; Report No.2007-P-00031; September 10, 2007, noted that "...new development is increasing nutrient and sediment loads at rates faster than loads are being reduced from developed lands. Little progress has been reported in reaching nutrient and sediment load reduction goals from developed lands. The EPA's Chesapeake Bay Program Office (CBPO) estimates that impervious surfaces in the Bay watershed grew significantly – by 41 percent – in the 1990s. Meanwhile, the population increased by only 8 percent. Because progress in reducing loads is being offset by increasing loads from new development, greater reductions will be needed to meet the Bay goals. The CBPO estimated that loads from developed and developing lands increased while loads from agriculture and wastewater facilities decreased. Loads from developed and developing lands were 12 to 16 percent higher in 2005 than in 1985."

Additionally, the recently released Chesapeake Bay Foundation report entitled "Bad Waters" regarding Chesapeake Bay water quality problems outlined the following points:

- After years of pollution, sprawling growth, and loss of habitat, the Bay's systems have become more unbalanced and, in the process, are losing their ability to recover from continued pollution.
- Nitrogen and phosphorus pollution from human activities result in algal blooms, dead zones, and fish kills across the Chesapeake Bay and its rivers and streams.
- Pollutants enter the Bay through sewage discharges, urban and suburban stormwater, runoff from cropland and animal farms, and vehicle emissions and power plants.

To date, significant actions have been taken by the Commonwealth to achieve reductions in point source pollution. The Commonwealth now needs to employ strategies to address nonpoint source water quality improvements in both agricultural and urban settings, including making marked improvements in the Virginia Soil and Water Conservation Board's stormwater regulations.

## [References:

Secretary of Natural Resources W. Tayloe Murphy, Jr. January 2005. Commonwealth of Virginia, Chesapeake Bay Nutrient and Sediment Reduction Tributary Strategy. 85 pp.

([http://www.naturalresources.virginia.gov/Initiatives/WaterQuality/FinalizedTribStrats/ts\\_statewide\\_All.pdf](http://www.naturalresources.virginia.gov/Initiatives/WaterQuality/FinalizedTribStrats/ts_statewide_All.pdf))

The Virginia Department of Environmental Quality. approved by EPA on October 16, 2006; released October 30, 2006. Final 2006 305(b)/303(d) Water Quality Assessment Integrated Report. (<http://www.deq.virginia.gov/wqa/ir2006.html>)

Secretary of Natural Resources L. Preston Bryant, Jr. January 2007. Chesapeake Bay and Virginia Waters Clean-Up Plan. 55 pp.

(<http://www.naturalresources.virginia.gov/Initiatives/WaterCleanupPlan/docs/ChesBayVaWatersCleanupPlan0107.pdf>)

EPA Office of the Inspector General. September 10, 2007. Development Growth Outpacing Progress in Watershed Efforts to Restore the Chesapeake Bay. Report No.2007-P-00031. 31 pp.

([http://www.chesapeakebay.net/pubs/calendar/IC\\_09-20-07\\_Report\\_1\\_8297.pdf](http://www.chesapeakebay.net/pubs/calendar/IC_09-20-07_Report_1_8297.pdf))

Chesapeake Bay Foundation. 2007. Bad Waters: Dead Zones, Algal Blooms, and Fish Kills in the Chesapeake By Region in 2007. 10 pp.

([http://www.cbf.org/site/DocServer/CBF\\_BadWatersReport.pdf?docID=10003](http://www.cbf.org/site/DocServer/CBF_BadWatersReport.pdf?docID=10003))]

## Substance

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

It is the Virginia Soil and Water Conservation Board's intent to consider changes and solicit recommendations related to the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations including, but not limited to:

- 1) Amendments, deletions, or additions to Part I (Definitions, Purpose, and Applicability)
- 2) Amendments, deletions, or additions to Part II (Stormwater Management Program Technical Criteria) related to:
  - Development of water quality and quantity technical criteria, including but not limited to modifications to performance-based and technology-based standards for water quality and the inclusion of specific provisions addressing water quantity issues;
  - Determination of acceptable BMPs for necessary pollutant removals to address water quality;
  - Establishment of phosphorus and nitrogen load limits based on Tributary Strategies or other scientifically-based reduction strategies;
  - Specification of low impact development crediting strategies;

- Development of revised flow-weighted mean concentrations for phosphorus and nitrogen related to site imperviousness values;
  - Development of strategies for onsite and offsite controls including comprehensive watershed plans or other practices and controls generally recognized as controlling stormwater quantity and quality;
  - Allowance for off-site controls financed through the use of pro-rata fees by localities; and
  - Development of procedures to address TMDL wasteload allocations.
- 3) Amendments, deletions, or additions to Part III (Local Programs) related to local program criteria and Board processes and procedures for authorizing a locality or the Department to administer a local program, including but not limited to:
- Establishment of technical criteria for a local program, administrative requirements, stormwater plan review and approval procedures including stormwater management facility right-of-access and maintenance agreement requirements, VSMP General Permit coverage requirements, inspection procedures and requirements, program enforcement authorities including a Schedule of Civil Penalties, hearing procedures, exceptions processes, stormwater management facility maintenance requirements, and reporting and record keeping requirements.
  - The modifications to Part III shall also include procedures for the review of local programs as well as procedures and requirements for local program authorization by the Board to administer a stormwater management program.
- 4) Other technical amendments, deletions, or additions. This may also include amendments, deletions, or additions to forms, documents, or other materials necessary to supplement the regulations..

It is also the intent to revise the regulation, as needed, to improve the administration and implementation of the Virginia Stormwater Management Act (§10.1-603.1 et seq.) per the requirements set forth in the federal Clean Water Act and its attendant regulations.

The development and implementation of statewide stormwater management programs will provide for the protection and improvement of water quality and the management of water quantity that will restore and enhance the living resources of Virginia's waters, provide clean water for recreational uses and conservation in general, and contribute to the protection of Virginia's rivers, lakes, streams and the Chesapeake Bay. These actions are essential for the protection of the health, safety, and welfare of the citizens of the Commonwealth.

## Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

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The Board is obligated to develop strategies that will act to ensure the general health, safety and welfare of the citizens of the Commonwealth as well as protect the quality and quantity of state waters from the potential harm of unmanaged stormwater. Degraded water quality in the Chesapeake Bay and many of the Commonwealth's streams and tributaries is well-documented and is clearly an issue of concern to the citizens of the Commonwealth. The protection of the Commonwealth's water resources requires the attention of the Commonwealth and its regulatory and voluntary programs.

The passage of legislation by the Virginia General Assembly to streamline the Virginia Stormwater Management Program also requires action be taken to update the regulations to develop the criteria under which a locality may be authorized to administer a qualifying local stormwater management program.

Therefore, no alternative actions consistent with current law have been identified. The substance, format, and procedures of these regulations will ultimately depend upon approval from the U.S. Environmental Protection Agency, which has national oversight of all Clean Water Act programs.

### Public participation

*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

The Board is seeking comments on the intended regulatory action [revisions to Parts I (Definitions, Purpose, and Applicability), II (Stormwater Management Program Technical Criteria), and III (Local Programs) of Virginia Stormwater Management Program (VSMP) Permit Regulations (Chapter 60) found at <http://leg1.state.va.us/000/reg/TOC04050.HTM>], including but not limited to: (1) ideas to assist in the development of a proposal, (2) the costs and benefits of the alternatives stated in this background document or other alternatives and (3) potential impacts of the regulation. The Board is also seeking information regarding impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: (1) projected reporting, recordkeeping and other administrative costs, (2) probable effect of the regulation on affected small businesses, and (3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Persons desiring to submit written comments pertaining to this notice may do so by mail, the Internet, or facsimile.

- Comments pertaining to this notice should be sent to the Regulatory Coordinator at: Virginia Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219.
- Electronic comments also may be submitted on the Virginia Regulatory TownHall by clicking on the "NOIRA" stage and selecting "comment period" at: <http://www.townhall.virginia.gov/L/viewaction.cfm?actionid=1916&display=stages>.

- Or comments may be faxed to the Regulatory Coordinator at: (804) 786-6141.

All 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. For additional information regarding this regulatory action you may contact Mr. David Dowling at (804) 786-2291.

Recognizing the significant work that has already been done to advance these regulations, the Board has authorized the Department to proceed through the public comment period after publication of the NOIRA in the Virginia Register of Regulations without holding a public meeting. As such, a public meeting during the NOIRA public comment period will not be held.

Following publication of the proposed regulation in the Virginia Register, the Department, as authorized by the Board, will hold at least one public hearing to provide opportunity for public comment. Notice of the hearing(s) will be posted in the Calendar of Events section of the Virginia Register of Regulations and be posted on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)). Both oral and written comments may be submitted at that time.

**Participatory approach**

*Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

The Board has directed the use of the participatory approach to develop the proposal. The Board authorized: (1) the Director of the Department of Conservation and Recreation to establish a Technical Advisory Committee to make recommendations to the Director and the Board on potential regulatory changes; (2) the Department to hold other stakeholder meetings as it deems necessary; (3) the Department to prepare draft proposed regulations for the Board’s review and consideration; and (4) the Department, in developing its draft proposed regulations, to fully consider and include all of the work and input that has already been undertaken relating to these regulations since the Department published the first NOIRA.

The Department, as authorized by the Board, will be convening a Technical Advisory Committee comprised of members of the previous TAC which met over the last 18 months and additional stakeholders whose participation will supplement the expertise and representation of the group. Persons interested in participating on the advisory committee should provide their name, address, phone number, e-mail address, and the name of the organization that they represent in writing to the agency contact person by no later than 5:00 p.m. on the last day of the comment period.

**Family impact**

*Assess the potential 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.*

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It is not anticipated that this regulation will have a direct impact on the institution of the family or family stability. However, the improvement of water quality and control of water quantity does have public health and safety benefits that have an indirect impact on families.