

Chapter 24. Surface Water Management Areas.

§ 62.1-242. Definitions.

As used in this chapter, unless the context requires otherwise:

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include but are not limited to 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, commercial, and industrial uses. Domestic and other existing beneficial uses shall be considered the highest priority beneficial uses.

"Board" means the State Water Control Board.

"Nonconsumptive use" means the use of water withdrawn from a stream in such a manner that it is returned to the stream without substantial diminution in quantity at or near the point from which it was taken and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.

"Surface water withdrawal permit" means a document issued by the Board evidencing the right to withdraw surface water.

"Surface water management area" means a geographically defined surface water area in which the Board has deemed the levels or supply of surface water to be potentially adverse to public welfare, health and safety.

"Surface water" means any water in the Commonwealth, except ground water, as defined in § [62.1-255](#).

1989, c. 721; 1992, c. 812.

§ 62.1-243. Withdrawals for which surface water withdrawal permit not required.

A. No surface water withdrawal permit shall be required for (i) any nonconsumptive use, (ii) any water withdrawal of less than 300,000 gallons in any single month, (iii) any water withdrawal from a farm pond collecting diffuse surface water and not situated on a perennial stream as defined in the United States Geological Survey 7.5-minute series topographic maps, (iv) any withdrawal in any area which has not been declared a surface water management area, or (v) any withdrawal from a wastewater treatment system permitted by the State Water Control Board or the Department of Mines, Minerals and Energy.

B. No political subdivision or investor-owned water company permitted by the Department of Health shall be required to obtain a surface water withdrawal permit for:

1. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in a declared surface water management area before the daily rate of any such existing withdrawal is increased beyond the maximum daily withdrawal made before July 1, 1989.

2. Any withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has received a § 401 certification from the State Water Control Board pursuant to the requirements of the Clean Water Act to install any necessary withdrawal structures and make such withdrawal; however, a permit shall be required in any surface water management area

before any such withdrawal is increased beyond the amount authorized by the said certification.

3. Any withdrawal in existence on July 1, 1989, from an instream impoundment of water used for public water supply purposes; however, during periods when permit conditions in a surface water management area are in force under regulations adopted by the Board pursuant to § 62.1-249, and when the rate of flow of natural surface water into the impoundment is equal to or less than the average flow of natural surface water at that location, the Board may require the release of water from the impoundment at a rate not exceeding the existing rate of flow of natural surface water into the impoundment.

Withdrawals by a political subdivision or investor-owned water company permitted by the Department of Health shall be affected by subdivision 3 of subsection B only at the option of that political subdivision or investor-owned water company.

To qualify for any exemption in subsection B of this section, the political subdivision making the withdrawal, or the political subdivision served by an authority making the withdrawal, shall have instituted a water conservation program approved by the Board which includes: (i) use of water saving plumbing fixtures in new and renovated plumbing as provided under the Uniform Statewide Building Code; (ii) a water loss reduction program; (iii) a water use education program; and (iv) ordinances prohibiting waste of water generally and providing for mandatory water use restrictions, with penalties, during water shortage emergencies. The Board shall review all such water conservation programs to ensure compliance with (i) through (iv) of this paragraph.

C. No existing beneficial consumptive user shall be required to obtain a surface water withdrawal permit for:

1. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in a declared surface water management area before the daily rate of any such existing withdrawal is increased beyond the maximum daily withdrawal made before July 1, 1989.

2. Any withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has received a § 401 certification from the State Water Control Board pursuant to the requirements of the Clean Water Act to install any necessary withdrawal structures and make such withdrawal; however, a permit shall be required in any surface water management area before any such withdrawal is increased beyond the amount authorized by the said certification.

To qualify for either exemption in subsection C of this section, the beneficial consumptive user shall have instituted a water management program approved by the Board which includes: (i) use of water-saving plumbing; (ii) a water loss reduction program; (iii) a water use education program; and (iv) mandatory reductions during water shortage emergencies. However, these reductions shall be on an equitable basis with other uses exempted under subsection B of this section. The Board shall review all such water management programs to ensure compliance with (i) through (iv) of this paragraph.

D. The Board shall issue certificates for any withdrawals exempted pursuant to subsections B and C of this section. Such certificates shall include conservation or management programs as conditions thereof.

1989, c. 721; 1993, c. 213.

§ 62.1-244. Board may require information from persons withdrawing surface water.

The Board may require any person withdrawing surface water for any purpose in any surface water management area to furnish information with regard to such surface water withdrawal and the use thereof.

1989, c. 721.

§ 62.1-245. Agreements among persons withdrawing surface water.

In the administration of this chapter, the Board shall encourage, promote and recognize voluntary agreements among persons withdrawing surface water in the same surface water management area. When the Board finds that any such agreement, executed in writing and filed with the Board, is consistent with the intent, purposes and requirements of this chapter, the Board shall approve the agreement following a public hearing. The Board shall provide at least sixty days' notice of the public hearing to the public in general and individually to those persons withdrawing surface water in the surface water management area who are not parties to the agreement, and shall make a good faith effort to so notify recreational user groups, conservation organizations and fisheries management agencies. The Board shall be a party to the agreement. The agreement, until terminated, shall control in lieu of a formal order, rule, regulation or permit issued by the Board under the provisions of this chapter, and shall be deemed to be a case decision under the Administrative Process Act (§ 2.2-4000 et seq.). Any agreement shall specify the amount of water affected thereby.

Any agreement approved by the Board may include conditions which can result in its amendment or termination by the Board, following a public hearing, if the Board finds that it or its effect is inconsistent with the intent, purposes and requirements of this chapter. Such conditions may include (i) a determination by the Board that the agreement originally approved by the Board will not further the purposes of this chapter, (ii) a determination by the Board that circumstances have changed such that the agreement originally approved by the Board will no longer further the purposes by this chapter, or (iii) one or more parties to the agreement is not fulfilling its commitments under the agreement. The Board shall provide at least sixty days' notice of the public hearing to the public in general and individually to those persons withdrawing surface water in the surface water management area who are not parties to the agreement, and shall make a good faith effort to so notify recreational user groups, conservation organizations and fisheries management agencies.

1989, c. 721; 1999, c. 561.

§ 62.1-246. When Board may initiate a surface water management area study proceeding; hearing required.

A. The Board upon its own motion or, in its discretion, upon receipt of a petition therefor by any county, city or town within the surface water management area in question, or any state agency, may initiate a surface water management area proceeding whenever in its judgment there is evidence to indicate that:

1. A stream has substantial instream values as indicated by evidence of fishery, recreation, habitat, cultural or aesthetic properties; and
2. Historical records or current conditions indicate that a low flow condition could occur which would threaten important instream uses; and
3. Current or potential offstream uses contribute to or are likely to exacerbate natural low flow

conditions to the detriment of instream values.

B. If, after a public hearing held pursuant to § 2.2-4007.01, or at the request of an affected person or on the Board's motion, a hearing shall be held under § 2.2-4009, and the Board finds that the conditions required above exist and further finds that the public welfare, health and safety require that regulatory efforts be initiated, the Board shall declare the area in question to be a surface water management area. The Board shall cause notice of the surface water management area to be published in a newspaper of general circulation throughout the area, and shall mail a copy of its decision to the mayor or chairman of the governing body of each county, city or town within which any part of the area lies, or which is known by the Board to make offstream use of water from the area, and to the chief administrative officer of any federal facility known by the Board to be using water from within the area. The Board shall include in its decision a definition of the boundaries of the water management area.

1989, c. 721; 2007, cc. 873, 916.

§ 62.1-247. Use of surface water in surface water management area.

After an area has been declared a surface water management area by an order of the Board, no person shall withdraw or attempt to withdraw any surface water, except for withdrawals exempted under § 62.1-243 or made pursuant to a voluntary agreement approved by the Board pursuant to § 62.1-245, without a surface water withdrawal permit issued by the Board.

1989, c. 721; 1999, c. 561.

§ 62.1-248. Permits.

A. Any permit issued by the Board shall include a flow requirement appropriate for the protection of beneficial instream uses. In determining the level of flow in need of protection, the Board shall consider, among other things, recreational and aesthetic factors and the potential for substantial and long-term adverse impact on fish and wildlife found in that particular surface water management area. Should this determination indicate a need to restrict water withdrawal, the Board shall consider, among other things, the availability of alternative water supplies, the feasibility of water storage or other mitigation measures, and the socioeconomic impacts of such restrictions on the potentially affected water users and on the citizens of the Commonwealth in general.

In its permit decision, the Board shall attempt to balance offstream and instream water uses so that the welfare of the citizens of the Commonwealth is maximized without imposing unreasonable burdens on any individual water user or water-using group. The decision to implement this balance may consist of approval of withdrawal without restriction, approval subject to conditions designed to protect instream uses from unacceptable adverse effects, or disapproval of the withdrawal.

Permit conditions may include, but are not limited to, the following: (i) maximum amounts which may be withdrawn, (ii) times of the day or year during which withdrawals may occur, and (iii) requirements for voluntary and mandatory conservation measures.

B. In considering whether to issue, modify, revoke, or deny a permit under this section, the Board shall consider:

1. The number of persons using a stream and the object, extent and necessity of their respective withdrawals or uses;

2. The nature and size of the stream;
3. The types of businesses or activities to which the various uses are related;
4. The importance and necessity of the uses claimed by permit applicants, or of the water uses of the area and the extent of any injury or detriment caused or expected to be caused to instream or offstream water uses;
5. The effects on beneficial uses; and
6. Any other relevant factors.

C. Permits shall be transferable among users, subject to approval by the Board.

D. In developing regulations governing the issuance of permits, the Board shall prioritize among types of users. Domestic and existing uses shall be given the highest priority in the issuance of permits for other beneficial uses. Included among existing uses shall be any projected use which has been relied upon in the development of an industrial project and for which a permit has been obtained by January 1, 1989, pursuant to § 404 of the Clean Water Act.

1989, c. 721.

§ 62.1-248.1. When application for permit considered complete.

No application for a permit shall be considered complete unless the applicant has provided the Executive Director with notification from the governing body of the county, city or town in which the withdrawal is to take place that the location and operation of the withdrawing facility is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2. The provisions of this section shall not apply to any applicant exempt from compliance under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

1992, c. 186.

§ 62.1-249. Applicability of permit conditions.

A. The Board by regulation shall determine when the level of flow is such that permit conditions in a surface water management area are in force. As a part of this regulation, the Board shall adopt a reasonable system of water-use classification according to classes of beneficial uses. The Board may include provisions for variances and alternative measures to prevent undue hardship and ensure equitable distribution of water resources.

B. The regulations may provide that the Board, or the Board's Executive Director, by order may declare that the level of flow is such that permit conditions are applicable for all or part of a surface water management area.

C. The Board may impose such restrictions on one or more classes of water uses as may be necessary to protect the surface water resources of the area from serious harm.

D. Regulations shall provide for the means for a declaration of water shortage to be rescinded.

E. When permit conditions become applicable in a surface water management area, the Board shall notify each permittee by mail or cause notice thereof to be published in a newspaper of general circulation throughout the area. Publication of such notice will serve as notice to all permit holders in the area.

1989, c. 721.

§ 62.1-250. State agency review.

Prior to the creation of a surface water management area, or the issuance of a permit within one, the Board shall consult and cooperate with, and give full consideration to the written recommendations of, the following agencies: the Department of Game and Inland Fisheries, the Department of Conservation and Recreation, the Virginia Marine Resources Commission, the Department of Health, and any other interested and affected agencies. Such consultation shall include the need for development of a means in the surface water management area for balancing instream uses with offstream uses. Agencies may submit written comments on proposed permits within forty-five days after notification by the Board. The Board shall assume that if written comments are not submitted by an agency, within the time period, the agency has no comments on the proposed permits.

1989, c. 721.

§ 62.1-251. Cancellation or suspension of permit.

Whenever the Board finds that the holder of a permit is willfully violating any provision of such permit or any other provision of this chapter, the Board may cancel or suspend the permit or impose conditions on its future use in order to prevent future violations. The finding of the Board shall be made in accordance with the Administrative Process Act, § [2.2-4000](#) et seq.

1989, c. 721.

§ 62.1-252. Penalties; injunctions.

A. Any person who violates any provision of this chapter shall be subject to a civil penalty not to exceed \$1,000 for each violation. Each day of violation shall constitute a separate offense.

B. With the consent of any person in violation of this chapter, the Board may provide, in an order issued by the Board against the person, for the payment of civil charges. These charges shall be in lieu of civil charges imposed by the court.

C. In order to protect the public interest of the Commonwealth, the Board may seek injunctive relief against any person violating any provision of this chapter.

D. The civil penalties and civil charges provided for in this section shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1.

1989, c. 721; 1991, c. 718.

§ 62.1-253. Riparian rights.

Nothing in this chapter shall be construed as altering, or authorizing any alteration of, any existing riparian rights except as set forth in permits issued pursuant to this chapter. The conditions in such permits shall be in force only in those times when low stream flows, or the potential therefor, result in a declaration as provided for in subsection A of § [62.1-249](#).

1989, c. 721.