



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	Department of Environmental Quality
<b>Virginia Administrative Code (VAC) citation</b>	9VAC15-20
<b>Regulation title</b>	Guidelines for the Preparation of Environmental Impact Assessments for Oil and Gas Well Drilling Operations in Tidewater Virginia
<b>Action title</b>	Corrections to make the regulation consistent with current state statutes and regulations.
<b>Final agency action date</b>	January 28, 2014
<b>Document preparation date</b>	January 28, 2014

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

This regulation is being revised to reference current statutes and regulations. Currently the regulation contains incorrect references to state statute and regulations and the revisions being proposed make the regulation conform to state statute.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

The Director of Environmental Quality took a final action on January 28, 2014 to amend the Guidelines for the Preparation of Environmental Impact Assessments for Oil and Gas Well Drilling Operations in Tidewater Virginia (9VAC15-20).

**Periodic review**

*If this final regulation is not the result of a periodic review of the regulation, please delete this entire section. If this final regulation is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Nicole Rovner, The Nature Conservancy	The Nature Conservancy (TNC) believes the regulation should be retained since it is necessary for the protection of public health, safety and welfare. The regulation is consistent in many ways with the “Development by Design” approach that the TNC recommends for addressing impacts of energy development.	DEQ agrees that the regulations should be retained.
Ann Jennings, Chesapeake Bay Foundation	Chesapeake Bay Foundation (CBF) believes the regulation should be retained since it is necessary for the protection of public health, safety and welfare. If oil or gas drilling in Tidewater Virginia is improperly conducted, it poses a significant water quality threat to the Chesapeake Bay and its tributaries.	DEQ agrees that the regulations should be retained.
Ann Jennings, Chesapeake Bay Foundation, and Richard Parrish, on behalf of Southern Environmental Law Center (SELC), Shenandoah Valley network (SVN), and the Virginia Conservation Network (VCN)	Oil and gas drilling will aggravate the efforts of the Commonwealth and local governments in tidewater Virginia to implement Virginia’s Watershed Implementation Plan for the Chesapeake Bay and to achieve the Chesapeake Bay Total Maximum Daily Load (TMDL). Environmental impact assessments required by this regulation can ensure that the new load is quantified and addressed.	DEQ agrees that the regulations should be retained.
Richard Parrish, on behalf of	SELC, SVN, and VCN believe the regulation should be retained since	DEQ agrees that the regulations should be retained.

<p>Southern Environmental Law Center (SELC), Shenandoah Valley network (SVN), and the Virginia Conservation Network (VCN)</p>	<p>it is necessary for the protection of public health, safety and welfare.</p>	
<p>Richard Parrish, on behalf of Southern Environmental Law Center (SELC), Shenandoah Valley network (SVN), and the Virginia Conservation Network (VCN)</p>	<p>SELC, SVN, and VCN believe DEQ should consider including requirements for the following in the regulations:</p> <ul style="list-style-type: none"> <li>• A discussion of fracking fluids, their components, and their impacts;</li> <li>• A baseline study of groundwater and surface waters prior to drilling or horizontal fracturing; and a discussion of the cumulative impacts of gas development on natural and community resources.</li> </ul>	<p>Prior to revising the regulations to address these topics, the agency believes these issues should be discussed further with stakeholders. Currently stakeholders are focusing their efforts on the activities of the General Assembly session. The agency plans to discuss these issues with stakeholders in the future.</p>
<p>Richard Parrish, on behalf of Southern Environmental Law Center (SELC), Shenandoah Valley network (SVN), and the Virginia Conservation Network (VCN)</p>	<p>9VAC15-20-70 requires a description of the environment potentially affected by the gas or oil operation, however there is no requirement to take and analyze water samples for existing wells within ¼ mile or 1 mile for purposes of comparison with post-drilling water quality. Supports inclusion of pre-drilling water quality for comparison with post-drilling water quality.</p>	<p>Prior to revising the regulations to address these topics, the agency believes these issues should be discussed further with stakeholders. Currently stakeholders are focusing their efforts on the activities of the General Assembly session. The agency plans to discuss these issues with stakeholders in the future.</p>

The regulation is necessary to protect public health and welfare from potential impacts of oil and gas well drilling operations in Tidewater Virginia.

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

Current section number	Proposed new section number, if	Current requirement	Proposed change and rationale
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	applicable		
10		Definition of Chesapeake Bay Preservation Act	Updated regulatory and statutory citations in the definition of Chesapeake Bay Preservation Area.
10		Definition of Department of Mines, Minerals, and Energy	Updated statutory citation in the definition of Department of Mines, Minerals, and Energy.
10		Definition of tidal wetlands	Updated statutory citation in the definition of tidal wetlands.
10		Definition of Tidewater Virginia	Updated statutory citation in the definition of Tidewater Virginia.
100		Regulation references Oil Discharge Contingency Plans and Administrative Fees for Approval Regulation.	This regulation has been repealed and replaced with the Facility and Aboveground Storage Tank Regulations- 9VAC25-91. The correct regulation is now referenced.
110		Regulation references obsolete air regulations.	Updated regulations with the current air program regulations concerning air sources and standards for toxic pollutants.

The changes to the regulations correct statutory references, statutory definitions, and regulatory names and citations. These regulatory changes do not make any changes to the requirements of the regulations. All revisions are editorial in nature.

### Regulatory flexibility analysis

*Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

These regulations are required by state statute, however an Environmental Impact Statement has never been submitted since drilling for oil and gas has not been conducted in Tidewater Virginia. Since Environmental Impact Statements for these types of projects have not been submitted by large or small businesses, it is difficult to identify any changes that would benefit the regulated community related to compliance or reporting requirements. Removal of these regulations or exempting small businesses from these regulations is not an option since these regulations are required by state statute. Also comments were submitted in favor of retaining these regulations to ensure that human health and the environment is protected in the event drilling for oil or gas is proposed.

### Family impact

*Please assess the 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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This regulation does not impact the institution of the family or family stability.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

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CBF - Chesapeake Bay Foundation  
DEQ- Department of Environmental Quality  
SELC - Southern Environmental Law Center  
SVN - Shenandoah Valley Network  
TNC - Nature Conservancy  
VCN - Virginia Conservation Network  
TMDL - Total Maximum Daily Load

Fracking, also known as hydraulic fracturing, is the fracturing of rock by a pressurized liquid.