



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	145
VAC Chapter Number:	30
Regulation Title:	Certified Professional Wetland Delineator Regulations
Action Title:	Promulgating
Date:	March 6, 2003

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Chapter 784 of the Acts of the 2002 General Assembly, which was a result of Senate Bill 61 ("The Bill"), created a regulatory program to certify professional wetland delineators. The Bill assigned the regulatory program to the Virginia Board for Professional Soil Scientists; changed the Board's name to the Virginia Board for Professional Soil Scientists and Wetland Professionals; and changed the Board's membership to reflect the new program. The Bill assigned the administration and support of the certified professional wetland delineators program to the Department of Professional and Occupational Regulation.

The new board came into effect on July 1, 2002 and is mandated, pursuant to the Bill, to implement the regulatory program by July 1, 2004. This will be the first set of regulations for certified professional wetland delineators. There are no existing regulations to amend. The regulations are intended to define: 1) Definitions of terms to be used in the regulations; 2) Entry

standards for those seeking to practice as a certified professional wetland delineators; 3) Renewal and reinstatement standards for regulants; 4) Standards of practice and conduct; and 5) Grounds for disciplinary action against regulants. Other regulations which may be necessary will be considered.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The Board's authority to promulgate regulations for certified professional wetland delineators may be found in § 54.1-201 and § 54.1-2203 of the Code of Virginia. The provisions of § 54.1-2203 shall become effective on July 1, 2004. These two sections of the Code mandate the Board to promulgate regulations for the certification of professional wetland delineators concerning qualifications of applicants, examination of applicants and the proper conduct of certified professional wetland delineators.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

§ 54.1-201 and § 54.1-2203 of the Code of Virginia mandate the Board to promulgate regulations for the certification of professional wetland delineators concerning qualifications of applicants, examination of applicants and the proper conduct of certified professional wetland delineators. As the General Assembly has mandated the Board to promulgate the regulations for this program to protect the health, safety and welfare of the public, the Board is complying with the statutory mandate.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

These regulations are necessary to implement Chapter 784 of the Acts of the 2002 General Assembly, which was a result of Senate Bill 61, and to create the regulatory program therein mandated to protect the health, welfare and safety of the public when dealing with persons practicing as a certified professional wetland delineator.

The regulations are intended to:

- 1) Definitions of terms to be used in the regulations;
- 2) Entry standards for those seeking to practice as a certified professional wetland delineators;
- 3) Renewal and reinstatement standards for regulants;
- 4) Standards of practice and conduct; and
- 5) Grounds for disciplinary action against regulants.

Other regulations which may be necessary will be considered.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The advantage to the public is that they will know have a way of identifying wetland delineators who have met the standards set forth by the Board for certification. The only potential disadvantage is that the cost of the voluntary certification program may be passed on from the certificate holders to the public; however, the cost of the program is relatively small.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Fiscal Impact of Proposed Regulation

Summary:

Senate Bill 61 passed in the 2002 Session of the Virginia General Assembly establishes certification standards for wetlands professionals and adds certified wetlands professionals to the current Board for Soil Scientists. The proposed regulations establish requirements for entry, renewal, and reinstatement, and include minimum standards for certification as well as standards of conduct and practice. The proposed regulations establish fees for wetlands professionals, and increase the amount of fees paid by Soil Scientists.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

Fiscal Impact:

	FY 2003	FY 2004	FY2005	FY2006
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Subprogram	560 44	560 44	560 44	560 44

Impact of Regulatory Changes:				
One-Time Costs	700	700	0	0
Ongoing Costs	1,000	10,500	10,500	11,088
Total Fiscal Impact	1,700	11,200	10,500	11,088
FTE	0.00	0.00	0.00	0.00

Description of Costs:

One-Time: Costs associated with additional board meetings to develop regulations and establish the new program.

Ongoing: Costs represent only the additional expenses associated with the new Wetlands Professionals program. They include travel and per diem for additional board members, staff support for program activities, enforcement activities, legal services, and administrative costs.

Cost to Localities: None anticipated.

Description of Individuals, Businesses, or Other Entities Impacted:

Estimated Number of Regulants: The Department expects approximately 100 individuals to obtain certification as wetlands professionals. There are currently approximately 100 soil scientist regulants.

Projected Cost to Regulants: The average total cost to regulants will be approximately \$260 per biennium, or \$130 annually. This represents a completely new cost to individuals who become certified as wetlands professionals. Soil scientists currently pay \$175 per biennium for their licensing fees. This change will increase the average total costs by about \$85 per biennium, or less than \$45 annually.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

These regulations are necessary to implement Chapter 784 of the Acts of the 2002 General Assembly, which was a result of Senate Bill 61, and to create the regulatory program therein mandated to protect the health, welfare and safety of the public when dealing with persons practicing as a certified professional wetland delineator.

The regulations are intended to:

- 1) Definitions of terms to be used in the regulations;
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Other regulations which may be necessary will be considered.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

This is the initial regulation promulgation activity. Chapter 784 of the Acts of the 2002 General Assembly and the current Code of Virginia mandate the creation of these regulations.

No alternative have been identified to evaluate.

The Department of Professional and Occupational Regulation and the Virginia Board for Professional Soil Scientists and Wetland Professionals will carefully weigh all information coming into its possession as these regulations are being created with the objective of developing

regulations which intrude as little as possible into the conduct of commerce by the regulated community and have the least adverse impact on the public.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

None received.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Based on the fact that no comments have been received regarding this issue, and based on the Board’s review, the regulation is clearly written and easily understandable by the affected individuals.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The regulations will be reviewed during the Board's normal course of regulatory review that in no case shall exceed three years from the effective date of these regulations.

The Board's regulations will be evaluated based on comments received in writing and at public hearings scheduled to receive comments on the Board's regulations. Any other items noted by the Board that need to be addressed during the course of the Board conducting its business will be noted and retained on file by staff for consideration by the Board during regulatory review.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

No impact on families in Virginia has been identified as resulting from the proposed regulations.