



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

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation	12VAC5-590
Regulation title	Waterworks Regulations
Action title	Chronically noncompliant waterworks. This new regulation implements a program to identify chronically noncompliant waterworks, and create mechanisms or enforcement options for eliminating chronically noncompliant waterworks.
Date this document prepared	July 31, 2008

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.

The owners of a limited number of waterworks chronically fail to comply with the Regulations and thereby subject their consumers to unwarranted health risks. This new Regulation will provide additional enforcement tools to compel these recalcitrant owners to bring their waterworks into compliance and protect public health.

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.

§ 32.1-12 of the Code of Virginia provides that the State Board of Health may...promulgate...such regulations...as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by it, the Commissioner or the Department.

§ 32.1-167 (et. seq.) empowers the State Board of Health (Board) to adopt and promulgate regulations governing waterworks, water supplies and pure water to protect the public health and promote the public welfare.

Chapters 648 and 774 of the 2007 General Assembly require the Department to implement a program to identify chronically noncompliant waterworks and create mechanisms or enforcement options for eliminating chronically noncompliant waterworks. (Note: An ancillary part of the General Assembly action was the amendment of Title 15.2-2146, Powers of localities to acquire certain waterworks system. This is not part of this regulatory proposal.)

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.

A 2006 Joint Legislative and Audit Review Commission study identified the need for the VDH to develop additional remedies to address specific recalcitrant waterworks owners who continually refuse to take actions necessary to assure that the drinking water they provide to their consumers is safe.

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.

This addition to the Regulations will provide added tools to the VDH to address chronically non-compliant waterworks owners.

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.

While this proposal closely follows the actions of the General Assembly, any additional cost-effective alternatives will be considered.

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 agency is seeking comments on the intended regulatory action, 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 agency is also seeking information on 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.

Anyone wishing to submit written comments may do so by mail, email or fax to Robert A. K. Payne, Esq., Director of Legal Affairs for the Virginia Department of Health, Office of Drinking Water. Written comments must include the name and address of the commenter. To be considered, comments must be received by the last day of the public comment period.

A public hearing will not be held.

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 VDH will utilize the Waterworks Advisory Committee (WAC) as established in the Regulations to assist and advise in the development of this regulation. The WAC is composed of a broad spectrum of representatives of the waterworks industry including the consumer.

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.

By eliminating chronically noncompliant waterworks, the public can be assured of safe drinking water that will improve economic self-sufficiency and may decrease the number of illnesses that lead to lost productivity and diminished personal income.

