



**Virginia  
Regulatory  
Town Hall**

**Proposed Regulation  
Agency Background Document**

<b>Agency Name:</b>	Virginia Department of Environmental Quality
<b>VAC Chapter Number:</b>	9 VAC 25-650-10 et seq.
<b>Regulation Title:</b>	Closure Plans and Demonstration of Financial Capability
<b>Action Title:</b>	Proposed permanent regulation to replace emergency regulation
<b>Date:</b>	March 14, 2001

**Summary\***

The proposed regulation will replace an existing emergency regulation which requires closure plans and demonstration of financial capability for privately owned sewerage systems and sewerage treatment works that treat domestic waste generated by privately owned residences.

As outlined in the Notice of Intended Regulatory Action, six alternatives were considered in development of the permanent regulation. Alternative Two was chosen as the basis for the permanent regulation. This alternative limits the regulation to the category of facilities identified in Section 62.1-44.18:3 of the Code of Virginia. The permanent regulation will be essentially identical to the existing emergency regulation, with the exception of two substantive changes from the emergency regulation. 1) The number of years of contract operation required under 9 VAC 25-650-60 has been decreased from five years to two. 2) A waiver provision (9 VAC 25-650-150) has been added pursuant to a legislative amendment to Section 62.1-44.18:3 of the Code of Virginia.

**Basis\***

The basis for the proposed regulation is Section 62.1-44.18:3 of the Code of Virginia. Under Section 62.1-44.18:3, the promulgation of a regulation is mandatory. "The Department of Environmental Quality shall promulgate regulations to carry out the provisions of this section." (Cite Section 62.1-44.18:3(B)). The regulation is to require a Virginia Pollution Discharge Elimination System (VPDES) permit, closure plan and demonstration of financial capability to

implement the plan for privately owned sewerage treatment systems and sewerage treatment works that discharge more than 1,000 gallons per day and less than 40,000 gallons per day.

The full text of Section 62.1-44.18:3 and the full text of Senate Bill 1404 (SB1404) amending the legislation is available at <http://leg1.state.va.us>.

The office of the Attorney General has certified that the agency has the statutory authority to promulgate the regulation and that the regulation comports with applicable state and/or federal law.

### Purpose\*

The unanticipated abandonment of a sewage treatment facility by its owner or operator creates a substantial and imminent threat to public health or the environment because of the facility ceasing operations while still receiving sewage. The State Water Control Board has therefore determined that a closure plan and demonstration of financial capability to implement the plan are appropriate for privately owned sewerage systems and sewerage treatment works in order to reduce the potential for such abandonment, or the continued operation of abandoned facilities using public funds.

The proposed regulation will require closure plans and demonstration of financial capability for privately owned sewerage systems and sewerage treatment works that treat domestic sewage generated by privately owned residences. The proposed regulation will ensure that a plan to close or to provide continued service, and sufficient funds to implement that plan, are in place in the event an owner or operator of a privately owned sewerage system or sewerage treatment works abandons the facility. The regulation will also minimize the potential for the expenditure of public funds to close or continue to operate a privately owned facility in the event of abandonment.

### Substance\*

There are two substantive changes from the emergency regulation. The number of years of contract operation required under 9 VAC 25-650-60 has been decreased from five years to two. Additionally, a waiver provision has been added pursuant to a legislative amendment to Section 62.1-44.18:3 of the Code of Virginia. The waiver provisions allows the State Water Control Board to waive the closure plan and financial assurance requirements of the regulation for affected facilities that discharge less than 5,000 gallons per day, provided agreement from the local government is obtained.

### Issues\*

The primary advantage to the public is that those individuals served by privately owned sewerage systems will be ensured, at least temporarily, continued service in the event the owner or operator abandons the facility. Additionally, a plan will be in place to protect public health and the environment in the event of facility abandonment. The primary disadvantage to the

public is that there will be an increased cost to the owner or operator of a privately owned sewerage system or sewerage treatment works for providing service to its customers. The owner or operator will be required to develop the closure plan and will be required to obtain a financial assurance mechanism to demonstrate financial capability to implement the plan. It is anticipated that this cost may be passed through to the customers through increased fees, property rents, or other methods.

The primary advantage to the Department of Environmental Quality (the Agency) and to the Commonwealth is that there will be a plan in place to protect human health and the environment that outlines the steps to be taken in the event of abandonment of a privately owned sewerage system or sewerage treatment works. Additionally, funding will be available so that the expenditure of public funds will be minimized in the event such a facility is abandoned. The primary disadvantage to the Agency and to the Commonwealth is that there will be an increased staff workload associated with the review of closure plans and financial assurance documentation submitted by affected facilities.

### Locality Particularly Affected\*

There is no locality particularly affected by the proposed regulation. The Department of Environmental Quality has identified 65 facilities in 44 counties throughout the Commonwealth that will be affected by the regulation. Any new facility meeting the criteria of the regulation, will be subject to the requirements of the regulation regardless of its location within the Commonwealth.

### Public Participation\*

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal and the impacts of the regulation on farm or forest lands.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail. Written comments should be signed by the commenter and include the name and address of the commenter. In order to be considered the comments must be received by the close of the comment period. Oral comments may be submitted at the public hearing.

### 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; e) the projected cost of the regulation for affected individuals, businesses, or other entities; and f) an estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or organizations in Virginia.*

**In addition to information provided below, this section will be completed by the Department of Planning and Budget.**

The Department of Environmental Quality has identified 65 facilities in 44 counties throughout the Commonwealth that will be subject to the regulation. Of the 65 affected facilities, 37 are mobile home parks, 16 are residential subdivisions, 6 are apartment complexes, 3 are camps, and 3 are mixed use consisting of residential and commercial use.

### Detail of Changes

In 9 VAC 25-650-60.C.4, change the contract operation period from five (5) years to two (2) years. This will reduce the financial burden on owners or operators who choose contract operation alternative as the plan for the affected facility.

Add the following section to the regulation, and renumber all subsequent sections. This section is added based on a legislative amendment, and may reduce the burden of compliance with the regulation for very small facilities.

#### 9 VAC 25-650-150, Waiver of Requirements

- A. The Board may waive the requirements of this regulation for any owner or operator of a privately owned sewerage system subject to this regulation that was permitted prior to January 1, 2001 and discharges less than 5,000 gallons per day upon a finding that the owner or operator of the facility has not violated any regulation or order of the Board, any condition of a permit to operate the facility.
- B. No waiver shall be approved by the Board until after the governing body of the locality in which the facility is located approves the waiver after a public hearing.
- C. The Board may revoke a waiver at any time for good cause.

### Alternatives

The Department of Environmental Quality presented six alternatives in the development of this regulation. No additional alternatives were developed based on comments received during the public comment period. The alternatives considered are as follows:

1. No action alternative;
2. Limit regulation to facilities identified in Section 62.1-44.18:3 of the Code of Virginia;
3. Apply regulation to all facilities permitted by the State Water Control Board;
4. Apply regulation to all privately owned facilities permitted by the State Water Control Board;
5. Apply regulation to all privately owned sewage treatment systems permitted by the State Water Control Board that treat domestic waste generated by private residences.

6. Apply regulation to privately owned sewage treatment systems subject to the Virginia Pollution Discharge Elimination System (VPDES) permit regulation (9 VAC 25-31-10 et seq.) that treat domestic waste generated by private residences;

Based on a review of the requirements of Section 62.1-44.18:3 of the Code of Virginia and comments received during the NOIRA public comment period, the Department of Environmental Quality has selected Alternative Two (2) as the basis for the regulation. This alternative affects only that category of facilities identified by the legislation requiring the regulation. Therefore, this alternative is the least burdensome or intrusive alternative that meets the essential purpose of the legislation.

### Public Comment

The following summarizes verbal and written comments received during the NOIRA comment period. The Department of Environmental Quality prepared a summary of the public comment period and mailed the summary to all who submitted written comments and to those participants of the public meetings who expressed an interest in receiving the summary.

#### Written Comments:

- \* Two written comments were received. Both expressed non-support for alternatives presented in the NOIRA that include facilities that exclusively treat industrial wastewater in the category of facilities subject to the regulation. The alternative selected as the basis for the proposed regulation does not include such facilities.

#### Verbal Comments:

- \* There was considerable discussion, at most of the public meetings, related to the possibility of establishing a statewide umbrella fund to cover the costs associated with the abandonment of any particular facility. There seemed to be general public support for consideration of such an approach to meet the intent of the law. This is not an option under current law.
- \* A total of six people provided some indication regarding alternatives being considered. Of these, two supported Alternative 6, and three supported Alternative 2. Alternative 2 forms the basis for the proposed regulation.
- \* One person commented that facilities serving rental properties should be excluded from the requirements of the regulation because residents can be evicted with 30 days notice, thus effectively terminating influent flow to the facility. This is not permitted under the current regulation, but submittal of a plan consisting of eviction and termination of influent flow is an acceptable means of satisfying the requirement of the regulation.

### Clarity of the Regulation

Through examination of the regulation and public comments, the Department of Environmental Quality has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

**Periodic Review**

Three years after the proposed regulation is effective, the Department of Environmental Quality will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated.

**Family Impact Statement**

The Department of Environmental Quality has considered the effects of this proposed regulation on the institution of 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; strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

Because this regulation will increase the cost associated with owning and operating a privately owned sewerage or sewage treatment works, it is anticipated that owners of such facilities will attempt to recoup this cost by increasing connection and user fees charged to customers served by the facilities. Therefore, disposable family income is anticipated to be negatively impacted for those families that utilize the services of facilities affected by the regulation.