



Proposed Regulation Agency Background Document

Agency name	Virginia Department of Health (VDH)
Virginia Administrative Code (VAC) citation	12VAC5-590
Regulation title	Waterworks Regulations
Action title	Chronically Noncompliant Waterworks
Date this document prepared	

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*.

Brief summary

This proposed regulation provides a regulatory definition of a Chronically Noncompliant waterworks, and establishes an enforcement procedure that allows the Commissioner to take action against recalcitrant waterworks owners to compel compliance and protect the public health and welfare.

Legal basis

§ 32.1-12 of the Code of Virginia provides that 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 to adopt and promulgate regulations governing waterworks, water supplies and pure water to protect the public health and promote the public welfare.

§ 32.1-167 defines a chronically noncompliant waterworks.

§ 32.1-174.4 requires the State Board of Health to promulgate regulations that create mechanisms or enforcement options for eliminating chronically noncompliant waterworks.

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.)

Purpose

A limited number of waterworks owners chronically fail to comply with the Waterworks 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.

This action is the result of a JLARC study and subsequent General Assembly action.

Substance

Section 12VAC5-590-10 includes the Code of Virginia definition of a chronically noncompliant waterworks into the body of the Waterworks Regulations.

Section 12VAC5-590-125 allows the State Health Commissioner to issue an order to the owner of a chronically noncompliant waterworks requiring the waterworks owner to submit: (1) a schedule for returning the waterworks to compliance and (2) a comprehensive business plan (§ 32.1-172 B of the Code of Virginia).

If the waterworks owner is financially incapable of performing any necessary capital improvements, the waterworks owner is required to make good faith applications to appropriate financial institutions for funding to complete the improvements. The waterworks owner is also required to notify each consumer of the Commissioner's order including a copy of the compliance schedule.

Additionally, the Commissioner is required to send a copy of the order to the chief administrative officer of the locality in which the waterworks is located.

The waterworks owner is subject to the civil fines provided in § 32.1-167 to § 32.1-176 of the Code of Virginia.

Issues

Please identify the issues associated with the proposed regulatory action, including:
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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary issue addressed by this proposed regulation is to attempt to protect the health of consumers served by a waterworks in Virginia that has been determined to be chronically noncompliant. The proposed regulation will require recalcitrant waterworks owners to bring the chronically noncompliant waterworks into compliance with the Waterworks Regulations.

The State Health Commissioner will inform the local government in which the chronically noncompliant waterworks is located, that it may initiate action, if desired by the locality, to secure ownership of the waterworks and assume operation in compliance with the Waterworks Regulation.

This proposed regulation poses no disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no federal regulations that parallel this requirement, therefore, the question of being more restrictive is moot.

Compliance with drinking water standards is a primary objective of the federal government (Environmental Protection Agency).

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

This regulation does not affect any particular locality.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Board of Health is seeking comments on the costs and benefits of the proposal and the potential impacts of this proposed regulation. Also, the Board of Health is 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 impact 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 Randall Swartz, Office of Drinking Water, 109 Governor Street, 6th Floor, Richmond, Virginia 23219; 804-864-7513 (tele); 804-864-7520 (fax); Randall.Swartz@vdh.virginia.gov. Written comments must include the name and address of the commenter. To be considered comments must be received by the last date of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	\$0
Projected cost of the regulation on localities	\$0
Description of the individuals, businesses or other entities likely to be affected by the regulation	Those affected by this proposed regulation are waterworks owners who continually and habitually violate the existing Waterworks Regulations and the consumers served.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	Approximately eight waterworks may be affected by this proposed regulation.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	\$0

Alternatives

Please describe any viable 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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

This regulation is required by an act of the General Assembly.

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.

This regulation is required by an act of the General Assembly.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
None	None	None

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.

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

Detail of changes

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

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	12VAC5-591-125	None	

Enter any other statement here