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Periodic Review Report of Findings

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-650
Regulation title	Closure Plan and Demonstration of Financial Capability
Date this document prepared	March 13, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

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

No acronyms are used in this document.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

The State Water Control Board is directed by § 62.1-44.18:3 of the Code of Virginia to adopt regulations that require privately owned sewerage systems and sewerage treatment works that discharge more than 1,000 gallons per day and less than 40,000 gallons per day to develop closure plans and provide financial assurance for closure of the sewerage systems or sewage treatment works. The State Water Control Board previously adopted this regulation in 2001 and last amended the regulation in 2015.

Alternatives

Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

The purpose of the regulation is to ensure that owners or operators of privately owned sewerage systems and sewerage treatment works that discharge between 1,000 gallons and 40,000 gallons per day are capable of continuing to treat sewage and are capable of properly closing facilities. These smaller sewerage systems and sewerage treatment works are private companies providing a service to paying customers. The financial stability of the business to continue to properly operate a sewage system or

sewage treatment works directly relates to the business’s ability to properly treat sewage before it is discharged into state waters.

State statute requires plans to be developed by the owner of these smaller sewage systems or sewage treatment works to abate, control, prevent, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if such facility ceases operations and to demonstrate their financial capability to implement the plan. Statute specifies that a trust fund, bond, corporate guarantee, or other mechanism deemed appropriate by the board may be used to demonstrate financial capability.

Due to the specific requirements of statute, there are limited viable alternatives that can be considered. The regulation does include additional ways that are not specifically mentioned in statute for demonstrating financial capability. This regulation includes options of using a letter of credit or certificate of deposit to demonstrate financial stability. The content of the regulation is also similar to other regulations concerning financial assurance. No viable alternatives to this regulation were identified.

Public Comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

An advisory group was not formed to assist with the periodic review. No comments were received during the public comment period.

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation is necessary to protect public health, safety and welfare. The purpose of the regulation is to ensure that owners or operators of privately owned sewerage systems and sewerage treatment works that discharge between 1,000 gallons and 40,000 gallons per day are capable of continuing to treat sewage and are capable of properly closing facilities. The proper operation of a sewage system or sewage treatment works to properly treat sewage before it is discharged into state waters is critical to protect public health and the environment.

The regulation is clearly written and easily understandable.

Decision

Please explain the basis for the rulemaking entity’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The regulation continues to be needed and the agency plans to amend this regulation in the future to address the timing of providing financial assurance when a permit is transferred to a new owner or operator. Currently the previous owner is required to provide financial assurance until the new owner provides financial assurance. The agency recommends amending the regulation to require the new owner to provide financial assurance prior to the transfer of the permit. This change is consistent with the requirement for a new facility to provide financial assurance prior to the facility beginning to operate.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

This regulation is necessary to protect public health, safety and welfare. The purpose of the regulation is to ensure that owners or operators of privately owned sewerage systems and sewerage treatment works that discharge between 1,000 gallons and 40,000 gallons per day are capable of continuing to treat sewage and are capable of properly closing facilities. The proper operation of a sewage system or sewerage treatment works to treat sewage before it is discharged into state waters is critical to protect public health and the environment. If a sewage treatment plant ceased to operate, untreated sewage would be discharged into state waters, and would negatively impact state waters, causing impacts to human health and the environment.

No comments were received during the periodic review.

The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost-effectively as possible. Multiple financial mechanisms are available for use to demonstrate financial capability.

The regulation is a state only regulation and does not conflict with any state law or other state regulation. All owners or operators subject to this regulation are also required to meet the requirements of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31).

This regulation was last revised in 2015. Since that time, technology has become more advanced and more treatment methods are available to be used at these types of sewage systems and sewerage treatment works. Newer technologies are capable of removing more nutrients from sewage before it is discharged to state waters. Additionally, some smaller sewage systems are now no longer independently operated, but operated by larger companies.

This regulation satisfies the provisions of the law and legally binding state requirements, and is effective in meeting its goals. The agency plans to amend this regulation in the future to address the timing of providing financial assurance when a permit is transferred to a new owner or operator. Currently the previous owner is required to provide financial assurance until the new owner provides financial assurance. The agency recommends amending the regulation to require the new owner to provide financial assurance prior to the transfer of the permit. This change is consistent with the requirement for a new facility to provide financial assurance prior to the facility beginning to operate.