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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC5-610
VAC Chapter title(s)	Sewage Handling and Disposal Regulations
Action title	Amend Regulations Following Periodic Review
Date this document prepared	March 18, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Board of Health (the Board) has not made significant revisions to the Sewage Handling and Disposal Regulations (the Regulations) since 2000. The Regulations establish the safe and sanitary collection, conveyance, transportation, treatment, and disposal of sewage by onsite sewage systems. The Virginia Department of Health (the Department) formed working groups with stakeholders in May 2022 to assist the Department in the development of proposed revisions to the Regulations. In January 2023, the Department began a periodic review of the Regulations. The intent of this planned regulatory action is to explore amendments to the Regulations based on current industry standards and comments received from the stakeholder working groups, in order to ensure the Regulations (i) are protective of public health and the environment, (ii) address changes in current industry standards and practice, (iii) clarify regulatory language, and (iv) exhibit improved consistency with other regulations related to onsite sewage systems and sewage handling. Additionally, possible regulatory reductions will be considered as part of this planned regulatory action.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

“The Board” means the Board of Health

“The Regulations” means the Sewage Handling and Disposal Regulations

“The Department” means the Virginia Department of Health

“The Division” means the Division of Onsite Water and Wastewater Services

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

This regulatory change is not a result of a mandate.

This regulatory change is prompted by (i) feedback from stakeholder working groups, (ii) agency staff review of the Regulations, (iii) the amount of time that has elapsed since the Regulations have undergone a comprehensive review, and (iv) Executive Order 19 and the Office of Regulatory Management (ORM) procedures for the review of state agency regulations.

Legal Basis

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

- (1) Virginia Department of Health
- (2) Title 32.1 of the Code of Virginia, and specifically § 32.1-164, provide that the State Board of Health has supervision and control over the safe and sanitary collection, conveyance, transportation, treatment, and disposal of sewage by onsite sewage systems and alternative discharging sewage systems, and treatment works as they affect the public health and welfare.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The Board is charged with the responsibility to adopt, promulgate, and enforce regulations necessary to protect health and safety as it relates to onsite sewage systems. The Regulations are essential to interpret and apply the requirements of the Code of Virginia in protecting public health and welfare. The

Department has determined that the Regulations should be amended to ensure they reflect the most updated science and best practices, including feedback from relevant industry experts and other stakeholders. The Regulations have not undergone a comprehensive revision since 2000. The Regulations, in their current form, do not reflect changes in the industry and best practices over the last 24 years.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The following substantive changes to existing sections, and new substantive provisions are being considered to the existing regulatory language:

- Alignment with other laws and regulations related to onsite sewage systems (Building Code, Department of Environmental Quality regulations, Department of Transportation regulations, Department of Conservation and Recreation regulations).
- Establishment of Renewable Operating Permits for onsite sewage systems, contingent on Operation and Maintenance (O&M) records and satisfactory O&M reports.
- Establishment of enforcement mechanisms for O&M of conventional onsite sewage systems.
- Inclusion of requirements related to professional licensure.
- Removal of redundant language.
- Alignment with the Form, Style and Procedure Manual and changes to the number of regulatory requirements per the Regulatory Economic Analysis Manual.
- Inclusion of agency policies, including those regarding the programmatic shift toward private sector site evaluations, design services, and O&M.
- Inclusion of standards for disposal of graywater.
- Improve consistency in identification of what constitutes a failing onsite sewage system.
- Update pump and haul specifications for temporary, permanent, and emergency pump and haul permitting.
- Clarify minimum installation depth requirements for drainfield trenches on sloping sites.
- Improve the Soil Drainage Management Plan and Contract to meet modern industry practices.
- Improve standards for septic tank manufacturing to meet current industry practices.
- Revise and add definitions as necessary for consistency with the Code of Virginia and current industry practices.
- Improve consistency between the Regulations and the Regulations for Alternative Onsite Sewage Systems (12VAC5-613) as it relates to the presence of permeability limiting features.
- Incorporate Saturated Hydraulic Conductivity (Ksat) testing procedures in the regulations.
- Improve standards for site and soil evaluations in relation to onsite sewage system design.
- Requirements for the Department inspection during installation of onsite sewage systems designed by the private sector.
- Include standards and specifications for onsite sewage system installation inspection reports and as-built drawings.
- Revise separation distances for onsite sewage systems to avoid public health hazards.
- Align wastewater flow and characterization requirements with current industry practices.
- Revise pump system requirements to meet current industry practices and research.
- Include standards for the safe and adequate abandonment of existing, unused onsite sewage systems.
- Clarify the use and construction of Lateral Groundwater Movement Interceptors.

- Addition of a requirement for a secondary safety device inside septic and pump tanks to inhibit accidental access into tanks.
- Revise Type IV (privy) systems to include modern technologies and industry practices.
- Develop considerations for the impacts of climate change for septic to include:
 - Establishment of renewable operating permits for at risk systems.
 - Reduction of setback distances for treated effluent systems.
 - Development of mechanisms for monitoring at risk systems.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

Code of Virginia § 32.1-164 requires regulations of the Board to govern the collection, conveyance, transportation, treatment, and disposal of sewage by onsite sewage systems in the Commonwealth. The alternative to the proposed action is to maintain the Regulations as currently adopted; however, this is not considered viable. This regulatory action is necessary to recognize current industry standards, improve consistency with other regulations, improve protection of public health and quality of both surface and ground water, and provide for regulatory economic analysis per the Regulatory Economic Analysis Manual. Without the proposed action, Virginians will not benefit from more current and up-to-date industry practices and research. Additionally, inconsistencies between the Regulations and other regulations related to onsite sewage systems will persist. This proposed action is less intrusive to small businesses, primarily, but not limited to, onsite sewage system installers, operators, and designers, as it provides an opportunity to incorporate current industry standards into the Regulations. The proposed action would also provide an opportunity to clarify areas of inconsistency and ambiguity, which currently lead to variance requests to the State Health Commissioner, which can delay permitting actions.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Department is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Lance Gregory, Director of Division of Onsite Water and Wastewater Services, 109 Governor Street, 5th Floor, Richmond, VA 23219, (804) 864-7491 (office), (804) 864-7475 (fax), lance.gregory@vdh.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.