



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	State Water Control Board
VAC Chapter Number:	9 VAC 25-770- 10 et seq
Regulation Title:	Financial Responsibility Requirements for Mitigation Associated with Tidal Dredging Projects
Action Title:	Adoption of Financial Responsibility Requirements for Mitigation Associated with Tidal Dredging Projects
Date:	September 24, 2002

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose*

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of the proposed regulation is to specify the mechanisms by which the State Water Control Board may require demonstration of financial responsibility for the completion of compensatory mitigation requirements for dredging projects in tidal waters permitted under the Virginia Water Protection Permit (VWPP) Program. Financial responsibility may be demonstrated by letter of credit, certificate of deposit, or performance bond. When the U.S. Army Corps of Engineers requires demonstration of financial responsibility, then the mechanism and amount approved by the Corps shall be used to meet this requirement.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory

action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

The basis for this regulation is amendments to Section 62.1-44.15 5(c) of the Code of Virginia, passed by the 2002 General Assembly (HB91/SB 327), as follows:

(5c) Any certificate issued by the Board under this chapter relating to dredging projects governed under Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 may be conditioned upon a demonstration of financial responsibility for the completion of compensatory mitigation requirements. Financial responsibility may be demonstrated by a letter of credit, a certificate of deposit or a performance bond executed in a form approved by the Board. If the U.S. Army Corps of Engineers requires demonstration of financial responsibility for the completion of compensatory mitigation required for a particular project, then the mechanism and amount approved by the U.S. Army Corps of Engineers shall be used to meet this requirement.

Need*

Please detail the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied

VWP permits require compensatory mitigation for unavoidable impacts to tidal wetlands and subaqueous bottoms disturbed by dredging activities. In some cases, particularly when multiple property owners are involved in dredging coves for boating access, these mitigation projects are not completed due to a lack of financial resources or clear responsibility. The U.S. Army Corps of Engineers sometimes but not always requires bonding to ensure project completion. This regulatory action would insure that financial resources would be available to complete mitigation projects.

Substance*

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed.

A permanent regulation will be developed to address this need using the emergency regulation adopted by the Board as the basis for the permanent regulation. The emergency regulation specifies the mechanisms by which the Board requires financial assurance to ensure completion of mitigation requirements for tidal dredging projects, but allows for the requirement to be satisfied by bonding required by the Corps, to avoid duplication. These requirements will apply only to tidal dredging projects and not to non-tidal dredging projects or any other types of projects requiring VWP permits.

Alternatives*

Please describe the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the need. Also describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action, and the reasoning by which the agency has rejected any of the alternatives considered.

The alternative of not developing a regulation for the provision of financial assurance for mitigation for tidal dredging projects is not feasible as this regulatory development is mandated by action of the 2002 General Assembly. We are avoiding unnecessary duplication by including the provision that no additional financial assurance will be required if other regulatory entities are already requiring such assurance.

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 meeting is to be held to receive comments on this notice. Indicate that 1) the agency is not holding a meeting because the agency has authorized proceeding without holding a meeting or 2) the agency is holding a meeting. If a public meeting is to be held, indicate where information on the public meeting (i.e., date, time and place) may be found.

The Board is seeking comments on the intended regulatory action, including (i) ideas to assist in the development of a proposal, (ii) the costs and benefits of the alternatives stated in this notice or other alternatives and (iii) 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 meeting to by mail to Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240 or by email to egilinsky@deq.state.va.us. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the close of the comment period.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory Approach*

Please indicate the extent to which an ad hoc advisory group will be used 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 Board seeks comment from the public on whether to use the participatory approach to assist the agency in the development of a proposal.

Family Impact Statement

Please provide a preliminary analysis of 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.

The regulation is not expected to have any impact on the institution of the family and family stability. However, in the event a community association conducting a tidal dredging project were unable to complete the work, the regulation would have a beneficial effect on families in that with financial assurance in place, individual property owners would not be held liable for completion of the work.