



Virginia Department of Planning and Budget **Economic Impact Analysis**

9 VAC 25-650 Closure Plans and Demonstration of Financial Capability
Department of Environmental Quality
November 14, 2014

Summary of the Proposed Amendments to Regulation

The State Water Control Board (Board) proposes to: 1) clarify that the corporate financial test and the corporate guarantee may be used as mechanisms to demonstrate financial assurance, 2) add detail on requirements for the corporate financial test and the corporate guarantee, and 3) add definitions and clarifying language that do not substantially change requirements.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

The purpose of this 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 sewerage system or sewerage treatment works directly relates to the business's ability to properly treat sewage before it is discharged into state waters.

Code of Virginia § 62.1-44.18:3 requires plans to be developed by the owner of these smaller sewerage systems or sewerage 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. The statute specifies that a trust fund, bond, corporate guarantee, or other mechanism deemed appropriate by the board may be used to demonstrate financial assurance.

When the regulation was originally adopted, smaller sewage systems or sewage treatment works were owned by smaller entities that had limited financial resources. For that reason, the corporate guarantee specified in the statute was not included in the regulation as a financial assurance option. Over the years, some of the smaller sewage systems or sewage treatment works have been purchased by or have become operated by larger companies that have additional financial resources available to them. The larger companies have more financial resources and would potentially be able to demonstrate financial assurance through the use of a corporate financial test or corporate guarantee. For some firms this may be a lower cost manner of demonstrating financial assurance.

Clarifying in this regulation that the use of a corporate financial test or a corporate guarantee may be used to demonstrate financial assurance may result in some firms newly choosing one of these methods, particularly if it is less costly. This clarification introduces no new cost. Thus the proposed amendments produce a net benefit.

Businesses and Entities Affected

This regulation affects 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. The Department of Environmental Quality estimates that there are 40 such entities in the Commonwealth. Due to the small capacity of the sewage systems and sewage treatment works, it is likely that most businesses regulated by this regulation are small businesses.

Localities Particularly Affected

The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment

The proposed amendments will not significantly affect employment.

Effects on the Use and Value of Private Property

Clarifying that the use of a corporate financial test or a corporate guarantee may be used to demonstrate financial assurance may result in some firms newly choosing one of these methods. This may result in cost savings and consequently a moderate increase in value for some privately owned sewerage systems and sewerage treatment works.

Small Businesses: Costs and Other Effects

Clarifying that the use of a corporate financial test or a corporate guarantee may be used to demonstrate financial assurance may result in some small firms newly choosing one of these methods. This may result in cost savings.

Small Businesses: Alternative Method that Minimizes Adverse Impact

The proposed amendments will not create an adverse impact for small businesses.

Real Estate Development Costs

The proposed amendments will not significantly affect real estate development costs.

Legal Mandate

General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulatory action would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

Small Businesses: If the proposed regulatory action will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules (JCAR) is

notified at the time the proposed regulation is submitted to the *Virginia Register of Regulations* for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

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