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## Proposed Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-790
<b>VAC Chapter title(s)</b>	<b>Sewage Collection and Treatment Regulations</b>
<b>Action title</b>	<b>Amend Sewage Collection and Treatment Regulations to include a reporting requirement for all septic systems taken off-line and connected to sewerage systems</b>
<b>Date this document prepared</b>	May 1, 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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The Sewage Collection and Treatment Regulations (9VAC25-790) regulate sewerage systems and treatment works.

The intent of this regulatory action is to determine how many septic systems (or other on-site sewage disposal systems) in the Chesapeake Bay watershed are taken off-line and the house, residence, or business is connected to a sewage treatment works that serves the locality. The data will be used to understand and quantify reductions in nutrient loads and pollution that impact water quality in the Chesapeake Bay.

In July 2018, The Environmental Protection Agency (EPA) issued State-Basin Planning targets for nitrogen and phosphorus in Virginia’s five river basins draining to the Chesapeake Bay. The Chesapeake Bay TMDL Phase III Watershed Implementation Plan (WIP) represents the Commonwealth’s plan to achieve nutrient and sediment reductions needed to restore the Chesapeake Bay and its tidal tributaries.

Watershed Implementation Plans are roadmaps for how the seven jurisdictions (Delaware, the District of Columbia, Maryland, New York, Pennsylvania, Virginia, and West Virginia) in the Chesapeake Bay Program (CBP) will attain the Chesapeake Bay TMDL. The Bay TMDL is an informal planning tool used to establish CBP goals. WIPs were agreed to be developed and implemented in three phases, with EPA agreeing to provide an assessment of the WIP. EPA does not provide an approval or disapproval of a WIP.

Amending the SCAT Regulations will ensure a more accurate count of nutrient reductions that result from directing sewage from individual septic systems and other on-site sewage disposal systems to a centralized sewage treatment works. Sewage treatment works have been upgraded to improve nutrient removal capability and are subject to discharge limitations through the Department of Environmental Quality’s (Department) Virginia Pollutant Discharge Elimination System (VPDES) permit program. Information about the number of septic systems that are no longer used to treat and dispose of sewage will assist with tracking the Commonwealth’s progress towards water quality goals, including Chesapeake Bay watershed restoration goals, thus helping to certify that Virginia is meeting its reduction goals.

The requirement to amend the SCAT Regulations is directly mandated by the Commonwealth’s Chesapeake Bay TMDL Phase III WIP. Initiative 53 provides that “the Commonwealth will initiate a regulatory action to amend the existing Sewage Collection and Treatment Regulations (9VAC25-790-10 et seq.) to include a reporting requirement for all septic systems (or other on-site sewage disposal systems) taken off-line and connected to sewage collection systems.”

## Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.*

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- Board- State Water Control Board
- Agency or Department – Department of Environmental Quality
- CPB- Chesapeake Bay Program
- EPA- Environmental Protection Agency
- NOIRA – Notice of Intended Regulatory Action
- SCAT – Sewage Collection and Treatment Regulations, 9VAC25-790
- TMDL- Total Maximum Daily Load
- WIP – Watershed Implementation Plan

## 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.”*

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The Commonwealth's Chesapeake Bay TMDL Phase III WIP (Initiative 53) requires reporting of sewer connections by wastewater utilities. Initiative 53 provides that "[t]he Commonwealth will initiate a regulatory action to amend the existing Sewage Collection and Treatment Regulations (9VAC25-790-10 et seq.) to include a reporting requirement for all septic systems (or other on-site sewage disposal systems) taken off-line and connected to sewage collection systems. This requirement will ensure a more accurate count of nutrient reductions resulting from septic systems connected to sewer."

### 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.*

The Board adopted the Sewage Collection and Treatment Regulations under the authority provided by §62.1-44.15(10) of the Code of Virginia. Additionally, § 62.1-4419 of the Code of Virginia requires that before an "owner may erect, construct, open, expand or operate a sewerage system or sewage treatment works which will have a potential discharge or actual discharge to state waters, such owner shall file with the Board an application for a certificate in scope and detail satisfactory to the Board."

### Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

This regulatory action is essential to protecting the water quality in the Commonwealth of Virginia, which is essential to the health, safety, and welfare of Virginia's citizens and is needed in order to establish appropriate and necessary reporting requirements for all septic systems (or other on-site sewage disposal systems) located in the Chesapeake Bay Watershed that are taken off-line and connected to sewage collection systems. Additionally, this action is essential in supporting the Commonwealth's Chesapeake Bay TMDL Phase III WIP. The addition of this reporting requirement will ensure a more accurate count of nutrient reductions resulting from septic systems connected to sewer, which will assist with tracking the Commonwealth's progress towards water quality goals, including Chesapeake Bay watershed restoration goals.

### Substance

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

The substance of this action is to amend the Sewage Collection and Treatment Regulations (9VAC25-790) to include a requirement for permitted sewage treatment works located within the Chesapeake Bay Watershed to report all septic systems (or other on-site sewage disposal systems) taken off-line and connected to sewerage systems. This requirement will ensure a more accurate count of nutrient reductions resulting from septic connected to sewer, which will assist with tracking the Commonwealth's progress towards water quality goals, including Chesapeake Bay watershed restoration goals.

**Issues**

*Identify the issues associated with the regulatory change, 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 there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

The Sewage Collection and Treatment Regulations (9VAC25-790) do not currently contain any reporting requirements regarding on-site sewage systems taken off-line and connected to public sewerage systems.

The primary advantage of the proposed regulatory action is the implementation of a reporting requirement for all septic systems (or other on-site sewage disposal systems) located within the Chesapeake Bay watershed taken off-line and connected to sewerage collection systems. Including this requirement would provide the Department with more accurate information to track water quality goals. The regulation includes language to limit the requirement to the best of the permittee’s knowledge, thus the implementation of this requirement can largely be accomplished using existing resources and will impose a minimal financial burden. This will aid in protecting state waters, while limiting both the time and resources required to gather the required data, as well as preventing the regulation from creating compliance issues or being punitive to permittees. This is an advantage for the public, the regulated community, and the Commonwealth. Potential disadvantages would be limited to an increase on staff resources.

**Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.*

The seven jurisdictions of the CBP partnership agreed to develop and implement WIPs in three phases to provide a framework for the goals and milestones necessary towards Chesapeake Bay restoration goals. This reporting requirement is directly mandated by the phase III WIP and is thus essential to complying with the CBP partnership agreement.

**Agencies, Localities, and Other Entities Particularly Affected**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

Other State Agencies Particularly Affected

There are no other state agencies particularly affected by this regulatory action.

Localities Particularly Affected

All counties, cities, and incorporated towns located within the Chesapeake Bay Watershed would be affected by this regulatory change, but none are expected to be particularly affected. If the proposed regulatory action is enacted the burden to track the data would be on the localities, and the burden to report the data to the Department, would be on the sewage treatment works,

**Other Entities Particularly Affected**

All permittees that are other entities would be affected by this regulatory change, but none are expected to be particularly affected. There are approximately 316 privately and publicly owned treatment works located within the Chesapeake Bay Watershed. If the proposed regulatory action is enacted these permittees would have to comply with the requirement to report the number of on-site sewage systems taken off-line and connected to sewerage systems that convey sewage to their facility. It is expected that much of the impact could be absorbed by existing resources.

For purposes of "Locality Particularly Affected" under the Board's statutes

There is no locality particularly affected under the Board's Statutes.

**Economic Impact**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.*

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including:                  a) fund source / fund detail;                  b) delineation of one-time versus on-going expenditures; and                  c) whether any costs or revenue loss can be absorbed within existing resources.</p>	<p>It is anticipated that any fiscal impact on the Department as a result of these regulations can be absorbed with existing resources.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no other state agencies particularly affected by this regulatory action.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>This requirement will ensure a more accurate count of nutrient reductions resulting from septic systems connected to sewer, which will assist with tracking the Commonwealth's progress towards water quality goals, including Chesapeake Bay watershed restoration goals.</p>

**Impact on Localities**

This analysis has been reporting on the ORM Economic Impact Form in Table 1a and Table 2.

**Impact on Other Entities**

This analysis has been reporting on the ORM Economic Impact Form in Table 1a, Table 3, and Table 4.

### 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.*

No alternatives to this regulatory action were considered. The regulatory amendments are necessary to implement the Commonwealth's Chesapeake Bay TMDL Phase III WIP.

This analysis has been reported on the ORM Economic Impact form in Table 1b and Table 4.

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

### Regulatory Flexibility Analysis

*Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.*

As mandated by initiative 53 of the Commonwealth's TMDL Phase III WIP, the proposed regulation requires permitted sewage treatment works within the Chesapeake Bay Watershed to report the number of on-site sewage systems taken off-line and connected to sewerage systems that convey sewage to their facility. State law does not provide an exemption for small businesses for this requirement. In developing the proposed regulation consideration was given to minimizing requirements for all permitted sewage treatment works, including small businesses. The Department anticipates that implementation of the requirement to report the number of on-site sewage systems taken off-line and connected to sewerage systems that convey sewage to their facility will have a minimal economic impact on individual small businesses.

This analysis has been reporting on the ORM Economic Impact Form in Table 1b and Table 4.

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

### Periodic Review and Small Business Impact Review Report of Findings

*If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is*



*necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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 applicable law, will minimize the economic impact of regulations on small businesses.*

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No periodic review was announced during the NOIRA stage.

### Public Comment

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency's response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

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A public comment period ran from September 11, 2023, through October 11, 2023, and was extended to December 6, 2023. No public comments were received during this period.

### 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.*

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The Board 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, (iii) the potential impacts of the regulation, and (iv) the Department's regulatory flexibility analysis stated in that section of this background document. Also, the Board 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 effect 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 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 or email to Morgan Emanuel, Regulatory and Guidance Analyst, DEQ Office of Water Planning, P.O. Box 1105, Richmond, Virginia 23218, phone: 804-494-9635 and [morgan.emanuel@deq.virginia.gov](mailto:morgan.emanuel@deq.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 this stage of this regulatory action.

## Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

**Table 1: Changes to Existing VAC Chapter(s)**

<u>Current chapter-section number</u>	<u>New chapter-section number, if applicable</u>	<u>Current requirements in VAC</u>	<u>Change, intent, rationale, and likely impact of new requirements</u>
	9VAC25-790-985	None	<p>Add section 985: “On or before February 1, annually, every permitted sewage treatment works within the Chesapeake Bay Watershed shall report to the Department, to the best of their knowledge, the number of onsite sewage systems taken off-line and connected to sewerage systems that convey sewage to their facility during the previous calendar year.”</p> <p>This requirement will ensure a more accurate count of nutrient reductions resulting from septic systems connected to sewer. This will assist in tracking the Commonwealth’s water quality goals, including Chesapeake Bay water restoration goals. This requirement is directly mandated by the Commonwealth’s Chesapeake Bay TMDL Phase III WIP. Initiative 53 provides that “the Commonwealth will initiate a regulatory action to amend the existing Sewage Collection and Treatment Regulations (9VAC25-790-10 et seq.) to include a reporting requirement for all septic systems (or other on-site sewage disposal systems) taken off-line and connected to sewage collection systems.”</p>

## Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess 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.*

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It is not expected that this regulation will have a direct impact on families.