



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	Virginia Department of Environmental Quality
<b>VAC Chapter Number:</b>	9 VAC 25-650-10 et seq.
<b>Regulation Title:</b>	Closure Plans and Demonstration of Financial Capability
<b>Action Title:</b>	Final Regulation
<b>Date:</b>	September 17, 2001

### Summary

This regulation will replace an emergency regulation requiring closure plans and demonstration of financial capability for privately owned sewerage systems and sewerage treatment works that treat domestic waste generated by privately owned residences. The regulation requires a Virginia Pollution Discharge Elimination System (VPDES) permit, closure plan, and demonstration of financial capability to implement the plan for 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.

Two substantive changes were made from the emergency regulation in the development of the permanent regulation. 1) The number of years of contract operation required under 9 VAC 25-650-60 was decreased from five years to two. 2) A waiver provision (9 VAC 25-650-150) was added pursuant to a legislative amendment to Section 62.1-44.18:3 of the Code of Virginia.

Based on comments received during the public comment period and on the difficulty experienced by two owners attempting to obtain financial assurance mechanisms under the emergency regulation, two substantive changes were made to the regulation. 1) A Certificate of Deposit was added as an acceptable financial assurance mechanism, and 2) the requirement for a stand-by trust fund was removed. Additionally, the allowable time to file the financial assurance mechanism with the Board after Board approval of the closure plan and cost estimate was increased from 10 days to 30 days. Finally, to address the Department of Planning and Budget's concern that the regulation could delay transfer of ownership, the time requirement for notification to the Board of an ownership transfer was decreased from 120 days to 30 days.

## Statement of Final Agency Action

The State Water Control Board at its meeting on October 4, 2001 adopted regulation 9 VAC 25-650, Closure Plans and Demonstration of Financial Capability.

## Basis

The basis for the regulation is Section 62.1-44.18:3 of the Code of Virginia. Under Section 62.1-44.18:3, the promulgation of a regulation is mandatory. “The Department of Environmental Quality shall promulgate regulations necessary to carry out the provisions of this section.” (Cite Section 62.1-44.18:3(B)). The regulation is to require a Virginia Pollution Discharge Elimination System (VPDES) permit, closure plan and demonstration of financial capability to implement the plan for privately owned sewerage treatment systems and sewerage treatment works that discharge more than 1,000 gallons per day and less than 40,000 gallons per day.

The full text of Section 62.1-44.18:3 is available at <http://leg1.state.va.us>.

The office of the Attorney General has certified that the agency has the statutory authority to promulgate the regulation and that the regulation comports with applicable state and/or federal law.

## Purpose

The unanticipated abandonment of a sewage treatment facility by its owner or operator creates a substantial and imminent threat to public health or the environment because of the facility ceasing operations while still receiving sewage. The State Water Control Board has therefore determined that a closure plan and demonstration of financial capability to implement the plan are appropriate for privately owned sewerage systems and sewerage treatment works in order to reduce the potential for such abandonment, or the continued operation of abandoned facilities using public funds.

The regulation requires closure plans and demonstration of financial capability for privately owned sewerage systems and sewerage treatment works that treat domestic sewage generated by privately owned residences. The regulation will ensure that a plan to close or to provide continued service, and sufficient funds to implement that plan, are in place in the event an owner or operator of a privately owned sewerage system or sewerage treatment works abandons the facility. The regulation will also minimize the potential for the expenditure of public funds to close or continue to operate a privately owned facility in the event of abandonment.

## Substance

Based on comments received during the public comment period and on the difficulty experienced by two owners attempting to obtain financial assurance under the emergency regulation, two substantive changes were made to the regulation. 1) A Certificate of Deposit was added as an acceptable financial assurance mechanism, and 2) the requirement for a stand-by trust fund was removed. Additionally, the allowable time to file the financial assurance mechanism with the Board after Board approval of the closure plan and cost estimate was increased from 10 days to 30 days. To address the Department of Planning and Budget's concern that the regulation could delay transfer of ownership, the time requirement for notification of the Board of an ownership transfer was decreased from 120 days to 30 days.

Two substantive changes were made from the emergency regulation in the development of the permanent regulation. 1) The number of years of contract operation required under 9 VAC 25-650-60 was decreased from five years to two. 2) A waiver provision (9 VAC 25-650-150) was added pursuant to a legislative amendment to Section 62.1-44.18:3 of the Code of Virginia.

## Issues

The primary advantage to the public is that those individuals served by privately owned sewerage systems will be ensured, at least temporarily, continued service in the event the owner or operator abandons the facility. Additionally, a plan will be in place to protect public health and the environment in the event of facility abandonment. The primary disadvantage to the public is that there will be an increased cost to the owner or operator of a privately owned sewerage system or sewerage treatment works for providing service to its customers. The owner or operator will be required to develop the closure plan and will be required to obtain a financial assurance mechanism to demonstrate financial capability to implement the plan. It is anticipated that this cost may be passed through to the customers through increased fees, property rents, or other methods.

The primary advantage to the Department of Environmental Quality (the Agency) and to the Commonwealth is that there will be a plan in place to protect human health and the environment that outlines the steps to be taken in the event of abandonment of a privately owned sewerage system or sewerage treatment works. Additionally, funding will be available so that the expenditure of public funds will be minimized in the event such a facility is abandoned. The primary disadvantage to the Agency and to the Commonwealth is that there will be an increased staff workload associated with the review of closure plans and financial assurance documentation submitted by affected facilities.

## Statement of Changes Made Since the Proposed Stage

Substantive changes made to the regulation:

- 1) A Certificate of Deposit was added as an acceptable financial assurance mechanism.
- 2) The requirement for a stand-by trust fund was removed.

- 3) The allowable time to file the financial assurance mechanism with the Board after Board approval of the closure plan and cost estimate was increased from 10 days to 30 days.
- 4) The time requirement for notification of the Board of an ownership transfer was decreased from 120 days to 30 days.

### Public Comment

The Richmond Regional Planning District Commission submitted a statement indicating it has no comment on the regulation.

The Department of Conservation and Recreation submitted a statement supporting the regulation.

Mansour Zarin, owner of Hill Mobile Home Park, spoke at the public hearing held August 16, 2001. Mr. Zarin indicated he was having difficulty obtaining financial assurance to implement the closure plan. Mr. Zarin provided several letters from financial institutions in support of his comments.

Agency response: The regulation has been changed to offer a larger variety of financial assurance mechanisms. Additionally, the requirement for a standby trust fund was removed. These changes should make it easier for owners or operators of affected facilities to provide the required demonstration of financial capability required by the regulation.

### Detail of Changes

9 VAC 25-650-60, Closure Plans. In Paragraph C.4, change the contract operation period from five (5) years to two (2) years. This will reduce the financial burden on owners or operators who choose contract operation alternative as the plan for the affected facility.

9 VAC 25-650-70, Transfer of ownership or permit. Change the notification time requirement from 120 days to 30 days. This decreases the notification requirement, which, at 120 days, could delay the transfer of ownership for facilities affected by the regulation.

9 VAC 25-650-90, Trust Agreement. Remove references to standby trust. Remove Section 2, Identification of the Financial Assurance Mechanism. Remove language in Section 4, Payment for Implementation of the Closure Plan referring to what fund may not be drawn upon to cover. Renumber all sections. These changes are removed because either the standby trust requirement was removed or the language is not necessary.

9 VAC 25-650-100, Surety Bond. Remove references to standby trust fund in Paragraph B. Remove wording in Paragraph B related to what the obligation does not apply to. Remove Paragraph D. Renumber subsequent paragraphs. These changes either remove references to the standby trust fund requirement, which was removed, or remove language considered unnecessary.

9 VAC 25-650-110, Letter of Credit. Remove references to standby trust fund in Paragraph B. Remove language related to what the letter of credit may not be drawn on to cover. Remove Paragraph C. Renumber subsequent paragraphs. These changes remove references to the standby trust fund requirement, which was removed, or remove language considered unnecessary.

9 VAC 25-650-120, Standby Trust Agreement. Remove section entirely and replace with new section 9 VAC 25-650-120, Certificate of Deposit. This change removes the requirement that a standby trust fund be established, and adds a Certificate of Deposit as an acceptable financial assurance mechanism, thus increasing the variety of financial assurance mechanisms available to owners or operators of affected facilities. This change should make it easier for owners and operators to provide the demonstration of financial capability required by the regulation.

9 VAC 25-650-140, Drawing on financial assurance mechanism. Remove reference to Standby Trust and add reference to Certificate of Deposit.

9 VAC 25-650-150, Waiver of Requirements. Add the following section to the regulation, and renumber all subsequent sections. This section is added based on a legislative amendment, and may reduce the burden of compliance with the regulation for very small facilities.

9 VAC 25-650-150, Waiver of Requirements

- A. The Board may waive the requirements of this regulation for any owner or operator of a privately owned sewerage system subject to this regulation that was permitted prior to January 1, 2001 and discharges less than 5,000 gallons per day upon a finding that the owner or operator of the facility has not violated any regulation or order of the Board, any condition of a permit to operate the facility.
- B. No waiver shall be approved by the Board until after the governing body of the locality in which the facility is located approves the waiver after a public hearing.
- C. The Board may revoke a waiver at any time for good cause.

9 VAC 25-650-180, Replenishment of letters of credit or surety bonds. Remove this section in its entirety and renumber subsequent sections. This section was relevant to standby trusts and is removed because the requirement for a standby trust was removed.

### Family Impact Statement

The Department of Environmental Quality has considered the effects of this regulation on the institution of family and family stability including the extent to which 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; strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

Because this regulation will increase the cost associated with owning and operating a privately owned sewerage or sewage treatment works, it is anticipated that owners of such facilities will attempt to recoup this cost by increasing connection and user fees charged to customers served by the facilities. Therefore, disposable family income is anticipated to be negatively impacted for those families that utilize the services of facilities affected by the regulation.