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Regulatory
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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Health
Virginia Administrative Code (VAC) citation	12 VAC 5-650 (proposed)
Regulation title	Schedule of Civil Penalties
Action title	New regulation establishing a uniform schedule of civil penalties for violations of onsite sewage and alternative discharging sewage treatment system regulations.
Date this document prepared	December 12, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

This new regulation will establish a uniform schedule of civil penalties for violations of the Board of Health's regulations pertaining to conventional and alternative onsite sewage systems (12 VAC 5-610 or successor), and for violations of the Board of Health's regulations pertaining to alternative discharging sewage treatment systems for individual single family homes (12 VAC 5-640 or successor).

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

In 2007 the legislature amended Title 32.1 by adding § 164.I (2007 Acts of Assembly, Chapter 514), requiring the Board of Health to establish a uniform schedule of civil penalties for violations of regulations promulgated pursuant to § 32.1-164.B.

Need

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

The Code of Virginia requires the Board of Health to establish a uniform schedule of civil penalties. Any civil penalties collected must be credited to the Environmental Health Education and Training Fund established pursuant to § 32.1-248.3. The community to be regulated under this action potentially includes homeowners and occupants, onsite and alternative discharging system installers, Authorized Onsite Soil Evaluators, Professional Engineers, and others with responsibilities under the onsite sewage system and alternative discharging system regulations. Since these civil penalties are new, persons and groups may raise issues pertaining to specific violations, classes of violations, or practices being considered for civil penalties.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The new regulatory action will specify uniform penalties for specific violations of the Board's regulations. The penalty for any one violation may not be more than \$100 for the initial violation and not more than \$150 for each additional violation. Each day during which a violation is found to exist will constitute a separate offense, however violations arising from the same set of operative facts may not be charged more than once in any 10-day period. A series of violations arising from the same set of operative facts may not result in civil penalties exceeding a total of \$3,000. Civil penalties shall not be charged in cases where an unoccupied structure does not contribute to pollution of public or private water supplies or to the contraction or spread of disease. The Department of Health may pursue other remedies as provided by law, however civil penalties shall be in lieu of criminal penalties except where a violation contributes to or is likely to contribute to the pollution of public or private water supplies or the contraction or spread of disease. The Department of Health may issue a civil summons ticket as provided by law for a scheduled violation.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

No alternatives have been considered because the Code of Virginia requires the Board of Health to establish a uniform schedule of civil penalties.

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 hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also 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 may do so by mail, email or fax to: Donald J. Alexander, Office of Environmental Health Services, 109 Governor Street, Fifth Floor, Richmond, Virginia 23219, (804) 864-7452 (phone), (804) 864-7476 (fax), don.alexander@vdh.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved 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 agency intends to seek input in the development of the proposed regulation from its standing advisory committees- the Sewage Handling and Disposal Advisory Committee and the Authorized Onsite Soil Evaluator Advisory Committee- as well as from other stakeholder groups such as the Virginia Onsite Wastewater Recycling Association and the Virginia Environmental Health Association.

Family impact

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.

The new regulation will have little direct impact on families in the Commonwealth. The action, by offering an alternative to criminal enforcement, may encourage economic self-sufficiency and the assumption of responsibility on the part of regulated persons. The action is intended to improve the Department's enforcement capabilities, particularly in the area of the operation and maintenance of alternative onsite sewage systems. As such, the agency expects that its efforts to protect public health and the environment (ground and surface water quality) will be improved and that families will benefit from a safer environment. The regulation will have a direct, short-term financial effect on a family that is in violation if a civil penalty is charged. Any civil penalties collected will be credited to the newly created Environmental Health Education and Training Fund. This fund is to be used to support training for private- and public-sector individuals in all areas of Environmental Health and may be used for research to improve public health and for protection of the environment. Family members may benefit directly from the improved availability of educational and training opportunities and indirectly from improved environmental and public health protection.