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Periodic Review and Small Business Impact Findings Where Result is "Retain the Regulation As Is" Agency Background Document

Agency name	Department of Environmental Quality
Virginia Administrative Code (VAC) citation	9 VAC 20-160
Regulation title	Voluntary Remediation Regulations
Date	May 29, 2018

This information is required pursuant to Executive Order 17 (2014) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including: 1) the most relevant law and/or regulation; and 2) promulgating entity, i.e., agency, board, or person.

The Virginia Code in § 10.1- 1232 directs the Virginia Waste Management Board (Board) to promulgate regulations that facilitate voluntary cleanup of contaminated sites where remediation is not clearly mandated by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Virginia Waste Management Act, or other applicable authority. Section 10.1-1402(11) of the Virginia Code authorizes the Board to promulgate and enforce regulations necessary to carry out its powers and duties, the intent of the Virginia Waste Management Act and the federal acts.

The Voluntary Remediation Regulations are a state regulation and there is no equivalent corresponding federal regulation. This regulation applies only where remediation is not otherwise required under state or federal law, or where such jurisdiction has been waived. Entities that qualify may choose to utilize this regulation to conduct remediation of contaminated sites.

The Virginia Waste Management Board previously amended this regulation in 2002, 2011, 2012, and 2014.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

There are no known alternatives that would achieve the stated purpose of the program in a less burdensome and intrusive manner. The Voluntary Remediation Program is for voluntary clean up of contaminated sites where remediation is not clearly mandated by CERCLA, RCRA, Virginia Waste Management Act, State Water Control Law or other authority. It provides a stream-lined approach for remediation projects by establishing minimum standards and procedures pertaining to eligibility, enrollment, reporting, remediation and termination criteria. State statute mandates the promulgation of the regulation for the program, so there is no alternative to their promulgation.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

An informal advisory group was not formed as part of this review. No public comments were received during the public comment period.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

This regulation is necessary for the protection of public health, safety and welfare and is clearly written and easily understandable.

Result

Please state that the agency is recommending that the regulation should stay in effect without change and provide the reason why.

The agency is recommending the regulation stay in effect without change. The regulation is beneficial to both the regulated community and DEQ. This regulation promotes the remediation of contaminated sites where remediation is not otherwise required under state or federal law, or where such jurisdiction has been waived.

The agency plans to explore making minor changes to regulation in the future to further improve the clarity of the regulation. Any changes to the regulation would be made in a separate rulemaking.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: 1) the continued need for the regulation; 2) the nature of complaints or comments received concerning the regulation from the public; 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, include a discussion of the basis for the agency’s determination to retain the regulation as is, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The current regulation continues to be needed. This regulation facilitates voluntary cleanup of contaminated sites where remediation is not clearly mandated by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Virginia Waste Management Act, or other applicable authority. This voluntary program encourages remediation of contaminated sites in the Commonwealth. No public comments were received during the periodic review comment period.

The subject matter of the regulation is complex in nature and the regulation details the requirements of the program. The Voluntary Remediation Regulations are a voluntary state regulation and there is no corresponding federal regulation. Participants enter the program to voluntarily clean up contaminated sites where remediation is not clearly mandated by CERCLA, RCRA, Virginia Waste Management Act, State Water Control Law or other authority. It provides a stream-lined approach for remediation projects by establishing minimum standards and procedures pertaining to eligibility, enrollment, reporting, remediation and termination criteria.

This regulation was last amended in 2014 in response to changes in state law. Changes in technology and economic conditions since 2014 have not impacted the requirements of the regulation and the agency is recommending the regulation stay in effect without change. The regulation is beneficial to both the regulated community and the Commonwealth. The regulation facilitates voluntary cleanup of contaminated sites where remediation is not clearly mandated by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Virginia Waste Management Act, or other applicable authority. This voluntary program encourages remediation of sites in the Commonwealth. Entities may choose to participate in this program and small businesses are not adversely impacted by this regulation.

Family impact

Please provide an analysis of the regulation’s impact on the institution of the family and family stability.

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