



Virginia
Regulatory
Town Hall

townhall.virginia.gov

Notice of Intended Regulatory Action (NOIRA) Agency Background Document

| | |
|----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| Agency name | State Water Control Board |
| Virginia Administrative Code (VAC) citation | 9 VAC 25-630 |
| Regulation title | Virginia Pollution Abatement (VPA) Permit Regulation for Poultry Waste Management |
| Action title | Develop requirements that will address concerns regarding transfer and off-site management of poultry waste in the Commonwealth. |
| Date this document prepared | 10/19/2007 |

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.

The State Water Control Board is considering amending the existing Virginia Pollution Abatement (VPA) Permit Regulation for Poultry Waste Management in order to establish requirements for end-users of poultry waste to ensure that poultry waste is being used in a manner in which state waters are being protected and nutrients losses are being reduced and that these reductions can be measured.

The Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management governs the management of poultry wastes at confined poultry feeding operations that have 200 or more animal units (20,000 chickens or 11,000 turkeys) confined. It establishes the requirements for proper nutrient management, for waste storage and for tracking and accounting of the poultry waste at the permitted operations. This regulation also governs reporting requirements for poultry waste brokers that transfer off-site 10 tons or more poultry waste in any 365-day period.

For poultry waste that is transferred to an entity other than the poultry grower, the present regulatory program does not require records of 1) the amount of waste received by a single farm or landowner, 2) whether or not the waste will be applied in accordance with a nutrient management plan, 3) soil test levels of the receiving fields, 4) timing of the applications, or 5) a description of the receiving crops.

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 1999, the Virginia General Assembly passed House Bill 1207 (62.1-44.17:1.1) establishing the Virginia Poultry Waste Management Program. The Act required the State Water Control Board develop a regulatory program governing the storage, treatment and management of poultry waste including dry waste. Virginia Code § 62.1-44.17:1.1 authorizes the State Water Control Board to establish and implement the Poultry Waste Management Program.

The Program established provisions for issuing general permits to confined poultry feeding operations. In addition to the minimum provisions that the Virginia Code requires the Board to include in its regulation, subsection D of the Code provides the State Water Control Board broad discretion to include in its regulations any provisions necessary to protect state waters. Subsection D of 62.1-44.17:1.1 states the [Poultry Waste Management] program shall reflect Board consideration of existing state-approved nutrient management plans and existing general permit programs for other confined animal feeding operations, and may include such other provisions as the Board determines appropriate for the protection of state waters. This subsection provides to the Board the requisite authority to regulate end-users of poultry waste, as well as any other entity or activity related to poultry waste generation, storage or use in order to protect state waters.

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.

Concerns have been expressed by the public, legislature and executive branch, that additional safeguards are necessary to ensure that poultry waste that leaves the site and control of the permitted confined poultry feeding operations for land application are managed, applied and stored in a manner that is protective of water quality. The State Water Control Board is charged with the protection of the waters of the Commonwealth including the Chesapeake Bay and works to reduce pollution from non-point and point sources.

There are already several efforts being made towards reducing phosphorus in the waste and working to balance nutrients within watersheds. Some of these efforts are: the phytase feed initiative, the poultry litter transport incentive program, the "litter hotline" and the Secretary of Natural Resources Stakeholder Group. The phytase feed initiative is an effort to reduce the phosphorus levels in the poultry feed which reduces the level of phosphorus in the waste. A poultry litter transport incentive program is being developed that will facilitate the movement of poultry waste out of the concentrated production area of the Shenandoah Valley to areas in the state that can utilize the waste which will help balance the production and utilization of nutrients across the state through cost-share to the end-users. The "litter hotline" has been established to facilitate the marketing of the poultry waste in the Commonwealth.

A stakeholder group comprising of key representatives from the agricultural and conservation sectors was formed at the request of the Secretary of Natural Resources to discuss issues related to the management of off-site poultry waste.

While the stakeholder group made significant progress toward identifying numerous critical components of an off-site waste management program, there remain additional unresolved issues, including: application rates, application timing, reporting/recordkeeping, storage, soil tests, inspections and waste broker requirements.

It is the goal of the State Water Control Board that this regulatory action will enhance the initiatives mentioned above, address concerns while keeping in mind the potential effects on the marketing and utilization of this valuable source of organic nutrients and enhance the tracking of the poultry waste.

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 State Water Control Board is considering amending the existing regulation to include provisions regarding transferred off-site poultry waste used for land application by another entity other than the poultry grower. These provisions may establish end-user requirements such as: land application record keeping, poultry waste storage, land application timing and rates as well as field soil sampling requirements.

The Poultry Waste Storage and Utilization Fact Sheet that is currently being used can be amended further to outline the details regarding these requirements. A Technical Advisory Committee will be formed to provide assistance with these amendments.

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.

The State Water Control Board could take no action regarding poultry waste that is transferred and managed off-site. However, this will not allow the agency to adequately address the concerns that have been expressed by the public, legislature and executive branch that additional safeguards are necessary to ensure that poultry waste that leaves the site and control of the permitted confined poultry feeding operations for land application be managed, applied and stored in a manner that is protective of water quality.

A new Virginia Pollution Abatement Permit could be developed to cover the end-user of the poultry waste which would include the provisions to cover the issues of concern. The process of developing a new permit would take a considerable amount of time and would require end-users to register for and obtain coverage under the permit.

Under the current regulatory program, the permitted poultry grower is required to provide a copy of the most recent nutrient analysis of the poultry waste and a copy of the Poultry Waste Storage and Utilization Fact Sheet when transferring 10 tons or more of poultry waste in any 365-day period to another person. One possibility would be to use the Fact Sheet as a permit which would allow for a simpler approach to the regulatory process for the end-user as compared to the individual Virginia Pollution Abatement Permit approach. Such an approach would mean the end-user would need to comply with the fact sheet as a requirement of regulation.

There are various voluntary efforts that are being developed and implemented across the Commonwealth in relation to the issues that this action will address. Some of these initiatives are: the phytase feed initiative, the poultry litter transport incentive program and the "litter hotline".

A regulatory action would give quantifiable nutrient reductions and reasonable assurance that the requirements are being met. However, the voluntary approaches will complement the regulatory action and will not provide the reasonable assurance that this agency requires.

The State Water Control Board may consider opportunities for phasing the implementation of any new requirements that would be proposed by any regulatory action.

In addition, the Board is requesting comment from the public on other alternatives. All alternatives will be considered by the advisory group established to assist in the development of a proposal for the State Water Control Board's consideration.

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, 3) potential impacts of the regulation and 4) impacts of the regulation on farm and forest land preservation. 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 **Betsy Bowles, P.O. Box 1105, Richmond, Virginia 23218, phone 804-698-4059, fax 804-698-4116 and bkbowles@deq.virginia.gov**. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by 5:00 p.m. on the last day of the public comment period.

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 Board is using the participatory approach to develop a proposal. Persons interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). The primary function of the advisory committee is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the advisory committee will be sent to all applicants.

It is recognized that many of the members of the Secretary of Natural Resources Stakeholder Group may want to participate on the Technical Advisory Committee.

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.

It is not anticipated that an amendment to this regulation will have any impacts on the family and family stability.