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Regulatory
Town Hall

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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC25-870 Primary Action 9VAC25-31 Secondary Action 9VAC25-151 Secondary Action 9VAC25-32 Secondary Action 9VAC25-20 Secondary Action
Regulation title	Plasticulture Operations Regulation - Primary Action Virginia Pollutant Discharge Elimination System Permit Program - Secondary Action General VPDES Permit for Discharges Associated with Industrial Storm Water Discharges - Secondary Action Virginia Pollution Abatement Permit Program - Secondary Action Fees for Permits and Certificates - Secondary Action
Action title	Adoption of a Regulation for the Management of Runoff from Plasticulture Operations
Date this document prepared	October 8, 2009

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 intends to consider adopting a regulation, or amending existing regulations, to establish pollutant management requirements for agriculture operations utilizing plasticulture production methods in order to protect water quality.

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.

Section 62.1-44.15(10) authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program of the Board in all or part of the Commonwealth. Section 62.1-44.15(5) authorizes the State Water Control Board to issue, revoke or amend certificates under prescribed conditions for: (a) the discharge of sewage, industrial wastes and other wastes into or adjacent to state waters; (b) the alteration otherwise of the physical, chemical or biological properties of state waters; (c) excavation in a wetland; or (d) on and after October 1, 2001, the conduct of the following activities in a wetland: (i) new activities to cause draining that significantly alters or degrades existing wetland acreage or functions, (ii) filling or dumping, (iii) permanent flooding or impounding, or (iv) new activities that cause significant alteration or degradation of existing wetland acreage or functions.

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.

A plasticulture production system includes plant rows, often bedded, covered with impervious plastic mulch alternated with uncovered, inter-row spaces. Usually, drip irrigation tubing is placed under the plastic mulch to provide water and nutrients to the crop. In some cases, overhead sprinkler irrigation is used. In a few instances, no irrigation is employed. Because of the differences between crop production with plastic mulch and conventional crop production, requirements and conditions for water quality protection differ. The use of a plasticulture production system increases surface runoff and causes rain water to drain more rapidly from the fields. This drainage can carry sediments, nutrients, and possibly insecticides and fungicides, to tidal creeks. Excessive inputs of sediments and nutrients can lead to violations of water quality standards, potentially causing or contributing to burial of shellfish beds, algal blooms, and harvest closures from fecal coliform bacteria that could be part of the land runoff.

Control of the surface runoff through conservation practices and best management practices (BMPs) are necessary to reduce surface runoff and protect water quality for the welfare of citizens of the Commonwealth.

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 regulation will require agriculture operations utilizing a plasticulture production method to implement Best Management Practices (BMPs) to control runoff from the operation. The regulation may require that

owners of agriculture operations develop soil conservation plans and nutrient management plans incorporating the use and maintenance of both in-field and edge-of-field or offsite BMPs where necessary, and include monitoring and reporting requirements to demonstrate the effectiveness of the BMPs.

This rulemaking may also include amendment of other regulations including the Virginia Pollutant Discharge Elimination System Permit Program Regulation at 9 VAC 25-31, the Virginia Pollution Abatement Permit Program Regulation at 9 VAC 25-32 or the General VPDES Permit for Discharges Associated with Industrial Activity at 9 VAC 25-151.

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.

Alternatives to the proposed regulation amendments are being considered by the Department. One alternative is to take no action. This alternative is not preferred as action is necessary to protect water quality from adverse impacts associated with the runoff from plasticulture operations. Another alternative that has been pursued is a memorandum of agreement between the Commonwealth and the owners of plasticulture operations located on the Eastern Shore. While this option has not been eliminated, an agreement has not been reached and therefore initiating a rulemaking to address water quality impacts associated with plasticulture operations is needed. There is also the option of limiting application of the rulemaking to plasticulture operations on the Eastern Shore. While the plasticulture production method is utilized in other areas of the Commonwealth, the large majority takes place on the Eastern Shore (in 1996 plasticulture was utilized on approximately 11, 724 acres; 9,100 in Accomack County and 2,400 in Northampton County or 78% on the Eastern Shore, 600 in Westmoreland County, 500 in Hanover County and 210 in Richmond County.)

If other alternatives are identified during the public comment period, they will be considered and developed as appropriate. In addition, the process will involve the use of an advisory committee that will include members of the regulated community and the public in an effort to elicit cost effective ideas for developing the necessary provisions.

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 at the public meeting or by mail, email or fax to **[insert staff contact persons name, mailing address, phone number, fax number and email address]**. 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 DEQ by the close of the public comment period.

A NOIRA public meeting will be held and notice of the meeting may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov). Both oral and written comments may be submitted at that time.]

Public Hearing at Proposed Stage

A public hearing will be held after publication of the proposed stage of the regulatory action.]

Regulatory Panel

Please indicate, to the extent known, if advisers (e.g., regulatory advisory panel or negotiated rulemaking panel) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using a panel in the development of the proposal; 2) the agency is using a panel in the development of the proposal; or 3) the agency is inviting comment on whether to use a panel to assist the agency in the development of a proposal.

The Board is using a panel 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 panel 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 panel will be sent to all applicants.

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 expected that the proposed regulatory action will have an impact on the institution of the family and family stability. If there are family farms utilizing a plasticulture production method that become subject to regulation, there may be costs associated with implementing BMPs which could impact disposable family income. However, some or all of the costs associated with the implementation of BMPs may be offset by funding available for BMP implementation from various sources.