



Virginia
Regulatory
Town Hall

Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	Virginia Department of Environmental Quality
VAC Chapter Number:	9 VAC 20-160
Regulation Title:	Voluntary Remediation Regulations
Action Title:	Periodic Review
Date:	July 11, 2000

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

The Voluntary Remediation Regulations, 9 VAC 20-160-10, et seq., establish standards and procedures pertaining to the eligibility, enrollment, reporting, remediation, and termination criteria for the Virginia Voluntary Remediation Program. This program is designed to allow participants to remediate properties voluntarily to remediation levels that protect human health and the environment, while minimizing the expense and delay of the remediation process. The purpose of the program is to enhance the public health, safety and welfare of citizens residing in the vicinity of a contaminated property.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

The Virginia Code in § 10.1- 1429.1 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 regulations do not exceed the minimum requirements of the state mandate. There is no corresponding federal mandate, since the regulations apply only where remediation is not otherwise required under state or federal law, or where such jurisdiction has been waived.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

No comments were received from the public during the periodic review. An advisory group was not formed to assist with the periodic review.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The goal of the Voluntary Remediation Regulations is to allow and encourage the remediation of sites to levels protective of human health and the environment, where remediation is not otherwise mandated under state or federal standards. A “Certificate of Satisfactory Completion of Remediation” (Certificate) is issued when the Director concurs with all work submitted by the program participant, and the participant has demonstrated attainment of the remediation levels for the site. A Certificate provides immunity from certain enforcement action under state law. As of May 31, 2000, there have been 107 participants in the program, with 41 having completed the program and having received a Certificate. In addition, there are 50 other participants

actively involved in remediation of enrolled sites. The remainder of the sites are either waiting for eligibility determinations by the Department or have not paid the statutory registration fee. These numbers demonstrate the effectiveness of the program, with 38% of the sites having completed the program and 47% of the sites being active within the program.

The regulations are clearly written and easily understandable by the individuals and entities affected. However, since these regulations were first promulgated in 1997, some clarifications and wording changes will be considered during the amendment process.

Alternatives*

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects 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. The legislation mandates the promulgation of the regulations for the program, so there is no alternative to their promulgation.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The agency recommends the amendment of the regulation. This agency has completed a periodic review of the regulations and has determined that the regulations should be updated for the following reasons:

- 1) Test methods have changed since the regulations were adopted. The regulations need to be updated to the current sampling and analysis methods.
- 2) Some language in the regulations is obsolete and should be removed.

Substance*

Please detail any changes that would be implemented.

The amendment of the regulations may include but will not be limited to the following:

1. To update the regulations to incorporate current sampling and analysis methodology and to consider alternative technologies.
2. To review the definitions section of the regulation (section 10).
3. To review the requirements for terminating participation in the program.
4. To delete obsolete language from the regulation (e.g. section 50 and section 130).
5. To review documents incorporated by reference into the regulations.

In addition, The Board may consider comments received in response to the NOIRA which will assist the Department with the development of the proposed regulations.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the 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; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There will be no direct impact on the institution of the family. A family may benefit indirectly from the remediation of properties located in their communities. This program was designed to further the enhancement of the public health, safety and welfare of citizens residing in the vicinity of a contaminated property.

Purpose*

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

This program is designed to allow participants to remediate properties voluntarily to remediation levels that are protective of human health and the environment, while minimizing the expense and delay of the remediation process. The purpose of the program is to enhance the public health, safety and welfare of citizens residing in the vicinity of a contaminated property.

Need*

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

The Department has determined that the proposed regulatory action will encourage remediation of contaminated sites where remediation is not clearly mandated by CERCLA, RCRA, the Virginia Waste Management Act, or other applicable authority. By encouraging the remediation of the sites, the Department is protecting the public health, safety and welfare of citizens in the vicinity of a contaminated property. Remediation of these sites should prevent the migration of contaminants to adjacent properties.

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 meeting is to be held to receive comments on this notice. Indicate that 1) the agency is not holding a meeting because the agency has authorized proceeding without holding a meeting or 2) the agency is holding a meeting. If a public meeting is to be held, indicate where information on the public meeting (i.e., date, time and place) may be found.

The Board is seeking comments on the intended regulatory action, including ideas to assist in the development of a proposal, and the costs and benefits of the alternatives stated in this notice or other alternatives. Anyone wishing to submit written comments for the public comment file may do so at the public meeting or by mail. In order to be considered written comments must include the name, address and phone number of the commenter and must be received by the close of the comment period.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Oral comments may be submitted at that time.

Participatory Approach*

Please indicate the extent to which an ad hoc advisory group will be used 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 inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.