



Final Regulation Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation	12VAC5-590
Regulation title	Waterworks Regulations
Action title	Chronically Noncompliant Waterworks
Date this document prepared	August 5, 2010

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*.

Brief summary

This final regulation provides a regulatory definition of a Chronically Noncompliant waterworks, and establishes an enforcement procedure that allows the Commissioner to take action against recalcitrant waterworks owners to compel compliance and protect the public health and welfare.

No public comments were received during the public comment period; therefore, no changes were made to the regulation as proposed.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

Pursuant to § 32.1-20 of the *Code of Virginia* the Board of Health approved the amendments for **12VAC5-590, Waterworks Regulations, Chronically Noncompliant Waterworks** at its July 23, 2010, meeting.

Legal basis

§ 32.1-12 of the *Code of Virginia* provides that the State Board of Health may ... promulgate ... such regulations ... as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by it, the Commissioner or the Department.

§ 32.1-167 (*et seq.*) empowers the State Board of Health to adopt and promulgate regulations governing waterworks, water supplies and pure water to protect the public health and promote the public welfare.

§ 32.1-167 defines a chronically noncompliant waterworks.

§ 32.1-174.4 requires the State Board of Health to promulgate regulations that create mechanisms or enforcement options for eliminating chronically noncompliant waterworks.

Chapters 648 and 774 of the 2007 General Assembly require the Department to implement a program to identify chronically noncompliant waterworks and create mechanisms or enforcement options for eliminating chronically noncompliant waterworks. (Note: An ancillary part of the General Assembly action was the amendment of Title 15.2-2146, Powers of localities to acquire certain waterworks system. This is not part of this regulatory proposal.)

Purpose

A limited number of waterworks owners chronically fail to comply with the Waterworks Regulations and thereby subject their consumers to unwarranted health risks. This new regulation will provide additional enforcement tools to compel these recalcitrant owners to bring their waterworks into compliance and protect public health.

This action is the result of a JLARC study and subsequent General Assembly action.

Substance

12VAC5-590-10 includes the Code of Virginia definition of a chronically noncompliant waterworks into the body of the Waterworks Regulations.

12VAC5-590-125 allows the State Health Commissioner to issue an order to the owner of a chronically noncompliant waterworks requiring the waterworks owner to submit: (1) a schedule for returning the waterworks to compliance and (2) a comprehensive business plan (§ 32.1-172 B of the Code of Virginia).

If the waterworks owner is financially incapable of performing any necessary capital improvements, the waterworks owner is required to make good faith applications to appropriate financial institutions for funding to complete the improvements. The waterworks owner is also required to notify each consumer of the Commissioner's order, including providing a copy of the compliance schedule.

Additionally, the Commissioner is required to send a copy of the order to the chief administrative officer of the locality in which the waterworks is located.

The waterworks owner is subject to the civil fines provided in § 32.1-167 to § 32.1-176 of the Code of Virginia.

Issues

The primary issue addressed by this proposed regulation is to attempt to protect the health of consumers served by a waterworks in Virginia that has been determined to be chronically noncompliant. The proposed regulation will require recalcitrant waterworks owners to bring the chronically noncompliant waterworks into compliance with the Waterworks Regulations.

The State Health Commissioner will inform the local government in which the chronically noncompliant waterworks is located, that it may initiate action, if desired by the locality, to secure ownership of the waterworks and assume operation in compliance with the Waterworks Regulations.

This proposed regulation poses no disadvantages to the public or the Commonwealth.

Changes made since the proposed stage

Section number	Requirement at proposed stage	What has changed	Rationale for change
		NO CHANGES WERE MADE	

Public comment

Commenter	Comment	Agency response
	NO COMMENTS WERE RECEIVED	

All changes made in this regulatory action

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			NO CHANGES WERE MADE.

Regulatory flexibility analysis

This regulation is required by an act of the General Assembly.

Family impact

By eliminating chronically noncompliant waterworks, the public can be assured of safe drinking water that will improve economic self-sufficiency and will decrease the number of illnesses that lead to lost productivity and diminished personal income.