



Proposed Regulation Agency Background Document

Agency name	Department of Mines, Minerals, & Energy
Virginia Administrative Code (VAC) citation	4 VAC 25 -160
Regulation title	Virginia Gas and Oil Board Regulations
Action title	Amendments regarding the regulations of the Virginia Gas and Oil Board
Date this document prepared	February 2, 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*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

As a result of periodic review, the Department of Mines, Minerals and Energy and the Virginia Gas & Oil Board are amending 4VAC25-160, Virginia Gas and Oil Board Regulations, to make technical corrections, improve clarity, increase efficiency, and to restore consistency with other chapters. Sections 4VAC25-160-30, 4VAC25-160-40, 4VAC25-160-50, 4VAC25-160-60, 4VAC25-160-70, 4VAC25-160-100, and 4VAC25-160-200 will be amended to correct several technical areas for accuracy, and provide clarity. Amending Section 4VAC25-160-30 will reduce workload and increase efficiency for applicants by providing flexibility and economy in the permit process. Amendments to 4VAC25-160-40, 4VAC25-160-50, and 4VAC25-160-70 are being made to bring consistency to data submission requirements for the Division of Gas & Oil.

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., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Department of Mines, Minerals and Energy (DMME) has authority to promulgate this regulation under authority found in § 45.1-161.3, Powers of the Department, § 45.1-361.4, Duties and responsibilities of the Director, and § 45.1-361.15, Additional duties and responsibilities of the Board.

- Section 45.1-161.3 of the Code of Virginia empowers DMME, with the approval of the Director, to promulgate regulations necessary or incidental to the performance of duties or execution of powers under Title 45.1 of the Code of Virginia.
- Section 45.1-361.4 of the Code of Virginia empowers the Director with the power and duty to regulate gas, oil, or geophysical operations, collect fees, and perform other responsibilities as may be prescribed in regulations promulgated by the Department of Mines, Minerals and Energy, or the Virginia Gas & Oil Board.
- Section 45.1-361.15 of the Code of Virginia empowers the Virginia Gas & Oil Board to have the specific authority to issue rules, regulations or orders pursuant to the provisions of the Administrative Process Act

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The Department of Mines, Minerals and Energy and the Virginia Gas & Oil Board have determined the proposed regulatory amendments to various sections of 4VAC25-160 (4VAC25-160-30; 4VAC-25-160-40; 4-VAC25-160-50; 4VAC25-160-70) are necessary to protect the health, welfare, and safety of citizens, reduce workload and increase efficiency for applicants. The proposed regulatory actions to Section 4VAC25-160-200 will update references to external technical documents.

The proposed amendments to various sections of 4VAC25-160 are also essential to protect the health and welfare of citizens by providing clear language that is consistent with state law and regulation.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

As a result of periodic review, the Department of Mines, Minerals and Energy and the Virginia Gas & Oil Board is amending 4VAC25-160, Virginia Gas and Oil Board Regulations, to make technical corrections, improve clarity, increase efficiency, and to restore consistency with other chapters.

Sections 4VAC25-160-30, 4VAC25-160-40, 4VAC25-160-50, 4VAC25-160-60, 4VAC25-160-70, 4VAC25-160-100, and 4VAC25-160-200 will be amended to correct several technical areas for accuracy, and provide clarity. These amendments regarding process will aid the gas and oil industry, as well as the Gas & Oil Board in the approval and regulation of gas and oil permits.

Amending Section 4VAC25-160-30 will reduce workload and increase efficiency for applicants by providing flexibility and economy in the permit process.

Amendments to 4VAC25-160-40, 4VAC25-160-50, and 4VAC25-160-70 are being made to bring consistency to data submission requirements for the Division of Gas & Oil. The use of latitude and longitude and the Virginia Coordinate System of 1927 have been replaced by the Virginia Coordinate System of 1983 in other Division of Gas & Oil regulations. Current industry practice is to use the more modern 1983 coordinate system for describing the locations of wells and core holes. Applicants for permits under this chapter must currently convert their coordinates back to the 1927 system, as required by the regulation, in order to submit them to the Department of Mines, Minerals and Energy's Division of Gas & Oil. The amendment will allow applicants to use the updated 1983 coordinate system.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

These regulatory actions are expected to provide technical corrections, improve clarity, increase efficiency, and to restore consistency with other chapters of regulation. These amendments regarding process will aid the gas and oil industry, as well as the Gas & Oil Board in the approval and regulation of gas and oil permits. Reduced workload and increased efficiency for applicants will occur by providing flexibility and economy in the permit process.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no proposed requirements which are stricter than the federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities foreseen to be particularly affected by the proposed regulation.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

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 and 3) potential impacts of the regulation. 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 **Tabitha Hibbitts Peace, Policy Analyst, P.O. Drawer 900, Big Stone Gap, VA 24219, phone 276-523-8212, fax 276-523-8148, or Tabitha.Peace@dmme.virginia.gov.** Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

A public hearing will not be held unless a request for a hearing is received from 25 or more persons.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	\$0
Projected cost of the regulation on localities	\$0
Description of the individuals, businesses or other entities likely to be affected by the regulation	Gas and oil exploration and production companies.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	Four companies drill most oil and gas wells in Virginia. An unknown number of other companies may also undertake such activities from time to time. None of these would be defined as small businesses.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	These amendments regarding process will aid the gas and oil industry, as well as the Gas & Oil Board in the approval and regulation of gas and oil permits. Reduced workload and increased efficiency for applicants will occur by providing flexibility and economy in the permit process. No

	increased costs are anticipated as a result of these actions.
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Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

No other alternative would meet the essential purposes of the proposed actions.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

No other alternative would meet the essential purposes of the proposed regulatory actions.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response

No public comment was received following the January 7, 2008 publication of the Notice of Periodic Review, or following the July 7, 2008 publication of the NOIRA.

Family impact

Please assess the 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.

The proposed regulatory actions will have no impact on the family or family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

The Department of Mines, Minerals and Energy and the Virginia Gas & Oil Board are proposing amendments to sections of 4VAC25-160, Virginia Gas and Oil Board Regulations as described in the following table.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
4VAC25-160-30 D.	N/A	The division shall assign a docket number to each application or petition at the time of filing, and shall notify the applicant of the docket number.	Clarify that payment is due prior to assignment of docket number, "time of filing" does not clarify; <i>clarification of when a docket number is assigned</i>
4VAC25-160-30 E.4.	N/A	Persons shall submit 10 sets of each application and exhibit.	Reduce the number of copies to be submitted from 10 to 8; <i>accuracy of number needed</i>
4VAC25-160-30 E.4.	N/A	Each person offering exhibits into evidence shall also have available a reasonably sufficient number of exhibits for other persons who are subject to the provisions of §§ 45.1-361.19 and 45.1-361.23 of the Code of Virginia and are expected to be in attendance at the hearing.	Allow persons to receive copies of applications and exhibits with certified mail notice; <i>clarification</i>
4VAC25-160-30 F.	N/A	Applications for the establishment of units, spacing or pooling shall be accompanied by a \$130 nonrefundable fee, payable to the Treasurer of Virginia.	Insert "and modification" between "establishment" and "of units"; <i>clarification that fee applies to modifications</i>
4VAC25-160-40 B.6.a.	N/A	Use of latitude and longitude (the Virginia Coordinate System of 1927).	Change the requirements from the Virginia Coordinate System of 1927 to the Virginia Coordinate System of 1983; <i>consistency with current standards.</i>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
4VAC25-160-40 B.6.a.	N/A	6. a. For a pooling order, the notice should include: a plat showing the size and shape of the proposed unit and boundaries of tracts within the unit. The location of the proposed unit shall be shown in accordance with the Virginia Coordinate System of 1927, as defined in Chapter 17 (§55-287 et seq.) of Title 55 of the Code of Virginia, also known as the State Plane Coordinate System. <u>The proposed unit shall also be located by taking the measured distance in feet from the unit to the nearest 2.5 minute longitude line to the east and the nearest 2.5 minute latitude line to the north on the 7.5 minute (1:24,000) topographic map, with a notation of the 7.5 minute topographic map name and series.</u> The plat containing the percentage of acreage in each tract shall be certified by a licensed land surveyor or a licensed professional engineer and attested by the applicant as to its conformity to existing orders issued by the board;	Strike "The proposed unit shall also be located by taking the measured distance in feet from the unit to the nearest 2.5 minute longitude line to the east and the nearest 2.5 minute latitude line to the north on the 7.5 minute (1:24,000) topographic map, with a notation of the 7.5 minute topographic map name and series."; <i>technical correction</i>
4VAC25-160-50 A.5.c.	N/A	Use of latitude and longitude (the Virginia Coordinate System of 1927).	Change the requirements from the Virginia Coordinate System of 1927 to the Virginia Coordinate System of 1983; <i>consistency with current standards.</i>
4VAC25-160-50 A.5.c.	N/A	c. A description of the pool or pools included in the field, based on geological and technical data, including the boundaries of the pool or pools and field, shown in accordance with the Virginia Coordinate System of 1927, as defined in Chapter 17 (§55-287 et seq.) of Title 55 of the Code of Virginia, also known as the State Plane Coordinate System. <u>The boundaries of the pool or pools and field shall also be located by taking the measured distance in feet from the unit to the nearest 2.5 minute longitude line to the east and the nearest 2.5 minute latitude line to the north on the 7.5 minute (1:24,000) topographic map, with a notation of the 7.5 minute topographic map name and series;</u>	Strike "The boundaries of the pool or pools and field shall also be located by taking the measured distance in feet from the unit to the nearest 2.5 minute longitude line to the east and the nearest 2.5 minute latitude line to the north on the 7.5 minute (1:24,000) topographic map, with a notation of the 7.5 minute topographic map name and series;"; <i>technical correction</i>
4VAC25-160-50 A.1.1.	N/A	Citation: 4VAC25-160-40 C	Change "4VAC25-160-40 D" to "4VAC25-160-40 C"; <i>accuracy, section is incorrectly cited</i>
4VAC25-160-70 A.7.	N/A	Use of latitude and longitude (the Virginia Coordinate System of 1927).	Change the requirements from the Virginia Coordinate System of 1927 to the Virginia Coordinate System of 1983; <i>consistency with current standards.</i>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
4VAC25-160-70 A.7.	N/A	7. A plat showing the size and shape of the proposed unit and boundaries of tracts within the unit, shown in accordance with the Virginia Coordinate System of 1927, as defined in Chapter 17 (§ 55-287 et seq.) of Title 55 of the Code of Virginia, also known as the State Plane Coordinate System. <u>The proposed unit shall also be located by taking the measured distance in feet from the unit to the nearest 2.5 minute longitude line to the east and the nearest 2.5 minute latitude line to the north on the 7.5 minute (1:24,000) topographic map, with a notation of the 7.5 minute topographic map name and series.</u> Also included shall be the names of owners of record of the tracts, and the percentage of acreage in each tract, certified by a licensed land surveyor or a licensed professional engineer and attested by the applicant as to its conformity to existing orders issued by the board;	Strike "The proposed unit shall also be located by taking the measured distance in feet from the unit to the nearest 2.5 minute longitude line to the east and the nearest 2.5 minute latitude line to the north on the 7.5 minute (1:24,000) topographic map, with a notation of the 7.5 minute topographic map name and series."; <i>technical correction</i>
4VAC25-160-70 A.15.	N/A	Citation: 4VAC25-160-40 D	Change "4VAC25-160-40 D" to "4VAC25-160-40 C"; <i>accuracy, section is incorrectly cited</i>
4VAC25-160-70 C.	N/A	C. After the time for election provided in any pooling order has expired, the unit operator shall file an affidavit with the board stating whether or not any elections were made.	Insert "Within 45 days" before "after the time for election provided in any pooling order has expired, the unit operator shall file an affidavit with the board stating whether or not any elections were made"; <i>clarification</i>
4VAC25-160-100	N/A	Direct Costs and Indirect Costs are identified	Consider "post-production costs" as a new section; <i>clarification</i>
4VAC25-160-200 B.3.	N/A	Citation: "Manual of Back-Pressure Testing of Gas Wells," 1979	Update the title to "Manual of Back-Pressure Testing of Gas Wells," 2000, and add any subsequent revisions; <i>accuracy</i>