



Final 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	November 23, 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

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

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.

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.

On November 30, 2009, the Department of Mines, Minerals and Energy amended 4VAC25-160, Gas and Oil Board Regulations.

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 numbers, 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.

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. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal 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 identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" 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 there are no disadvantages to the public or the Commonwealth, please 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.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
30F		4VAC 25-160-30 F Change to “Application for the establishment and modification of a unit, spacing or pooling.”	The intent of the fee is per unit. Therefore, this change is supported.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Catherine Jewell: Bristol, VA	Direct Comment via email: “The Virginia Register posting on August 31, 2009 Failed to include 4VAC25-160-80. Applications to pool interests in a drilling unit: conflicting claims to coalbed methane gas ownership through 4VAC25-160-130. Appeals of the director's decisions. Without these changes we can not comment on them please forward them to us, so that we can review them.”	All changes proposed to 4 VAC 25-160 appeared in the August 31, 2009 publication of the Virginia Register. No changes had ever been proposed to 4 VAC 25-160-80 or 4VAC 25-160-130. Mrs. Jewell was advised of this, as well as the agency’s continuing acceptance of written comments at any time for use in future regulatory reviews.
Catherine Jewell: Bristol, VA and Juanita Sneeuwjagt, Clintwood, Va (Committee for Constitutional and Environmental Justice)	Summary of Submitted Comments: (22 pages) <i>Most comments submitted did not apply to the actual changes being proposed by the agency and were more appropriate of comments that should have been received in the NOIRA stage.</i> ----- 4VAC 25-160-30 F Change to “Application for the establishment and modification of a unit, spacing or pooling.” The fee is not adequate to cover the costs incurred by the State to publish notification of meetings, pay Board members and DGO and staff, set up escrow accounts and maintain them, nor to maintain these files. ----- 4VAC 25-160-40 (6) Change “The plat shall include property lines taken from (i) deed descriptions and chain of title, (ii)	Most comments will be considered for future reviews, as the final stage is too late to consider such in depth suggestions for change that would not be open to proper public comment periods. For clarity, only those comments that directly apply to the proposed changes will be included in this summary. ----- The intent of the fee is per unit. Therefore, this change is supported. Changes to fee amounts were not included in this review. ----- The new language proposed is not a discrepancy issue that plats should address. Acreage used for tax assessment purposes is not always an accurate description of the property, and are often estimates,

	<p>county courthouse records, (iii) <u>AND/OR</u> a physical survey with of each tract in the unit. <u>Where the Board is informed that the property lines fail to agree with acreage used in county records for tax assessment purposes, It shall require that a physical survey be conducted by an independent firm at the expense of the unit operator.</u>"</p> <p style="text-align: center;">-----</p> <p>Other states require tracts to be surveyed. The amount of the unit assigned to the royalty owners is based solely on what the operator has in the plats. . . The royalty owners will be paid according to the percentage of the unit assigned to him by the operator for the life of the well. You can not protect correlative rights when the acreage assigned is not accurate.</p> <p style="text-align: center;">-----</p> <p>It would be beneficial to the reviewer and well inspector, surface and mineral owners, and the Board to require more information on the well location plat. There is substantial difference between operators on the amount of information included on these plats. Some operators show only the proposed well location and tract boundaries within the unit, while others provide greater detail. The well location plat should, at a minimum, show all information . . .</p> <p style="text-align: center;">-----</p> <p>4VAC 25-160-40 (69) 9. Change to "An <u>accurate</u> estimates of the amount of reserves in the unit". Add "The estimate should be based on actual testing or production data from units in the area and consider the expected life of the well."</p> <p>10. Change to "An <u>accurate</u> estimate of the allowable costs..." Add "The estimate should be based on the actual costs of drilling similar wells".</p> <p style="text-align: center;">-----</p> <p>Where did the DGO obtain the authority to grant exceptions (esp. in the case of CBM wells)?</p> <p style="text-align: center;">-----</p> <p><i>Several suggestions are made to reference other sections or combine.</i></p>	<p>much like the assessment value for tax purposes could vary greatly from a fair market assessment.</p> <p style="text-align: center;">-----</p> <p>Owners receive notice to participate in all aspects of unit assignments based on proposed plats. Any discrepancy in an owner's actual ownership and his proposed royalty assignment is contestable as part of this process. There is ample opportunity for correlative rights to be protected through accurate royalty assignments.</p> <p style="text-align: center;">-----</p> <p>This information is already required for inclusion by 4VAC25-150-90 (plats), conventional gas and oil or injection wells 4VAC25-150-510; coalbed methane gas wells 4VAC25-150-590; or coreholes 4VAC25-150-680.</p> <p style="text-align: center;">-----</p> <p>This statement would infer that DGO currently accepts inaccurate estimates, which is inherently untrue. All estimates are based upon reasonable expectations and the precedence of similar wells.</p> <p style="text-align: center;">-----</p> <p>§ 45.1-361.17</p> <p style="text-align: center;">-----</p> <p>These suggestions are inconsistent with regulatory standards for clarity.</p>
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Jerry Grantham, President of the Virginia Oil & Gas Association	Summary of comments submitted at the public hearing: The Virginia Oil & Gas Association offers full support for the changes recommended by the Department of Mines, Minerals, & Energy’s Division of Gas & Oil.	
Maurice Royster, EQT	Summary of comments submitted at the public hearing: EQT agrees with the Virginia Oil & Gas Association and offers full support for the changes recommended by the Department of Mines, Minerals, & Energy’s Division of Gas & Oil.	

No comments appeared on the Town Hall.

All changes made in this regulatory action

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

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	Insert "and modification" between "establishment" and "of units"; <i>clarification that fee applies to modifications</i>

		nonrefundable fee, payable to the Treasurer of Virginia.	
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>
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</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>

		<u>minute topographic map name and series;</u>	
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>
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>

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.

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.