



Proposed Regulation Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation	12 VAC 5 -585
Regulation title	Amendment to the Biosolids Use Regulations; Applicator Certification
Action title	Review of Regulatory Package
Document preparation date	October 7, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) 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.

The Biosolids Use Regulations (12 VAC 5-585) are to be amended to provide regulations and standards for training, testing and certification of persons land applying Class B sewage sludge (biosolids) in the Commonwealth, and for revoking, suspending or denying such certification from any person for cause. The amended regulations are to include standards and criteria for the approval of instructional programs to be taught by governmental entities and by the private sector for the purpose of certifying biosolids land applicators.

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.

Legislation was passed by the General Assembly (SB 1088, Acts of Assembly c. 681, 2003) and signed into law by the Governor, amended § 32.1-164.6 of the Code of Virginia (available electronically at <http://leg1.state.va.us/cgi-bin/legp504.exe?031+ful+CHAP0681>), requiring that the State Board of Health (Board) adopt regulations for Certification of Sewage Sludge Land Applicators. The Board, with the assistance of the Virginia Department of Health (VDH), the Department of Environmental Quality and the Department of Professional and Occupational Regulation are to promulgate the regulations and standards required by the amended Code of Virginia and no person shall land apply Class B sewage sludge pursuant to a permit under §32.1-164.5 or § 62.1-44.19:3 of the Code of Virginia unless a certified sewage sludge land applicator is onsite at all times during such land application, as of 180 days following the effective date of the amended regulations. (The Office of the Attorney General has concluded that the proposed amendment is within the scope of authority of the State Board of Health as granted under Title 32.1 of the Code of Virginia).

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 and the problems the proposal is intended to solve.

The Biosolids Use Regulations (Regulations) provide the means to protect public health from improper and unregulated disposal of sewage sludge. However, individuals have expressed opposition to the land application of biosolids and have insisted that land application operations on permitted sites are not being adequately supervised. These amendments are designed to provide a consistent and uniform set of state requirements that will ensure that a qualified individual is supervising operations in which biosolids are land applied. It is anticipated that the development of state requirements will help improve the credibility of the VDH permit program and prevent extended litigation brought by permitted entities concerning restrictive local government ordinances that would effectively ban land application of biosolids.

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.)

The proposed amendment to the Regulations will involve the addition of new sections, 12 VAC (5-585-760 through 830) addressing standards for training, testing and certification of persons land applying Class B biosolids in the Commonwealth, and for revoking, suspending or denying such certification from any person for cause (attached). The land applier must have a certified individual on site and if the certified land applicator leaves the site they must be available to return to that site within 30 minutes and

if not so available, then the land application operation must be shut down at that site. The certified land applicator must provide required identification upon request by VDH staff or local government representatives.

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.

The State Board of Health approved the submittal of a Notice of Intended Regulatory Action (NOIRA) for an amendment to the Regulations concerning certification of land applicators at its July 22, 2004 meeting. An Ad Hoc Advisory Committee assisted the Virginia Department of Health (VDH) in developing the draft amendment language that reflects the recommendations received from a majority of committee members. The NOIRA public comment period closed on January 13, 2005. The public comments received up to that date did not raise any new issues that had not been discussed at the Ad Hoc Advisory Committee meetings. The draft amendment was brought before the State Board of Health at their January 21, 2005 meeting for consideration of initiating the rulemaking process. The State Board of Health approved the draft amendments as proposed with two minor revisions concerning the conditions under which a certified land applicator is "on-site" at the location of land application of biosolids. The State Board of Health requested that the draft language be revised from "is considered to be onsite," to "may be considered to be onsite." The State Board of Health also requested that the amendment specify that certified land applicators make their credentials available if requested. The draft amendment was revised to require the applicator to have the certificate number issued by VDH and their personal identification with them at the land application site.

Please NOTE:

The proposed amendments have already submitted to the Department of Planning and Budget (DPB) for an Economic Impact Analysis (Action ID/Stage ID: 1592/3142). DPB completed its analysis favorably on August 26, 2005 and the amendment was then sent to the Office of the Secretary for Health and Human Resources (OSHHR) for further evaluation. OSHHR requested that two revisions be made to the proposed amendment, including a minor wording change to consistently use plural references to certified land applicators in the amendment text. In addition, OSHHR requested that the reference to a fee fund stated in section 12 VAC 5-585-780F, be removed as such a fund was not established by the enabling legislation. Those requested changes have been made and the proposed amendments are being resubmitted for DPB review. (Since much of the necessary analysis has already occurred, an expedited review by DPB is requested.)

The advantage of adopting the requested amendments is that the credibility of this controversial state permit program will be enhanced. By establishing reasonable requirements for certifying land applicators, the most economical and most beneficial means of sludge management will continue to be available to the owners of sewage treatment works, who are primarily metropolitan governments.

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	One man-year of staff time at a cost of \$60,000 annually paid from the Division of Wastewater Engineering budget.
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	Private firms that land apply biosolids through contracts with Municipalities and agreements with landowners and farmers.
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.	10
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.	Approximately \$200 in training costs annually per individual certified.

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.

The Virginia Department of Health may elect to request the that State Board of Health consider the following alternatives:

1. Do not revise the Biosolids Use Regulations,
2. Revise the entire set of Biosolids Use Regulations, or
3. Revise the sections of the Biosolids Use Regulations dealing only with the amendment for certification of land applicators.

Failure to provide specific State requirements as requested will likely result in local adoption of ordinances with varying non-uniform requirements, that could have significant financial impacts on the regulated entities. Court challenges are likely to result from inconsistent and overly restrictive local ordinances, leading to expensive litigation. Although additional requests for revisions to the Biosolids Use Regulations have been submitted by local governments and private individuals, the process of revising the entire set of the Biosolids Use Regulations will likely become a long drawn out process, as the land application of biosolids is a highly controversial subject. Thus, the Virginia Department of Health is electing to recommend that only the previously listed sections of the Biosolids Use Regulations be revised at this time.

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
Department of Conservation and Recreation (DCR)	The Department of Conservation and Recreation (DCR) expressed support for the amendment and indicated that they would continue to participate in the subsequent training program upon implementation of the amendment.	VDH Biosolids Program staff will work with DCR Nutrient Management Program staff to develop the certification training program.
Recyc Systems, Inc.	Recyc Systems expressed strong support for a certification program for land application field managers who would be on-site at land application operations. Recyc Systems recommended that the certified land applicators be knowledgeable in the areas of nutrient management and soil science. Recyc Systems also recommended that VDH be flexible in scheduling sufficient classes and testing to meet the certification demand and that the certification exam be designed to conform with the general education backgrounds of land applicators.	The certification program will include the areas of nutrient management and soil science. VDH recognizes that the scheduling of training classes and the scheduling and content of certification examinations must meet the needs of land applicators.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The proposed regulatory action will have no anticipated or associated impacts on family rights to educate and supervise children. It will not discourage economic self-sufficiency and family responsibilities and commitments or decrease disposable family income.

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.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	12 VAC 5-585-760		An individual holding a valid certificate of competence as specified in the Biosolids Use Regulations (certified land applicator) must be onsite at all times during such land application. A certified land applicator may be considered to be onsite if they are at the site permitted for land application and, if it is necessary to leave the site, they are available within 30 minutes to return to the site to verify and ensure that land application of biosolids is in compliance with the issued permit. A certified land applicator shall have the certificate number issued by VDH and personal identification with them at the land application site. The Department may certify land applicators based on specified areas of training, experience and level of knowledge as demonstrated through successful completion of examinations as acceptable to the Department.
	12 VAC 5-585-770		The applicant for certification must submit a completed form with information relating to their education, work experience, knowledge of land application of biosolids and applicable regulations, and willingness to abide by the requirements of the Biosolids Use Regulations. Also, applicants would be required to document their education, training and experience. Applicants must pass an examination in order to receive a 2 year certification, unless they can document current certification from an approved land applicator certification program in another state.
	12 VAC 5-585-780		The Department will charge fees for training, testing and certifying land applicators. A fee of \$100 is required for the initial certification and subsequent renewals.
	12 VAC 5-585-790		The Department may offer the land applicator certification examinations on request and will schedule an examination at least once per year. The examinations shall require a

			<p>demonstration of the ability to ensure that biosolids will be land applied in compliance with the requirements of the Biosolids Use Regulations. The examinations for qualified applicants for a certificate of competence in accordance with this chapter shall address: a general understanding of biosolids treatment processes and biosolids characteristics and public health protection concepts; knowledge of the basic principles of soils, agriculture, silviculture, land application concepts and site management and operations; familiarity with occupational safety and health protection concepts; knowledge of land applicator training and certification requirements and familiarity with the requirements of other land application related laws, regulations, and incentive programs. Applicants taking the examination will be notified as to whether they achieved or did not achieve the passing score established by the Department. A certificate with an established renewal date will be issued to applicants that pass the examination.</p>
	12 VAC 5-585-800		<p>The Department will provide training sessions at least annually on various topics essential to ensuring that land application of biosolids complies with state and federal laws and regulations. The training may include biosolids use regulations; basic soil and crop science; soil fertility; environmental management; and other relevant topics.</p>
	12 VAC 5-585-810		<p>A certificate is to be renewed every two years and may be renewed on or before the expiration of a certificate by complying with certain requirements including: payment of the renewal fee and supplying proof of satisfactory completion of at least four hours of continuing education course work within the past two years. The completed course work must be approved by the Department as providing satisfactory training.</p>
	12 VAC 5-585-820		<p>A certificate will expire if not renewed. Following the expiration of a certificate, reinstatement may be accomplished only by reapplication and compliance with all applicable requirements of 12 VAC5-585-770. The Department will attempt to notify the certified land applicators of any continuing education needs and other requirements as necessary for certificate renewal 90 days or more prior to certificate expiration.</p>

	12 VAC 5-585-830		If the Department finds that a certified land applicator or an applicant for certification violated any applicable requirements of this chapter, including the listed procedural violations, the Department may deny, suspend or revoke certification, following the informal fact-finding procedures of the Virginia Administrative Process Act (§2.2-4019 et seq. of the Code of Virginia).
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