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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Approving authority name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC 25-740
Regulation title	Regulation for Wastewater Reclamation and Reuse
Action title	Adoption of a Regulation for Wastewater Reclamation and Reuse
Document preparation date	July 28, 2005

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of the proposed action is to develop and adopt a technical regulation that will satisfy provisions of the Code of Virginia, §62.1-44.2 and §62.1-44.15, and the mandate of the 2000 General Assembly contained in House Bill 1282. The regulation will establish requirements and standards for the reclamation and reuse of wastewater.

Legal Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, 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 legal basis for this regulation is Section 62.1-44.2 et seq. of the Code of Virginia and House Bill 1282 of the 2000 General Assembly. Specifically, Section 62.1-44.2 establishes the purpose of the State

Water Control Law that is to promote and encourage the reclamation and reuse of wastewater in a manner protective of the environment and public health. Section 62.1-44.15:5 authorizes the Board to issue a Virginia Pollution Discharge Elimination System (VPDES) permit or a Virginia Pollution Abatement (VPA) permit for the reuse of reclaimed wastewater including, but not limited to, land irrigation. Section 62.1-44.15:10 authorizes the Board to adopt regulations as it deems necessary to enforce the general water quality management program. Furthermore, Section 62.1-44.15:15 authorizes the Board to promote and establish requirements for the reclamation and reuse of wastewater that are protective of state waters and public health as an alternative to directly discharging pollutants into state waters.

Need

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

Although a regulatory framework for wastewater reclamation and reuse involving land irrigation has been established through the VPA Permit Regulation (9 VAC 25-32-10 et seq.) or VPDES Permit Regulation (9 VAC 25-31-10 et seq.), these regulations do not prescribe any technical standards for this type of operation. The reuse of reclaimed wastewater for other purposes (such as industrial cooling processes, fire protection, street washing, dust control, etc.) are not currently required to obtain a permit from the Department.

Pursuant to the action of the 2000 General Assembly, the Board must promote and establish requirements for the reclamation and reuse of wastewater that are protective of state waters and public health as an alternative to directly discharging pollutant into state waters. The proposed regulation will establish technical standards that address various potential categories of reuse. Therefore, the proposed regulatory action would be essential to protect the health, safety and welfare of the citizens of Commonwealth. It would also be essential to protect the Commonwealth's environment and natural resources from pollution, impairment or destruction.

Efforts were made previously by the Department to develop and adopt a wastewater reclamation and reuse regulation. A proposed regulation was advertised in the Virginia Register and a public hearing was held on February 24 and April 2, 2003, respectively, to obtain public comments. Based on comments received during the public comment period and at the public hearing, potential issues that may need to be addressed upon resuming development of the regulation include: irrigation rates and setbacks, permitting requirements for reclaimed wastewater generators and users, economic feasibility with regard to permitting and compliance costs, and alternative indicator organisms to monitor disinfection efficacy.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The proposed regulation will establish requirements for the reclamation and reuse of wastewater that are protective of state waters and public health. It will provide for greater flexibility and less stringent requirements commensurate with the quality of the reclaimed wastewater and its intended use. It will provide a consistent process for the review and approval or denial of requests for the reclamation and reuse of wastewater in Virginia.

The Department previously developed a proposed regulation for wastewater reclamation and reuse that was advertised in the Virginia Register on February 24, 2003. A public hearing for the proposed regulation was also held on April 2, 2003, to further solicit public comments. Comments received during the public comment period and at the public hearing were addressed as appropriate through revisions to the proposed regulation. Thereafter, work on the draft proposed regulation was suspended until June 2005. Due to the prolonged period following the first revisions to the proposed regulation, the Department determined that the APA Process for the regulation should be reinitiated. Much of the information used to draft the previous proposed regulation, as well as text of the previous proposed regulation, will be retained as applicable for discussion by a Technical Advisory Committee during the development of the currently proposed regulation.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.

The following alternatives have been considered by the Department:

1. Promulgate a wastewater reclamation and reuse regulation that establishes technical requirements and standards for various potential reuse categories. The permitting mechanisms established in the VPA and VPDES Permit Regulations or concurrently developed VPA General Permit Regulations for wastewater reclamation and reuse, could be incorporated by reference.
2. Amend the VPA Permit Regulation by incorporating the technical standards for various potential reuse categories. These standards could then be used as criteria for a VPDES permit issued to facilities that may employ any reuse options in addition to the wet weather discharge. This option was not recommended to avoid making the VPA Permit Regulation a technical regulation.
3. Make the technical requirements and standards for wastewater reclamation and reuse part of the Sewage Collection and Treatment (SCAT) Regulations. This option was not recommended because:
 - a. The SCAT Regulations pertain only to sewage, while sources of reclaimed wastewater may be exclusively industrial, sewage, or a combination of sewage and industrial; and
 - b. The technical requirements and standards for wastewater reclamation and reuse will not specifically address collection and treatment of wastewater, the primary focus of the SCAT Regulations.
4. Take no action to adopt the regulation. Instead, establish requirements by issuing a staff guidance. This option was not recommended because the result is not as predictable or certain as regulation.

The Department has tentatively determined that alternative 1 is the most appropriate alternative available that will satisfy the statutory mandates. The requirements established by the proposed regulation would apply to either of the existing permitting programs, VPA or VPDES. It would also provide a consistent process for the review and approval or denial of requests for the reuse of reclaimed wastewater in Virginia.

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 public 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 that the date, time and place of the meeting may be found in the calendar of events section of the Virginia Register of Regulations.

The Board 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 notice or other alternatives and 3) impacts of the regulation on farm and forest land preservation. The Board is also seeking information regarding 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 for the public comment file may do so at the public meeting or by mail, email or fax to Ms. Valerie Rourke, Department of Environmental Quality, 629 East Main Street, P.O. Box 10009, Richmond, Virginia 23240-0009; e-mail: varourke@deq.virginia.gov; and fax: (804)698-4116. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 5:00 p.m. on the date established as 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. Both oral and written 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 using the participatory approach to develop a proposal. The Department, as authorized by the Board, is forming a Technical Advisory Committee to consist of relevant stakeholders that will assist in the development of the regulation. Persons interested in participating on the advisory committee should provide their name, address, phone number and the name of the organization that they represent in writing to the agency contact person by no later than 5:00 p.m. on the last day of the comment period.

Impact on family

Assess the potential 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.

It is not anticipated that this regulation will have a direct impact on the institution of the family or family stability.