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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 25-840
Regulation title	General Virginia Pollution Abatement Permit Regulation for Irrigation Reuse of Level A Reclaimed Water
Action title	Adoption of a General Virginia Pollution Abatement Permit Regulation for Irrigation Reuse of Level A Reclaimed Water
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 general permit 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 prohibitions for irrigation reuses of Level A reclaimed water.

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. The requirements shall address various potential categories of reuse and may include general permits and provide for greater flexibility and less stringent requirements commensurate with the quality of the reclaimed water and its intended use.

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.

Pursuant to the action of the 2000 General Assembly, the Board must promote and establish requirements for the reclamation and reuse of wastewater that, among other things, must address various potential categories of reuse and may include general permits and provide for greater flexibility and less stringent requirements commensurate with the quality of the reclaimed water and its intended use. 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.) and the VPDES Permit Regulation (9 VAC 25-31-10 et seq.), either of these regulations would require an individual permit for each proposed irrigation reuse of reclaimed water. The proposed regulation will encourage irrigation reuse of reclaimed water by: (1) Establishing a general permit for irrigation reuse of Level A reclaimed water, and (2) Allowing more flexible and expeditious permitting options and less stringent requirements commensurate with the quality of the reclaimed water. Therefore, the proposed regulation is essential to protect the health, safety and welfare of the citizens of the Commonwealth, and to protect the Commonwealth's environment and natural resources from pollution, impairment or destruction.

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 define Level A reclaimed water, identify irrigation reuses of Level A reclaimed water, and will establish requirements and prohibitions for these reuses that are protective of state waters and public health. It will allow a greater range of reuse options and impose fewer restrictions and less stringent requirements, commensurate with the quality of the reclaimed water. In addition, it will provide a consistent process for the review and approval or denial of requests for irrigation reuse in Virginia.

Concurrent with the development of this regulation, the Department proposes to develop a technical regulation for wastewater reclamation and reuse, a general permit regulation for industrial and non-irrigation reuses of reclaimed water, and a general permit regulation for irrigation reuse of lower quality

(Level B) reclaimed water. The three general permit regulations, including the proposed regulation that is the subject of this notice, will reference portions of the technical 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 general permit regulation that establishes requirements and prohibitions for the irrigation reuse of a higher quality (Level A) reclaimed water. Because there will be no point source discharge associated with the identified reuse, the regulation will be a General VPA Permit Regulation. Also, concurrently promulgate: (a) General VPA Permit Regulations that specifically address irrigation reuse of lower quality (Level B) reclaimed water and industrial and non-irrigation reuses of reclaimed water, and (b) A technical regulation for wastewater reclamation and reuse that will be incorporated by reference in the aforementioned general permit regulations.
2. Promulgate only a technical regulation for wastewater reclamation and reuse, and regulate irrigation reuse of a higher quality (Level A) reclaimed water under an individual VPA or VPDES Permit. This option was not recommended because:
 - a. It would require both the VPA and VPDES Permit Regulations to be amended to reference the technical regulation; and
 - b. The issuance of an individual VPA or VPDES permit for each irrigation reuse proposal would be a longer process than that required for the issuance of a general permit.
3. Take no action to adopt a regulation but establish requirements, instead, through guidance issued to Department staff. This option was not recommended as it would cause the permitting and regulation of irrigation reuse to be less consistent and flexible.

The Department has tentatively determined that alternative 1 is the most appropriate available alternative to satisfy the statutory mandates. The requirements established by the proposed regulation would provide a consistent and expedited process for the review and approval or denial of requests for irrigation reuse of Level A reclaimed water 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.