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Fast-Track Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9VAC25-650
Regulation title(s)	Closure Plan and Demonstration of Financial Capability
Action title	Fast track regulation amendment to require the new owner to provide financial assurance prior to the transfer of the permit.
Date this document prepared	March 11, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulation is being amended to revise financial assurance requirements related to the transfer of the permit to a new owner or operator. Currently the previous owner or operator is required to provide financial assurance until the new owner or operator provides financial assurance. The regulation is being amended to require the new owner or operator to provide financial assurance prior to the transfer of the permit. This change is consistent with the requirement for an owner or operator of a new facility to provide financial assurance prior to the facility beginning to operate.

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 April 15, 2019, the State Water Control Board authorized the department to:

1. Promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The board's authorization also constituted its amendment of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.

2. Set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the department does not find it necessary to make any changes to the proposal.

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

As required by Virginia Code § 2.2-4012.1, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The agency conducted a periodic review for this regulation and recommended this regulation be amended to address financial assurance requirements related to the transfer of the permit to a new owner or operator. Currently the previous owner or operator is required to provide financial assurance until the new owner or operator provides financial assurance. The regulation is being amended to require the new owner or operator to provide financial assurance prior to the transfer of the permit. This change is consistent with the requirement for a new facility to provide financial assurance prior to the facility beginning to operate.

This amendment is expected to be noncontroversial since it reduces the regulatory burden on former owners and operators to continue to provide financial assurance after the permit has been transferred to a new owner or operator. The new owner or operator was previously required to provide financial assurance within six months of the permit transfer. This regulatory change makes the new owner or operator provide financial assurance prior to the permit transfer occurring. This maintains consistency with the requirement for an owner or operator of a new permit to provide financial assurance prior to starting operation of the privately owned sewerage systems and sewerage treatment works.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

The State Water Control Board is directed by § 62.1-44.18:3 of the Code of Virginia to adopt regulations that require privately owned sewerage systems and sewerage treatment works that discharge more than 1,000 gallons per day and less than 40,000 gallons per day to develop closure plans and provide financial assurance for closure of the sewerage systems or sewage treatment works.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

This regulation is being amended to revise financial assurance requirements related to the transfer of the permit to a new owner or operator. Currently the previous owner or operator is required to provide financial assurance until the new owner or operator provides financial assurance. The regulation is being amended to require the new owner or operator to provide financial assurance prior to the transfer of the permit. This change is consistent with the requirement for a new facility to provide financial assurance prior to the facility beginning to operate. This change will reduce the regulatory burden on former permit

holders by requiring the new owner or operator to provide financial assurance before the permit transfer occurs.

The regulation is also being revised to include a missing word in Section 90.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The regulation is being amended to require the new owner or operator to provide financial assurance prior to the transfer of the permit. Section 90 is also being amended to include a missing word.

Issues

Please identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The primary advantage to the public is protection from closure costs associated with the abandonment of a privately owned sewerage systems and sewerage treatment works that discharge more than 1,000 gallons per day and less than 40,000 gallons per day. The financial assurance provision of this regulation provides funding for the costs to close the facility in the event the facility is abandoned. Former owners and operators would also benefit from this change since they would no longer be required to maintain financial assurance after they have transferred the permit to another entity.

Requiring financial assurance to be demonstrated by the new owner or operator is consistent with the requirements placed on owners or operators seeking a permit to operate sewerage systems and sewerage treatment works that discharge more than 1,000 gallons per day and less than 40,000 gallons per day.

There are no disadvantages to the public, agency, or Commonwealth.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no applicable federal requirements. State statute requires the development of this regulation to address the abandonment of smaller sewage systems or sewage treatment works. The abandonment of these facilities would lead to potential untreated sewage entering into state waters, resulting in a substantial and imminent threat to public health and the environment.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected:

No other state agencies are impacted by this regulation.

Localities Particularly Affected:

No localities are impacted by this regulation.

Other Entities Particularly Affected:

Approximately 32 privately owned entities are impacted by this regulation.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>The regulation is being amended to require the new owner or operator to provide financial assurance prior to the transfer of the permit instead of after the permit is transferred. This change does not impact agency costs or revenues.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>The regulation is being amended to require the new owner or operator to provide financial assurance prior to the transfer of the permit instead of after the permit is transferred. This change does not impact agency costs or revenues.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The regulation is being amended to require the new owner or operator to provide financial assurance prior to the transfer of the permit instead of after the permit is transferred. This change does not impact agency costs or revenues.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>This regulation requires closure plans and financial assurance to be provided for privately owned sewerage systems and sewerage treatment works that discharge more than 1,000 gallons per day and less than 40,000 gallons per day. No localities operate privately owned sewerage systems or sewerage treatment works meeting this criteria and are not subject to this regulation.</p>
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Impact on Localities

<p>Benefits the regulatory change is designed to produce.</p>	<p>This regulation requires closure plans and financial assurance to be provided for privately owned sewerage systems and sewerage treatment works that discharge more than 1,000 gallons per day and less than 40,000 gallons per day. No localities operate privately owned sewerage systems or sewerage treatment works meeting this criteria and are not subject to this regulation.</p>
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Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>This regulation requires closure plans and financial assurance to be provided for privately owned sewerage systems and sewerage treatment works that discharge more than 1,000 gallons per day and less than 40,000 gallons per day. This amendment addresses the transfer of an existing permit to a new owner. The current regulation requires the new owner to obtain financial assurance within six months of the permit transfer and requires the old owner or operator to continue to provide financial assurance until the new owner meets the financial assurance requirements. The amendment requires the new owner or operator to obtain financial assurance prior to the permit being transferred. This amendment reduces the regulatory requirements on the old permit holder.</p>
<p>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:</p> <ul style="list-style-type: none"> a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. 	<p>The agency estimates that this regulation affects 32 entities. Due to the small capacity of the sewage systems and sewage treatment works, it is likely that most businesses regulated by this regulation are small businesses. The regulatory amendment affects the transfer of permits and there is a small number of permit transfers that occur during the permit term.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements. 	<p>This amendment requires the new owner or operator to obtain financial assurance prior to the transfer of the permit. The new owner or operator is currently required to obtain financial assurance within six months of obtaining a permit. This change will require the new owner or operator to meet the same requirements as an owner or operator of a new permit. This change benefits the previous permit holder by no longer requiring the previous owner or operator to provide financial assurance after the permit has been transferred to a new owner.</p>

Impact on Other Entities

Benefits the regulatory change is designed to produce.	This amendment will benefit the old owner or operator by not requiring them to provide financial assurance after the permit has been transferred to a new owner or operator. This will reduce the financial burden on the old owner or operator since they will be able to cancel their financial assurance mechanism for the permit once the permit has been transferred to the new owner.
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Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

Consideration was given to retaining the regulation and not revising the financial assurance requirements related to the transfer of a permit to a new owner or operator; however, retaining the regulation as is would continue to place a burden on the previous owner or operator to continue to provide financial assurance until the new permit holder provides financial assurance. Due to the small capacity of the sewage systems and sewage treatment works, it is likely that most businesses regulated by this regulation are small businesses. This amendment removes the burden on the previous owner or operator to continue to provide financial assurance after the permit is transferred. The previous owner or operator is no longer financially responsible for the closure of the sewage systems and sewage treatment works after the permit is transferred to a new owner or operator.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

The State Water Control Board is directed by § 62.1-44.18:3 of the Code of Virginia to adopt regulations that require privately owned sewerage systems and sewerage treatment works that discharge more than 1,000 gallons per day and less than 40,000 gallons per day to develop closure plans and provide financial assurance for closure of the sewerage systems or sewage treatment works. Due to this statutory requirement, small businesses cannot be exempted from the financial assurance requirements.

Consistent with financial assurance provisions of other regulations, financial assurance mechanisms are required to be reviewed annually and less stringent reporting requirements would not maintain oversight concerning the financial resources available to pay for the cost of closure of the facility. The amendment does reduce the regulatory requirements on the previous owner or operator, many of which are small businesses, by not requiring financial assurance to be provided once the permit is transferred to another owner or operator. The new owner or operator would provide financial assurance prior to the permit transfer.

Public Participation

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Melissa Porterfield, DEQ - Office of Regulatory Affairs, P.O. Box 1105, Richmond, VA 23218; phone (804) 698-4238, FAX: 804-698-4019, email: melissa.porterfield@deq.virginia.gov . Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
70 B.		When transfer of ownership or operation occurs, the old owner or operator will provide financial assurance until the new owner or operator provides financial assurance. New owner to provide financial assurance within 6 months of permit transfer.	Currently the old owner or operator is required to continue to provide financial assurance until the new owner demonstrates financial assurance. This change will now require the new owner or operator to demonstrate financial assurance prior to transfer of the permit. This change is consistent with the requirement for financial assurance to be provided before a new facility begins to operate.
90 H		Trust Agreement	Inserted the word "days" following the number 60. The phrase now reads "Within 60 days." Previously the units were missing from the number 60.