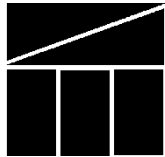


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes¹ Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

9 VAC 25-650 Closure Plans and Demonstration of Financial Capability
Department of Environmental Quality
Town Hall Action/Stage: 5270 / 8602
June 4, 2019

Summary of the Proposed Amendments to Regulation

The State Water Control Board (Board) proposes to revise financial assurance requirements related to the transfer of a Virginia Pollutant Discharge Elimination System (VPDES) permit to a new owner or operator.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Section 9 VAC 25-650-20 of the regulation states that:

The purpose of this regulation is to require owners or operators of certain privately owned sewerage systems² that treat sewage from private residences to file with the board a plan to abate, control, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if the facility ceases operations. For the purposes of this regulation, such a plan shall be termed a closure plan. Such plan shall also include the demonstration of financial assurance ...

¹ Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

² Privately owned sewerage systems subject to the Virginia Pollutant Discharge Elimination System Permit Regulation (9VAC25-31) that treat sewage generated by private residences and discharge more than 1,000 gallons per day and less than 40,000 gallons per day to state waters.

The financial assurance is to ensure that the costs associated with protecting public health and the environment are recovered from the owner or operator in the event that the facility ceases operation. Financial assurance can be demonstrated by one or a combination of the following mechanisms: trust agreement, surety bond, letter of credit, certificate of deposit, corporate financial test, and corporate guarantee.

The current regulation requires that when a transfer of ownership or operational control occurs,

the old owner or operator shall comply with the requirements of this chapter until the new owner or operator has demonstrated that he is complying with the requirements of this chapter. The new owner or operator shall demonstrate compliance with this chapter within six months of the date of the change of ownership or operational control of the facility.

The Board proposes to instead require that the “new owner or operator shall demonstrate compliance with this chapter and the board shall approve the financial mechanism prior to the transfer of the permit.” Former owners and operators would benefit from this change since they would no longer be required to maintain financial assurance after they have transferred the permit to another entity. The public would benefit in that there would be assurance prior to the transfer that new owners are financially capable of covering the costs associated with protecting public health and the environment in the event that the facility ceases operation. New owners would have to incur the expense of acquiring a trust agreement, surety bond, letter of credit, certificate of deposit, corporate financial test, or corporate guarantee sooner under the proposed language. However, that could be taken into account in the agreed on price in the sale of the facility.

Businesses and Entities Affected

The proposed amendments potentially affect current owners of the 32 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, as well as potential future owners.

Localities Particularly Affected

The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment

The proposed amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property

The proposed amendments would not likely significantly affect the use and value of private property.

Real Estate Development Costs

The proposed amendments are unlikely to affect real estate development costs.

Small Businesses:

Definition

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “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.”

Costs and Other Effects

The proposed amendments are unlikely to significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact

The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses:

The proposed amendments do not adversely affect businesses.

Localities:

The proposed amendments do not adversely affect localities.

Other Entities:

The proposed amendments do not adversely affect other entities.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.