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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25 - 790
VAC Chapter title(s)	Sewage Collection and Treatment Regulations
Action title	Amend Sewage Collection and Treatment Regulations to include a reporting requirement for all septic systems taken off-line and connected to sewage collection systems.
Date this document prepared	4/19/2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Sewage Collection and Treatment Regulations (9VAC25-790) regulate sewerage systems and treatment works.

The intent of this regulatory action is to require reporting by wastewater utilities of all septic systems (or other on-site sewage disposal systems) taken off-line and connected to sewage collection systems.

The goal of this new regulatory requirement is to ensure a more accurate count of nutrient reductions resulting from septic systems connected to sewer, which will assist with tracking the Commonwealth's progress towards water quality goals, including Chesapeake Bay watershed restoration goals.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

Board – State Water Control Board
Agency or Department – Department of Environmental Quality
NOIRA – Notice of Intended Regulatory Action
WIP – Watershed Implementation Plan
TMDL – Total Maximum Daily Load

Mandate and Impetus

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, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “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.”

The Commonwealth’s TMDL Phase III WIP (initiative number 53) requires reporting of sewer connections by wastewater utilities. Initiative number 53 provides that “[t]he Commonwealth will initiate a regulatory action to amend the existing Sewage Collection and Treatment Regulations (9VAC25-790-10 et seq.) to include a reporting requirement for all septic systems (or other on-site sewage disposal systems) taken off-line and connected to sewage collection systems. This requirement will ensure a more accurate count of nutrient reductions resulting from septic connected to sewer.”

Legal Basis

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

The Board adopted the Sewage Collection and Treatment Regulations under the authority provided by § 62.1-44.15(10) of the Code of Virginia. Additionally, § 62.1-44.19 of the Code of Virginia requires that before an “owner may erect, construct, open, expand or operate a sewerage system or sewage treatment works which will have a potential discharge or actual discharge to state waters, such owner shall file with the Board an application for a certificate in scope and detail satisfactory to the Board.”

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

This regulatory action is essential to protecting the water quality in the Commonwealth of Virginia, which is essential to the health, safety, and welfare of Virginia’s citizens and is needed in order to establish appropriate and necessary permitting requirements. Including a reporting requirement in this regulation

for all septic systems (or other on-site sewage disposal systems) taken off-line and connected to sewage collection systems will ensure a more accurate count of nutrient reductions resulting from septic systems connected to sewer, which will assist with tracking the Commonwealth’s progress towards water quality goals, including Chesapeake Bay watershed restoration goals.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The substance of this action is to amend the Sewage Collection and Treatment Regulations (9VAC25-790) to include a reporting requirement for regulated entities to report all septic systems (or other on-site sewage disposal systems) taken off-line and connected to sewage collection systems. This requirement will ensure a more accurate count of nutrient reductions resulting from septic connected to sewer, which will assist with tracking the Commonwealth’s progress towards water quality goals, including Chesapeake Bay watershed restoration goals.

Alternatives to Regulation

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.

No alternatives to this regulatory action were considered. The regulatory amendments are necessary to implement Virginia’s TMDL Phase III WIP.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. The Board is also seeking information on 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) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

This NOIRA is not being used to announce a periodic review or a small business impact review.

Anyone wishing to submit written comments may do so by mail or email to Erica Duncan, DEQ, P.O. Box 1105 Richmond, VA 23218, phone number 804-337-5407 (for questions), email: erica.duncan@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>). Written comments must include the name and address of the commenter. In order to be considered, comments must be received before midnight on the last day of the public comment period.

Public Hearing at Proposed Stage

A public hearing will not be held following the publication of the proposed stage of this regulatory action unless requests for a public hearing are received during the NOIRA public comment period from at least 25 persons.

Regulatory Advisory Panel

Please indicate, to the extent known, if advisers (e.g., regulatory advisory panel or negotiated rulemaking panel) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using a panel in the development of the proposal; 2) the agency is using a panel in the development of the proposal; or 3) the agency is inviting comment on whether to use a panel to assist the agency in the development of a proposal.

The Board is using a panel to develop a proposal. Persons interested in assisting in the development of a proposal should notify the Department's contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). The primary function of the panel is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the panel will be sent to all applicants.