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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Department of Conservation and Recreation
<b>Virginia Administrative Code (VAC) citation</b>	4 VAC 5 - 15
<b>Regulation title</b>	Nutrient Management Training and Certification Regulations
<b>Action title</b>	Revise nutrient management plan content and development procedures to enhance nitrogen and phosphorus management provisions in order to protect water quality.
<b>Document preparation date</b>	January 20, 2004

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://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](http://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](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 this proposed action is to consider the development and adoption of revised criteria for nutrient management plan content and development procedures in order to bring the regulations and attendant documents into compliance as may be necessary with § 62.1-44.17:1.1 of the Code of Virginia and in the requirements set forth in 40 CFR Parts 9, 122, 123 and 412 as published in the Federal Register Volume 68, No. 29, dated February 12, 2003 or as may otherwise be necessary to protect water quality.

### 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.*

§ 10.1-104.2 of Chapter 1 of Title 10.1 of the Code of Virginia requires the Department to establish criteria for nutrient management plans. These criteria were last promulgated in the Department's 1995 *Virginia Nutrient Management Standards and Criteria*.

*§ 10.1-104.2. Voluntary nutrient management training and certification program. (1994, c. 159.)*

*A. The Department shall operate a voluntary nutrient management training and certification program to certify the competence of persons preparing nutrient management plans for the purpose of assisting land owners and operators in the management of land application of fertilizers, municipal sewage sludges, animal manures, and other nutrient sources for agronomic benefits and for the protection of the Commonwealth's ground and surface waters. The Department shall promulgate regulations:*

*3. Providing for criteria relating to the development of nutrient management plans for various agricultural and urban agronomic practices;...*

In addition, Article 3 of Chapter 3.1 of Title 62.1 of the Code of Virginia requires the Department to adopt and implement additional regulatory or other changes to nutrient management plan criteria by December 31, 2005 the Department concludes are appropriate to better address water quality issues associated with poultry waste.

*§ 62.1-44.17:1.1. Poultry waste management program. (1999, c. 1.)*

*C. The program shall include, at a minimum:*

*2. Provisions requiring that:*

*a. Nitrogen application rates contained in nutrient management plans developed pursuant to this section shall not exceed crop nutrient needs as determined by the Department of Conservation and Recreation. The application of poultry waste shall be managed to minimize runoff, leaching, and volatilization losses, and reduce adverse water quality impacts from nitrogen;*

*b. For all nutrient management plans developed pursuant to this section after October 1, 2001, phosphorus application rates shall not exceed the greater of crop nutrient needs or crop nutrient removal, as determined by the Department of Conservation and Recreation. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous;*

*c. By December 31, 2005, the Department of Conservation and Recreation, in consultation with the Department of Environmental Quality, shall (i) complete an examination of current developments in scientific research and technology which shall include a review of land application of poultry waste, soil nutrient retention capacity, and water quality degradation and (ii) adopt and implement regulatory or other changes, if any, to its nutrient management plan program that it concludes are appropriate as a result of this examination; and*

*d. For all nutrient management plans developed pursuant to this section after December 31, 2005, and not prior thereto, phosphorous application rates shall conform to the provisions of subdivision 2 b of this subsection and shall be in accordance with other regulatory criteria and standards, if any, amended or adopted by the Department of Conservation and Recreation pursuant to subdivision 2 c of this subsection to protect water quality or to reduce soil concentrations of phosphorous or phosphorous loadings. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous.*

Also, requirements set forth in 40 CFR Parts 9, 122, 123 and 412 as published in the Federal Register Volume 68, No. 29, dated February 12, 2003 requires states to establish for concentrated animal feeding operations (CAFOs) criteria for nutrient management plans that will be required in NPDES permits. Section 412.4(c) stipulates that CAFOs must develop and implement a nutrient management plan that is based on a field specific assessment, that addresses the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters.

## 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. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.*

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Existing nutrient management training and certification regulations including the documents incorporated by reference such as the November 1995 *Virginia Nutrient Management Standards and Criteria*, will be amended to include revised criteria capable of reducing nitrogen and phosphorus loss from land to ground and surface waters. Modifications to phosphorus management practices are necessary to reduce water quality impacts from the land application of fertilizer, animal manure, sewage sludge, and industrial wastes. Amendments in nitrogen application criteria in nutrient management plans will be primarily addressed through improved timing of land application of nitrogen containing materials. Additional changes will include, but will not be limited to, a revised listing of Virginia soils to include those soil series established since the last regulatory adoption in 1995.

The protection and improvement of water quality will restore and enhance the living resources of Virginia's waters and provide clean water for recreational uses and conservation in general. These actions are essential to the protection of the health, safety, and welfare of the citizens of the Commonwealth.

## 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.*

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The agency identified no alternative actions to address the need to update the regulations. In evaluating potential phosphorus criteria for nutrient management plans, the Department seeks to identify a method that meets several objectives. The method should: (1) protect water quality by controlling soil concentrations of phosphorus or phosphorus loadings, (2) be straightforward and time efficient to apply, (3) produce consistent results when applied by different persons, (4) be relatively easy to understand and convey to farmers, and (5) have the ability to be reasonably compatible with nutrient management plan software presently used in Virginia. There are several alternative phosphorus management structures the agency will consider in developing revised regulations that include: (1) soil test phosphorus based on crop response potential, (2) soil test phosphorus based on environmental thresholds, (3) a phosphorus index, or (4) other potential structures or combinations of the listed approaches.

## 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.*

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The Department is seeking comments on the intended regulatory action, including ideas to assist in revising the Virginia Nutrient Management Standards and Criteria (last revision November 1995), in the development of a regulatory proposal, and on the costs and benefits of the alternatives stated in this notice or other alternatives. The Virginia Nutrient Management Standards and Criteria can be found at <http://www.dcr.state.va.us/sw/docs/ntmgtstds.pdf>.

Persons desiring to submit written comments pertaining to this notice may do so by mail, the Internet, or facsimile. Comments pertaining to this notice should be sent to the Regulatory Coordinator at: Virginia Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219. Comments may also be e-mailed to the Regulatory Coordinator at: [regcord@dcr.state.va.us](mailto:regcord@dcr.state.va.us). Or comments may be faxed to the Regulatory Coordinator at: (804) 786-6141. All written comments must include the name and address of the commenter (e-mail addresses would also be appreciated). In order to be considered, comments must be received or postmarked by 5:00 PM on May 13, 2004.

The Department intends to utilize a public participatory approach to these regulatory amendments and a public meeting will be held on May 6, 2004 at 7 p.m. in the Henrico County Government Center.

Following publication of the proposed regulation in the Virginia Register, the Department will hold a public hearing to provide opportunity for public comment. Notice of the meeting will be posted 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.*

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The Department is using the participatory approach to develop the proposal. The Department will be forming an ad hoc advisory committee to assist in the development of proposed regulations.

### Impact on family

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.*

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This regulatory action will have no direct impact on the institution of the family or family stability although the improvement of water quality does have public health and safety benefits that have an indirect impact on families.