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

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation	12 VAC 5 - 585
Regulation title	Biosolids Use Regulations
Action title	Access Control Amendment
Date this document prepared	7/18/06

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

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 Biosolids Use Regulations (12 VAC 5-585) are to be amended to address recommendations on site access control as contained in the 2005 Joint Legislative Audit and Review Commission Report (House Document No. 89) entitled, "Review of Land Application of Biosolids In Virginia." (<http://jlarc.state.va.us>)

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Biosolids Use Regulations (12 VAC 5-585) were adopted by the State Board of Health in accordance with § [32.1-164.5](#) of the Code of Virginia. The 2005 General Assembly directed the Joint Legislative Audit and Review Commission (JLARC) to review and evaluate the regulation of land application of biosolids in Virginia through House Joint Resolution 643 (available

electronically at: (<http://leg1.state.va.us/cgi-bin/legp504.exe?ses=051&typ=bil&val=hj643>). The JLARC Report contained a number of recommendations for actions that the Virginia Department of Health (VDH), the State Board of Health and the General Assembly could take to improve biosolids regulation in Virginia (<http://jlarc.state.va.us/Meetings/October05/BioSolid.pdf>). Several of the recommendations concerned access control to land application sites (recommendations 11 through 13, which are set forth below).

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.

The Biosolids Use Regulations (Regulations) provide the means to protect public health from improper and unregulated disposal of sewage sludge. However, individuals have expressed opposition to the land application of biosolids and have insisted that land application operations on permitted sites are not being adequately evaluated and supervised. The 2005 JLARC Report recommended that VDH implement additional restrictions on public and animal access to land application sites. The recommended restrictions will require ~~that~~ the Regulations to be amended.

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 2005 JLARC Report recommendations involving site access requirements can be summarized as follows:

Recommendation (11) – VDH should require that applicators of biosolids post signs about the application for a minimum of 30 days (or one year, for high access sites) following the application. Signs should be posted at known access points and along road frontage.

Recommendation (12) – VDH should develop a “medium” public access designation for biosolids sites, providing somewhat longer access restrictions and signage requirements than 30 days. This designation would be used to address sites that do not fit the “high” access designation, but are in areas that are not actually remote from the public, such as sites that are close to trailer parks, neighborhoods, or towns.

Recommendation (13) – VDH should examine the animal grazing restrictions of its regulations. VDH should develop language that requires, on farms where animals are grazed, the use of fencing or physical barriers to prevent animal grazing on the biosolids fields. VDH should continue to require that landowners sign agreements to keep animals off the biosolids sites for the required timeframe. In addition, VDH should develop regulatory language that sets forth clear and realistic expectations for the actions that

biosolids applicers are to take to help ensure compliance with the animal access restrictions on biosolids sites.

This amendment to the Regulations is designed to provide ~~additional~~ site access control through revisions to clarify the description of high and low potential for public access and revise the requirements contained in the farmer/land owner agreements. Permit applicants provide copies of tSuch hese agreements are provided to VDH when requesting by the applicants a for permits issued by VDH authorizing land application of biosolids on the sites listed in the signed agreements. VDH will request that tThe Regulations advisory committee (BURAC) will be requested to provide recommendations that will be used by VDH to develop a draft amendment.

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, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

No aalternatives have been considered as the development of this amendment has been recommended in the 2005 JLARC Report and is clearly authorized in Section 32.1-164.5 of the *Code of 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 hearing is to be held to receive comments on this notice.

The agency 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 background document or other alternatives and 3) potential impacts of the regulation. The agency 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) 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 may do so by mail, email or fax to: C. M. Sawyer, P.E., Director, Division of Wastewater Engineering, VDH, 109 Governor Street, Fifth Floor, Richmond, VA 23219, Phone: 804-864-7463, Fax: 804-864-7475 (email: cal.sawyer@vdh.virginia.gov) . Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

VDH will not hold a public hearing ~~will not be held.~~

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved 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 Biosolids Use Regulations Advisory Committee (BURAC) will assist VDH in the development of the amendment for access control requirements.

Family impact

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.

The proposed regulatory action will have no anticipated or associated impacts on family rights to educate and supervise children. It will not discourage economic self-sufficiency and family responsibilities and commitments or decrease disposable family income.