



Proposed Regulation Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation	12VAC5-640
Regulation title	Alternative Discharging Sewage Treatment Regulations for Individual Single Family Home Dwellings
Action title	Update and modify the regulations for less than or equal to 1000 gallon per day individual single family home discharging systems to incorporate policy documents and new technology and consider impacts to the Chesapeake Bay Total Maximum Daily Load (TMDL).
Date this document prepared	September 22, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The proposed amendments to these regulations are intended to provide greater flexibility for the design and use of discharging systems while at the same time ensuring that these systems function in a manner that protects public health and the environment. The changes include: simplifying the application process, adding requirements to assure that discharging systems are properly operated and maintained, adding requirements to assure reliability of system function, improving and simplifying the process that VDH uses to evaluate treatment units for general approval, addressing discharges to wetlands and amending administrative processes to ensure efficiency and to eliminate inconsistencies with the Code and APA.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

"AOSS" means alternative onsite sewage systems.

"Board" means the State Board of Health.

“Commissioner” means the State Health Commissioner.
 “VDH” means Virginia Department of Health
 “Code” means Code of Virginia
 “APA” means the Administrative Process Act (2.2-4000 et seq. of the Code of Virginia).
 “TL” means Treatment level
 “NPDES” means National Pollution Discharge Elimination Program
 “VPDES” means Virginia Pollution Discharge Elimination Program
 “BOD5” means biochemical oxygen demand, five-day
 “TSS” means total suspended solids.

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., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia* at §§ 32.1-12, 32.1-163 and 32.1-164 provides the statutory authority and mandates that the Board protect public health and the environment. Section 32.1-12 authorizes the Board to make, adopt, promulgate and enforce regulations that may be necessary to carry out the provisions of title 32.1 and other laws of the Commonwealth administered by it or the Commissioner. Further, § 32.1-164.A. states that “the Board shall have supervision and control over the safe and sanitary collection, conveyance, transportation, treatment, and disposal of sewage by onsite sewage systems and alternative discharging sewage systems, and treatment works as they affect the public health and welfare.” Moreover, § 32.1-164.B mandates that the Board promulgate regulations that govern the collection, conveyance, transportation, treatment and disposal of sewage by onsite sewage systems and alternative discharging sewage systems. 32.1.-164.A mandates that the Board require and that the Department conduct regular inspections of alternative discharging sewage systems and that subsection further mandates that the Board establish requirements for maintenance contracts for alternative discharging sewage systems.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The Board has not updated the regulations since the initial adoption in 1992. Since the regulations became effective, additional technological options have emerged that would offer more cost effective discharging options to homeowners. In addition, these new technologies offer a higher degree of protection of public health and the environment. The proposed amendments are intended to benefit stakeholders by simplifying application processes, by improving the process for conferring general approval on treatment units and by providing greater flexibility for the design and use of discharging systems. Further, the proposed amendments are intended to protect the health, safety and welfare of citizens by ensuring that these systems are properly designed, operated and maintained so as to prevent system failure and to protect Commonwealth citizens from the deleterious effects of raw sewage.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

Definitions added include but are not limited to the following terms "alternative onsite sewage system", "BOD5", "biological treatment unit", "combined application", "conventional onsite sewage system", "dechlorination", "maintenance", "modify", "operate", "operation", "general approval", definitions for reliability and treatment levels, "wetlands", "surface waters", "emergency pump and haul", "post aeration unit", "point source discharge", "NPDES" and "VPDES".

A requirement was added so that owners of discharging systems permitted after the effective date of the proposed amendments must have an operation and maintenance manual.

VDH amended the following provisions of the regulations:

expands the onsite options that must be evaluated and found unsatisfactory before a discharge option is to be considered so as to extend the evaluation to reduced footprint options available under 12VAC5-613-10 et seq.;

eliminates redundancies and inconsistencies with the APA and Title 32.1 of the Code with regard to hearings, orders and enforcement;

increases the length of time that a construction permit is valid;

provides for the transfer of construction and operation permits under limited circumstances;

modifies the application process in an effort to simplify it;

eliminates any reference to permit suspension;

requires wetland delineation by the U.S. Army Corps of Engineers when the proposed discharge is to a wetland;

the general approval process for treatment units was simplified in order to make it more reliable;

reduces the sampling and monitoring requirements to the homeowner for most systems;

requires reliability assurances for discharging systems to protect against the public health and environmental problems associated with component or system failure. VDH added three levels of reliability that are based on the available discharge area and the discharge point;

repeals the prohibition on the use of discharging systems for dwellings subject to intermittent use and allow it under certain circumstances;

requires systems to be designed to accommodate peak flow rates and to protect against adverse weather conditions;

restricts access between humans, animals and effluent in order to account for wetland discharges and in order to provide more design flexibility;

adds design requirements for system components in order to parallel the requirements contained in the Sewage Collection and Treatment Regulations (9VAC25-790 et seq.);

modifies the informal process control testing such that the testing conducted more accurately assesses system performance;

expands the allowed individuals performing maintenance to include Alternative Onsite Sewage System Operators in addition to the existing Class IV or higher wastewater works operator license; and

requires electronic reporting of inspection results.

Issues

Please identify the issues associated with the proposed regulatory action, 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

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1. The amended provisions provide benefits to the public by accommodating access to more cost-efficient technologies, by simplifying the application process and by allowing for the transfer of construction and operation permits under certain circumstances.
 2. The amended provisions provide advantages to the agency by simplifying the application process and by allowing private sector individuals to perform site evaluations.
 3. The amended provisions also provide greater protection to public health and the environment by requiring reliability assurances for discharging systems to protect against the public health and environmental problems associated with component or system failure. The proposed amendments also provide system designers and users with greater flexibility by enabling designers to reduce the separation distance between discharge points if certain design criteria are met and by allowing these systems for dwellings subject to intermittent use.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements that are more restrictive than federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities that are particularly affected by this proposed regulation. Coastal Virginia localities could be positively affected from a development standpoint due to the allowance for discharges to wetlands.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is 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 comments may do so via the Regulatory Town Hall website, www.townhall.virginia.gov, or by mail, email, or fax to Marcia Degen, 109 Governor Street, 5th floor, Richmond, Virginia 23219, 804-387-1883 (phone), 804-864-7475 (fax), Marcia.Degen@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 date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements create the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.	No cost to state to implement the program.
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	The addition of wetlands as a potential discharge point will increase the property that is available for development which will result in an increase in tax income for the locality. Discharges to wetlands are controversial, however, so this change may not be universally welcomed.
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	The amended regulations reduce the number of required analytical tests and the number of maintenance visits for most homeowners which will result in a cost savings. However, the amended regulation does require that an operation and maintenance manual be provided for each new system. That is an additional one time cost of \$1000 to \$2500.
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,	New applications for discharging systems are of a low volume and typically run less than 100 permits per year. These permits are only for single family homes so businesses shall not be directly impacted

<p>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.</p>	<p>unless they provide services that support these treatment systems.</p>
<p>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>New cost for owners for an operation and maintenance manual estimated at \$1000 to \$2500.</p> <p>The monitoring/maintenance costs are reduced for owners not choosing a generally approved treatment system. The existing regulation had maintenance/monitoring costs for non-generally approved systems that ranged from >\$1000 per year for monthly maintenance calls and quarterly formal monitoring to about \$800 for quarterly visits and semiannual formal monitoring. The revision will allow non-generally approved systems to be monitored initially quarterly, but once the system demonstrates compliance, the system reverts to generally approved sampling schedule which will save an owner >\$400 per year in operation and maintenance costs.</p> <p>This regulation opens wetlands as a potential discharge point, but it requires that a wetlands delineation be conducted. These delineations can be conducted by the Army Corps of Engineers, but an owner can opt to hire a private consultant. Cost estimates are \$1000 to \$2500 for a private evaluation.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The regulation is intended primarily to protect public health and the environment by establishing appropriate construction, location, and performance requirements for alternative discharging systems. In addition to these protections, the regulations, by allowing discharges to wetlands may open additional areas (primarily) in coastal Virginia to development.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

These regulations are mandated by the *Code of Virginia*. The other available alternative is to continue with the current regulations. However, in light of the antiquated technological and regulatory standards contained in the current regulations and in light of the redundancies and inconsistencies with the Code and other regulations, VDH has determined that these proposed regulations will better enable the Board to effectively carry out its public health responsibilities under title 32.1 of the *Code*. In addition, VDH made

efforts to accommodate new, more cost-efficient technologies in this regulatory proposal and these technologies should reduce economic burdens on homeowners and on small businesses.

Regulatory flexibility analysis

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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

VDH’s Division of Onsite Sewage and Water Services, Environmental Engineering, and Marina Programs has evaluated the regulations and has determined that they do not impose any unnecessary economic burdens on small businesses. This regulation specifically addresses single family homes and therefore VDH has determined that the substance, complexity and timing of the compliance and reporting requirements of the proposed regulations do not apply to small businesses.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Robert E. Lee	The management of the discharging systems has been severely lacking due to the lack of effective compliance and enforcement by the VDH. These regulations need the civil penalty rules enacted to make them somewhat effective. In addition, the regulations should mirror the Alternative Onsite Sewage System (AOSS) regulations as most things for these systems are the same. Approval of technology should follow the same process as the AOSS regulations. This rule in the same manner as the proposed AOSS regulation is lacking in terms of timely follow up to problems and non-compliance. Requirements for the development of a corrective action plan and its implementation and enforcement should be added. The AOSS licensed operators should be allowed to operate these	<ul style="list-style-type: none"> • When the Onsite Sewage System Schedule of Civil Penalties Regulation (12 VAC 5-650) is adopted, it will be utilized to enforce this regulation. • The approval of new technologies has been modified to be consistent with 12 VAC 5-613 with regard to the approval of treatment units. However, this regulation relies on additional treatment components as well and design standards for those additional components (i.e. disinfection) have been added as well. • Section 490 has been modified to reflect a start up testing protocol depending on the approval status of the treatment system and defines how non-compliant samples are to be addressed. • Section 500 has been modified to recognize AOSS operators as qualified operators for the small discharging systems.

	facilities also.	
John Di Guardo	This is another government attempt to over step its control over its citizens. It is a typical over kill law which will do nothing but further add on to the huge tax burden of the taxpayer. It must be done every year? What a waste of time and money. Maybe you should consider mandating that each system should be regulated or inspected on its own merits. Since most systems out there are working and working well each system should only have to be tested every 5 years UNLESS a problem is discovered and that particular system should be checked every year until properly fixed.	<ul style="list-style-type: none"> • The authorization to discharge to a stream is through the Department of Environmental Quality's General Permit which mandates an annual monitoring event which this regulation cannot change. • This regulation has been modified (section 490) to reduce the number of mandated maintenance visits to two per year. This is a reduction for 'experimental' systems which were formerly monthly visits and a reduction for 'preliminary approval' systems which were quarterly. Generally approved systems remain at two visits a year.
JC Henshaw	More regulation is not the answer, help property owners (Tax Payers) to develop and use their land, not hinder them. There is so much federal, state, and local regulations today that it cost the land owner a small fortune to build a single family dwelling within the Chesapeake Bay watershed. Support individual development, assist land owners, advise them on what they can do not just what they can't do. The approach should be to work with land owners to develop green Single Family Dwellings not to regulate them the death. Once built, the taxes will come to help build infrastructure for the most critical areas. Continuing to regulate and deny land owners use of their property will eventually end in a law suit over constitutional rights and cost all of us millions in tax dollars to argue	<ul style="list-style-type: none"> • A proposed modification to section 400 of this regulation would allow discharges to wetlands. Currently, these types of systems can only be installed where a discharge to an all weather stream, a dry ditch, or an intermittent stream is available. • Additional modifications to section 490 will reduce the maintenance and monitoring costs for homeowners.
Tax Payer	Why do we need two state agencies to permit a discharging system? DEQ has 100% jurisdiction for all discharges except those for SFDs that fall under the GP. Why does VDH get involved with these? This is wasteful, confusing, and goes against the Governor's "one-stop" philosophy. How well is this discharge program currently being implemented? To answer this question someone should insist on getting answers to	<ul style="list-style-type: none"> • The Code of Virginia directs VDH to construct and implement this program in conjunction with DEQ. • The regulations are being revised to improve the consistency between the discharging regulation and the AOSS regulation with regard to treatment unit review and approval. • VDH and DEQ have been coordinating efforts and the data issues are being resolved. • VDH and DEQ coordinated on the

	<p>the following questions:</p> <ol style="list-style-type: none"> 1. How often does VDH actually inspect each of these systems? The answer falls somewhere between annually and never with never being closer to the truth. 2. How often does VDH collect the required annual inspection fee? This might shed some light on the answer to question #1. However, don't rely on VDH to give you an accurate number of installed discharging systems under their jurisdiction. DEQ would likely be a better source to get an accurate number of systems. 3. How many of these systems were functioning properly the last time they were inspected? The answer to this will shock you. 4. When VDH discovers that a system is discharging untreated sewage, how long does it take to correct the problem? This answer will shock you even more. 5. What credentials do VDH employees have that make them qualified to perform annual inspections of these systems? 6. When did VDH hold its last employee training session for these regulations and the implementation of these regulations? I believe the answer is 1992. This should shed some light on question #5 above. Submit a FOIA request to your local health department and ask for a list of discharging systems and a copy of all VDH inspection reports. Then, call your local newspaper to report your findings. These regulations should be revised and then turned over to an agency capable of implementation 	<p>renewals of the General Permits. DEQ did not automatically reissue General Permits that were out of compliance based on a VDH report. General Permits were not reissued until the VDH compliance issue was resolved.</p>
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Family impact

Please assess the 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.

- 1) The proposed regulations will neither strengthen nor erode the authority and rights of parents in the education, nurturing, and supervision of their children.
- 2) The proposed regulations will neither encourage nor discourage economic self sufficiency, self-pride, nor the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents.
- 3) The proposed regulations will neither strengthen nor erode the marital commitment.
- 4) The proposed regulations will increase disposable family income as a reduction in monitoring and maintenance visits is proposed for most category of systems.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, rationale, and consequences
10	10	Authority for Regulations.	VDH amended this section to clarify that the flows for these systems are calculated on a monthly, not yearly average.
20	20	Purpose of Regulations.	Stylistic changes made.
30	30	Scope of Regulations. The chapter applies to all discharge systems constructed and operated to serve individual single family homes with flows less than or equal to 1000 gallons per day. Location criteria do not apply to systems installed prior to this chapter. A permit under this chapter will only be issued when no onsite options are available.	<p>Amendments made to clarify flow calculation (monthly not yearly), to make sure other regulatory sections are cross-referenced correctly and to clarify the effective date of the applicability of the location criteria contained in this chapter.</p> <p>VDH clarified that those owners who were permitted prior to July 30,1992, by DEQ that are exempted from the maintenance requirements are still required to collect and report the annual monitoring data required by the General Permit.</p> <p>VDH also amended this section to establish the requirement for owners to have an operation and maintenance manual; this requirement is to help ensure that these systems are being operated and</p>

			<p>maintained so as to preclude system failure. However, out of fairness to current system owners, the requirements will not be applied retroactively.</p> <p>VDH amended the requirement that onsite options must be evaluated and found unsatisfactory before a discharge option is to be considered so as to extend the evaluation to reduced footprint options available under 12VAC5-613-10 et seq. The rationale for the change is that more onsite options have become available since the effective date of this regulation.</p> <p>In addition, the amendments clarify that the performance requirements and horizontal setbacks in this chapter also apply to designs submitted under §32.1-163.6 of the Code of Virginia.</p>
40	40	Establishes that this chapter is supplemental to Sewage Handling and Disposal Regulations.	Stylistic amendment.
50	Repealed	Established that this chapter relies on the Sewage Collection and Treatment Regulations for design criteria	Repealed as the pertinent sections were added to this regulation.
60	60	Establishes that this chapter is supplemental to the State Water Control Board's VPDES Regulations.	Amended to clarify that the flows for these systems are calculated on a monthly, not yearly average.
70	70	Establishes the relationship to the uniform building code	Stylistic amendment.
80	80	Establishes the administration of this chapter and delegations of authority.	VDH amended this provision such that the Commissioner may delegate the power to revoke a permit. The rationale is that authorizing revocation at a district or local level will enable the agency to enforce more efficiently and consequently protect public health and the environment more efficiently. VDH also made stylistic edits and cross-reference changes to this section.
100	05	Definitions.	<p>Definitions for "aerobic treatment unit", "intermittent sand filter system", "generic system design", "proprietary system design", "onsite sewage disposal", "pump and haul" and "recirculating sand media filter system" were deleted as VDH deemed these terms to be obsolete and unnecessary to clarify or interpret the proposed regulation.</p> <p>VDH added definitions of "alternative onsite sewage treatment system" and</p>

			<p>“conventional onsite sewage system” that parallel the definitions found in §32.1-163 of the Code. These were added to clarify the regulation.</p> <p>VDH amended the definition of “Five day biochemical oxygen demand” in order to make it consistent with the definition in 12VAC5-613-10.</p> <p>VDH added definitions of “Board” and “Department” to clarify what entity was administering what section of the chapter. VDH amended the definition of “Division” to incorporate a name change.</p> <p>VDH added definitions of “reliability” and the three reliability classes to add clarity to the regulations requirements on the functional reliability of discharge systems. Those definitions are intended to achieve consistency between this regulation and 9VAC25-790.</p> <p>VDH added a definition of “combined application” to add clarity to the application process.</p> <p>VDH added definitions of “dechlorination”, “biological treatment unit”, “disinfection unit”, “post aeration unit” and “post filtration unit”, “treatment system”, “TL-2 effluent” and “TL-3 effluent” to add clarity to some of the more technical aspects and requirements of the regulation.</p> <p>VDH added definition of “operate”, “operation”, “maintenance” and “modify” that parallel the definitions found in §32.1-163 of the Code. These were added to clarify the operation and maintenance requirements of the regulation.</p> <p>VDH added a definition of “point source discharge” that parallels the definition found in the Clean Water Act. This was added to clarify the scope of this regulation and the distinction between discharging systems and onsite systems.</p> <p>VDH deleted definitions of “family” and “income” as these definitions were only relevant to fee provisions that have been struck from this regulation. Those provisions are contained in or will be added to the VDH Fee Regulations that are</p>
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			<p>currently being amended (12VAC5-620-10 et seq.).</p> <p>VDH amended the definition of “failing onsite sewage disposal system” to make it consistent with 12VAC5-610-20 et seq. VDH amended the definition of “failing alternative discharge treatment system” to clarify it and make it more easily understood.</p> <p>VDH added a definition of “emergency pump and haul” and deleted the definition of “pump and haul”. Emergency pump and haul is specifically used in this regulation alone and has not been previously defined.</p> <p>VDH amended the definition of “owner” to parallel the definition found in §32.1-163 of the Code.</p> <p>VDH added the definitions of “NPDES” and “VPDES” to clarify this regulation’s relationship to the Clean Water Act and the State Water Control Board’s VPDES regulations.</p> <p>VDH added a definition of “surface waters” that parallels the definition of 9VAC25-31-10.</p> <p>VDH added a definition of “wetlands” that parallels the definition found in §62.1-44.3 of the Code. The definition is intended to clarify the portions of the regulation related to wetlands as a discharge point.</p> <p>VDH deleted definitions of “sewer”, “subsurface soil absorption” and “subdivision” as the agency found no statutory or regulatory basis for defining these terms.</p> <p>VDH amended the definition of “dry ditch” to make it more easily understood.</p>
110	110	Establishes compliance with the Administrative Process Act.	VDH amended this section to ensure consistency with the provisions of the APA.
120	120	No changes proposed.	
130	None	Established the effective date of the original regulation.	VDH deleted this section as it is no longer pertinent.
140	140	Emergency Orders	Section references were modified to reflect changes in section 150.
150	150	Sets duties and powers of the Commissioner or VDH as it pertains to enforcing this	VDH amended subsection A to reconcile its content with the APA and the definition of a “case decision” found in §2.2-4001 of the

		chapter.	Code. The APA requires that agencies decide cases through informal conference or consultation proceedings, and this subsection, as previously written, was inconsistent with the APA because it purported to authorize the issuance of a "case decision" prior to an informal conference or consultation proceeding. Subsections C through F were deleted as they overlapped and were redundant with the authorities set forth in title 32.1 of the Code.
160	160	No changes proposed.	
170	170	Establishes the requirements for an applicant to obtain a variance and for the Commissioner to grant a variance.	VDH made some stylistic amendments such as ensuring that cross-references are accurate. VDH also deleted references to a "hearing" when the agency is intending to refer to an informal conference or consultation proceeding pursuant to the APA and §2.2-4019 of the Code. The term "hearing" denotes a legal adjudicatory proceeding, while the APA contemplates that these proceedings be conducted informally. VDH also deleted the requirement that the Commissioner "act" on a variance within 60 days of receipt. The rationale is that the Commissioner, in many instances, does not need to "act" (i.e. grant or deny) a variance as there may be other viable regulatory options available to the applicant that would resolve the matter and would obviate the need for a variance.
180	180	Establishes proceeding and hearing types.	VDH amended this section to delete many extraneous provisions that either overlapped or conflicted with the APA.
190	None	Request for hearing.	VDH deleted this section because it determined that this is not enforceable and therefore should not be incorporated into a regulation. The APA would prohibit VDH from denying a hearing request because it was sent to the wrong address; therefore, such a requirement is not enforceable and should not be in regulation.
200	None	Hearing as a matter of right.	VDH deleted this section because it was inconsistent with title 32.1 of the Code and the APA.
210	210	Establishes timelines for requesting appeals.	VDH amended this section to make all the timelines equal for the sake of consistency.
220	220	Establishes the basic need for construction and operation permits and sets conditions for validity.	Stylistic amendments were made for readability and clarity. The construction permit is now valid for up to 60 months instead of 54 months so that it has the

			<p>same lifespan as the General Permit. Language was added to clarify that operation permits will remain valid as long as a valid maintenance contract remains in effect and the facility is otherwise in compliance. Previously, VDH had to take an action to renew an operation permit. This section was also amended to allow for the transfer of construction and operation permits under certain conditions.</p>
230	230	<p>The current regulation combined the process for applying for a General Permit with the process of applying for a construction permit. This section also outlined how fees and fee waivers are handled.</p>	<p>The application for a General Permit using the Combined Application was split from the application for a construction permit. This section now only addresses applying for the General Permit with the Combined Application which will clarify the process for the public. Modifications were made to recognize that either VDH or a consultant could conduct the site evaluation for a suitable discharge point. Additional submittal requirements for proposed discharges to wetlands were added. Additionally, all references to fees and fee waivers were struck as VDH has a separate regulation that deals with fees.</p>
240	240	<p>This section sets the minimum requirements for what must be submitted for receipt of a construction permit.</p>	<p>This section was clarified by adding in detail on what constitutes a proper construction permit submittal from the Sewage Handling and Disposal Regulations. Additional submittal requirements for proposed discharges to wetlands were added. Section references were corrected.</p>
250	250	<p>Describes that a construction permit shall be issued when this requirements of this section are met.</p>	<p>Section references were modified due to changes in the general approval process. Minor stylistic edits were made.</p>
260	260	<p>Sites with failing onsite sewage disposal systems that do not meet the siting requirements of this regulation may have those requirements waived.</p>	<p>The section was modified to reflect reference section changes. Adds a requirement that waivers must be requested in writing and that VDH will issue the waiver in writing.</p>
300	262	<p>Sets requirements for a contractor to submit a statement of completion at the end of construction.</p>	<p>This section was moved for clarity. It also added a requirement for an engineer's statement of completion and for the submittal of as-built drawings if any changes were made during construction. 262.B. incorporates old section 310 which cautions that a system cannot be put into operation except for the purposes of testing without an operation permit.</p>
None	264	None	<p>An operation and maintenance manual has been added for new systems being</p>

			constructed. This section outlines the basic information that is required. This was added to provide consistency between the AOSS regulations and these regulations.
320	266	Sets the standard for issuing the operation permit as receipt of the contractor's completion statement, maintenance/monitoring contract, and VDH inspection. Also addressed fees for inspections	The new section was relocated for clarity and includes the additional requirements of the operation and maintenance manual; the engineer's completion statement; and as-built drawings.
270	270	Sets the requirements for when a construction or operation permit can be denied.	VDH modified the section for compliance with APA, for changes to section references, and it recognizes the additional submittals for the operation permit noted in 266.
280	280	Sets standards for when a construction or operation permit can be suspended or revoked.	Changes were made to be consistent with the APA
290	290	Voidance of construction permits	Edits made to comply with APA. The new construction permit validity time of 60 months is recognized.
300		See discussion above under new section 266	300 Repealed
310	None	Requires VDH to inspect a system prior to issuing an operation permit.	This section was repealed as its components were rolled in 266 and 262.
320		See above under new section 266	320 Repealed
330	None	Sets conditions under which VDH may suspend an operation permit.	Repealed as VDH can revoke, but cannot suspend a permit.
340	None	Sets conditions under which VDH may reinstate an operation permit.	Repealed as VDH cannot reinstate an operation permit. VDH can only issue an operation permit.
350	None	Described a process for approval treatment units that included progressively moving a design through 3 levels of testing. Each level of testing required numerous system installations and took over 5 years to complete.	This section was repealed as VDH has not been implementing this process. Section 432 describes the new process for considering a system generally approved which is consistent with the AOSS regulations.
360	None	Registration requirements for a product design with VDH	Repealed. No longer utilized.
370	None	Described submission of plans for 3 types of treatment units.	Repealed as this section is not needed.
380	None	Describes how a product approval achieved under section 350 could be rescinded.	Repealed as this process is no longer utilized by VDH.
390	390	No changes	

400	400	Identified all weather streams, intermittent streams and dry ditches as appropriate discharge points and under what conditions.	Stylistic edits were made for clarity. The intermittent stream/dry ditch requirements were changed to eliminate the maximum slope requirement for the discharge channel, but added a requirement to protect the channel from erosion. Also it was recognized that engineered channels have been used to extend natural swales and drainage ways to improve the discharge channel. Wetlands have been added as a potential discharge point, but a wetlands delineation must be completed and submitted to confirm the presence of wetlands.
410	410	No changes	
420	420	Prohibited discharges within one mile upstream of a drinking water intake and designated swimming areas; set a public notice/comment procedure for VDH to prohibit discharges to certain stream segments; established setback distances to wells, cisterns, limestone outcrops, sinkholes, springs, proximity to other discharge points,	The section was modified for clarity to clearly identify the existing prohibitions; added an option for a VDH health director to increase the treatment level and reliability class if needed for public health protection; established setbacks for the treatment components (tanks, etc.) from wells and cisterns; establishes new setbacks for wetland discharges; adds a recognition that setback distances to other wells (i.e. gas, geothermal) will be established on a case by case basis; modifies the setbacks to sinkholes and limestone outcrops to be less stringent; clarifies the conditions under which the distance between discharges can be reduced for various categories of discharge points; and modified the distance from a Class IV well to the downstream channel of a discharge to be consistent with ClassIII C wells as the construction standards (and hence the risk of contamination) are the same.
430	430	Set the basic performance requirements equal to the General Permit.	VDH modified this section to recognize that the construction and operation standards in this regulation must be met and maintained.
None	432	None	This replaces old section 350 and represents the current VDH method for approving treatment unit technology. Additionally it recognizes that all of the discharging systems are composed of additional treatment components such as disinfection and post aeration. This section establishes how VDH will consider the whole 'system' generally approved.
None	434		A new concept of reliability was added to address implied levels of reliability for various discharge points that were found in old table 3.2

440	440	Special factors that affect design are discussed. Homes that have intermittent usage (<3 months) are prohibited from having a discharge permit. Other factors discussed include flow, organic loading, erosion, and restricted access.	VDH modified this section to remove the prohibition for a discharge permit on homes with intermittent/seasonal use. It now recognizes that those types of system can be successfully designed and operated if appropriate measures are taken. The specific note to record permits with conditional flows was deleted as now all permits will be recorded under section 266. Other minor clarifications were made.
450	450	Requires restricted access for dry ditches and intermittent stream discharge points with easements. Also sets treatment design requirements for these types of discharge points.	Restricted access and easement requirements were added for wetland discharge points. Table 3.2 was modified to reflect a performance standard for the treatment required rather than the prescriptive description that was provided before. Reliability classification (I or II) is being used along with TL-3 to attain a similar level of public health protection.
460	460	Set the design standards for chlorine disinfection and recognized that other methods may be used if approved by VDH.	Design standards from 9 VAC 25-790 were added to this section to incorporate the more complete design standards for chlorine disinfection, dechlorination, ultraviolet disinfection, post aeration, and post-filtration. Constructed wetlands requirements were adopted from GMP 18
470	470	Identifies numerous basic construction requirements for discharging systems	Stylistic edits were made; clarifications on the sampling port requirements; and clarifications that the sign to be posted at the discharge point must be permanent
480	480	Required the VDH to inspect the site and for the engineer to inspect and note any comments/concerns	Repealed as elements of this section were combined into 262 and 266
490	490	Required homeowners to sample treatment systems (up to quarterly) in excess of the General Permit requirements based on the classification of the system. Also provided for up to monthly visits with informal testing depending on the classification of the system. Allows homeowners to collect their own samples with approval from VDH.	Revised to reflect two categories of systems only: generally approved or not generally approved. If generally approved, then there is a startup sample. If that tests ok, then move to annual sampling with 2 per year maintenance visits at a minimum. If not generally approved, 4 quarterly samples are required to demonstrate the system can comply with the general permit. If ok, then reverts to same as generally approved. Informal tests (Table 3.3) have been modified to be more system specific and also reference the required operation and maintenance manual. Also clarified that when VDH inspects a system, they may or may not collect informal or formal samples. The waiver to allow homeowners to collect their own sample has been deleted. Existing waivers will be recognized, but no new waivers will be issued. This was originally initiated because of the lack of available operators,

			but that has changed through the years and with the addition of the AOSS operators to the allowed operator, this waiver is no longer needed.
500	500	Sets the standards for the maintenance contract and who can provide the maintenance which is set at a Class IV wastewater works operator only	The maintenance contract items were updated to reflect changes allowed through policy and eliminated the mandated 24 month contract period. VDH did not see the value in setting the contract period, but only specifies that a contract must be in effect. The individuals who can provide maintenance have been expanded to include any wastewater works operator (Class IV or higher) and AOSS operators.
510	510	Requires owners to submit the results of all testing and activities to VDH.	This was modified to require electronic reporting by the 15 th of the month following the month in which the activity occurred to be consistent with the AOSS regs.
520	520	Identifies that failure to conduct or report monitoring results can result in suspension or revocation of the operation permit.	VDH modified this section to remove suspension from the options and leave just revocation. It also states that VDH will notify DEQ of the revocation of the operation permit.

For new chapters, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements

Enter any other statement here