



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Mines, Minerals, and Energy
Virginia Administrative Code (VAC) citation	4 VAC 25-170
Regulation title	Geothermal Energy Regulations
Action title	Amendments regarding the regulation of geothermal energy
Date this document prepared	May 1, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) 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.

As a result of periodic review, the Department of Mines, Minerals and Energy is amending 4VAC25-170, Geothermal Energy Regulations. Section 4VAC25-170-10 will be amended to correct the current technical language referring to “geothermal resource”, which does not clarify that the regulation applies to non-residential use only. The amendment will clarify that the regulation does not apply to residential heat pumps, a common misconception.

Amendments to 4VAC25-170-30 and 4VAC25-170-40 are being made to bring consistency to data submission requirements for the Division of Gas & Oil. The use of latitude and longitude and the Virginia Coordinate System of 1927 have been replaced by the Virginia Coordinate System of 1983 in other Division of Gas & Oil regulations. Current industry practice is to use the more modern 1983 coordinate system for describing the locations of wells and core holes. Applicants for permits under this chapter must currently convert their coordinates back to the 1927 system, as required by the regulation, in order to submit them to the Department of Mines, Minerals and Energy’s Division of Gas & Oil. The amendment will allow applicants to use the updated 1983 coordinate system.

Section 4VAC25-170-40 is being amended to change the name of the “Virginia Soil and Water Conservation Board” to the “Virginia Department of Conservation & Recreation”. This change will

reflect the accuracy of the amended name for the state board statutorily responsible for Erosion and Sediment Control Regulation.

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 Department of Mines, Minerals and Energy (DMME) has authority to promulgate this regulation under authority found in § 45.1-161.3, Powers of the Department, and § 45.1-179.6, Duties and responsibilities of Department, and § 45.1-179.7, Additional powers of Department.

- Section 45.1-161.3 of the Code of Virginia empowers DMME, with the approval of the Director, to promulgate regulations necessary or incidental to the performance of duties or execution of powers under Title 45.1 of the Code of Virginia.
- Section 45.1-179.6 of the Code of Virginia gives DMME jurisdiction and authority necessary to enforce the provisions of this chapter and shall have the power and authority to make and enforce rules, regulations, and orders
- Section 45.1-179.7 of the Code of Virginia empowers DMME to promulgate such rules and regulations as may be necessary to provide for geothermal drilling and the exploration and development of geothermal resources in the Commonwealth

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 Department of Mines, Minerals and Energy has determined the proposed regulatory actions to Sections 4VAC25-170-30 and 4VAC25-170-40 are essential to protect the welfare of citizens by reducing workload and increasing efficiency for applicants.

The proposed regulatory actions to Sections to 4VAC25-170-10 and 4VAC25-170-40 are also essential to protect the health and welfare of citizens by providing clear language that is consistent with state law and regulation.

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 Department of Mines, Minerals and Energy is proposing amendments to sections of 4VAC25-170, Geothermal Energy Regulations as described in the following table.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
4VAC25-170-10	N/A	The current technical language referring to “geothermal resource” does not clarify that the regulation applies to non-residential use only.	Add clarification to the definition of "geothermal resource" to indicate that the regulation is not for use with residential heat pumps by adding “for non-residential use” to the end of the definition. <i>This technical correction will clarify application to non-residential use only..</i>
4VAC25-170-30 (B) (1)	N/A	Use of latitude and longitude (the Virginia Coordinate System of 1927).	Change requirements for latitude and longitude to “Virginia Coordinate System of 1983”. <i>Consistency with current standards of technology.</i>
4VAC25-170-40 (1) (a)	N/A	Use of latitude and longitude (the Virginia Coordinate System of 1927).	Change requirements for latitude and longitude to “Virginia Coordinate System of 1983”. <i>Consistency with current standards of technology.</i>
4VAC25-170-40 (1) (c)	N/A	The method of meeting the guidelines of the Erosion and Sediment Control Regulations as adopted by the Virginia Soil and Water Conservation Board.	Change the “Virginia Soil and Water Conservation Board” to “Virginia Department of Conservation & Recreation”. <i>Accuracy of state board statutorily responsible for setting Erosion and Sediment Control Regulations.</i>

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 other alternative would meet the essential purposes of the proposed actions.

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 **Tabitha Hibbitts Peace, Policy Analyst, P.O. Drawer 900, Big Stone Gap, VA 24219, phone 276-523-8212, fax 276-523-8148, or Tabitha.Peace@dmme.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.

In addition, the agency is seeking information on (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. }

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 agency is not using a participatory approach in the development of the proposal because the amendments are expected to be non-controversial.

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 actions will have no impact on the family or family stability.

Periodic review - Public comment

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section.

If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 36, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Commenter	Comment	Agency response

No public comment was received following the January 7, 2008 publication of the Notice of Periodic Review.

Periodic review - Discussion

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section.

If this NOIRA is the result of a periodic review or if the periodic review is to be performed in combination with the NOIRA, please include a discussion of the agency's consideration of: (1) the continued need for the rule; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The Department of Mines, Minerals and Energy contends there is a continued need for the Virginia Geothermal Regulation, as the regulation is required by state law. The regulation does not overlap, duplicate, or conflict with any federal or state law or regulation. The regulation has never been evaluated by periodic review since its inception in 1984, and no activity has ever triggered its enforcement; however, renewed interest in alternative energy sources such as geothermal energy has increased the need for this regulation.

DMME's position is that the regulation should be amended, consistent with the stated objectives of applicable law, and that the amendments will have a positive economic impact on small business by reducing workload and increasing efficiency for applicants.