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Periodic Review Report of Findings

Agency name	Department of Environmental Quality
Virginia Administrative Code (VAC) citation	9VAC15-20
Regulation title	Guidelines for the Preparation of Environmental Impact Assessments for Oil or Gas Well Drilling Operations in Tidewater Virginia
Date this document prepared	July 8, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

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

DEQ- Department of Environmental Quality
DMME- Department of Mines, Minerals, and Energy
EIA - Environmental Impact Assessment

Legal Basis

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

Section 62.1-195.1 of the Code of Virginia requires the Department of Environmental Quality to develop criteria and procedures to assure the orderly preparation and evaluation of environmental impact assessments (EIA) for oil or gas well drilling activities proposed to be conducted in Tidewater Virginia. The Director of the Department of Environmental Quality adopted this regulation in response to this requirement.

Alternatives

Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

Section 62.1-195.1 of the Code of Virginia requires the Department of Environmental Quality to develop these criteria and procedures. There is no viable alternative to the adoption of these criteria and procedures. These criteria and procedures assist with the preparation and review of EIA for oil and gas well drilling activities in Tidewater Virginia.

Public Comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

An advisory group was not formed to assist in the periodic review.

Commenter	Comment	Agency response
Keith Richardson	The Southside Connector Distribution Pipeline project has undergone more safety reviews and inspections than any other project in the history of Virginia Natural Gas (VNG). Three courts (Norfolk and Chesapeake Circuit Court and the Virginia State Corporation Commission) have agreed that VNG has the authority to construct the pipeline Virginia DEQ has barely a mention on the above pipeline. What is the environmental impact of this pipeline?	The project referenced by the commenter is a natural gas pipeline. This regulation is related to the requirement for an EIA to be prepared as part of the permit application for an oil or gas production well to be drilled in Tidewater Virginia. The comment received is outside of the scope of the regulation undergoing periodic review.
Southern Environmental Law Center (SELC) ¹	If DEQ considers amending the regulation, it should incorporate the requirements found in the Memorandum of Agreement between the Department of Mines, Minerals, and Energy and DEQ into the regulations.	The Memorandum of Agreement (MOA) between the Department of Mines, Minerals and Energy and DEQ establishes the coordination process for projects that are being reviewed by both agencies. The MOA does not contain any technical criteria for the content of an EIA. The MOA contains commitments between the agencies to collaborate on projects and is not directly related to the preparation of an EIA. No changes are being made to the regulation in response to this comment.
Southern Environmental Law Center ¹	The regulation should be retained and strengthened as necessary to protect human health and the environment.	DEQ agrees the regulation should be retained.
Southern Environmental Law Center ¹	SELC submitted documentation previously submitted to Richmond County in support of a change to the county's zoning ordinance to prohibit fracking within the county. SELC raised concerns with impacts to the environment, including quality and quantity of groundwater and surface water, and on public health from oil and gas drilling in the Tidewater Region.	This regulation provides guidelines concerning the content of the EIA for oil and gas well drilling activities in Tidewater Virginia. The EIA is required to address potential impacts to the environment including impacts to groundwater and surface water. These potential impacts are reviewed by DEQ prior to DMME issuing a permit for an oil or gas well to be drilled in Tidewater Virginia.

¹ Southern Environmental Law Center submitted comments on behalf of itself and the following organizations: Citizens for a Fort Monroe National Park; Clean Water Action; FracTracker Alliance; Friends of Accotink Creek; Friends of the Rappahannock; Potomac Riverkeeper Network; Rachel Carson

Council; Rappahannock League for Environmental Protection; Virginia Chapter of the Sierra Club; Virginia Conservation Network; Virginia League of Conservation Voters; Virginia Wilderness Committee; Waterkeepers Chesapeake; and Wild Virginia.

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation is necessary for the protection of public health, safety and welfare and is clearly written and easily understandable. The regulation details the information to be submitted as part of the EIA.

Decision

Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The regulation continues to be needed and will be retained without changes.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) 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, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

This regulation continues to be needed. The regulation identifies information to be submitted as part of the EIA prepared for oil and gas drilling projects in Tidewater Virginia. This regulation assists the applicant with preparing an EIA that contains all of the required information to be reviewed.

SELC submitted comments in support of retaining the regulation and encouraged DEQ to further strengthen the regulation to protect the environment and public health, safety and welfare. The agency is retaining the regulation without changes.

The regulation details specific information to be included in the EIA. Some of this information is complex and technical in nature; however, entities developing and reviewing the EIA are familiar with the technical information required by the regulation.

This regulation is a state only regulation and there is no equivalent federal regulation.

This regulation was last amended in 2014 to update references to statutes and regulations. The requirement for the EIA to be submitted for these projects is a state mandate. The components of the EIA are required to evaluate the impact these activities have on the environment and are equally applicable to small businesses.

Family Impact

Please assess the potential impact of the regulation's impact on the institution of the family and family stability.

This regulation does not impact the institution of the family or family structure.