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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-32
VAC Chapter title(s)	Virginia Pollution Abatement (VPA) Permit Regulation
Action title	Implementation of Chapter 209 of the 2024 Acts of Assembly (HB 870)
Date this document prepared	July 29, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Virginia Pollution Abatement (VPA) Permit Regulation, 9VAC25-32, prescribes conditions for the proper treatment, stabilization, storage, and use of biosolids (treated sewage sludge), that are or will be land applied, marketed, and distributed. Chapter 209 of the 2024 Acts of Assembly (HB 870) amended § 62.1-44.19:3 of the Code of Virginia by adding a requirement for the State Water Control Board (Board) to include the following in its regulations for biosolids that are permitted for land application, marketing, or distribution: "Procedures for addressing administrative, staging, signage, and additional on-site and alternative storage site requirements when routine and on-site storage facility capacity and holding times are anticipated to be exceeded for the purpose of protecting against the release of sewage sludge into state waters, and to account for increased intensity, frequency, and duration of storm events."

This regulatory action will establish standards for additional on-site and alternative storage site requirements when routine and on-site storage facility capacity and holding times are anticipated to be exceeded. The standards will account for increased intensity, frequency, and duration of storm events and continue to protect against the release of biosolids (treated sewage sludge) into state waters.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

Board: State Water Control Board

Biosolids: a sewage sludge that has received an established treatment and is managed in a manner to meet the required pathogen control and vector attraction reduction, and contains concentrations of regulated pollutants below the ceiling limits established in 40 CFR Part 503 and 9VAC25-32-356, such that it meets the standards established for use of biosolids for land application, marketing, or distribution in accordance with the VPA Permit Regulation. 9VAC25-32-10.

DCR: Virginia Department of Conservation and Recreation

DEQ: Virginia Department of Environmental Quality

NOIRA: Notice of Intended Regulatory Action

Sewage sludge: any solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works. 9VAC25-32-10.

VAC: Virginia Administrative Code

VDH: Virginia Department of Health

VPA: Virginia Pollution Abatement

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The mandate for this regulatory change is Chapter 209 of the 2024 Virginia Acts of Assembly (HB 870), approved March 28, 2024. The directive from the General Assembly amended § 62.1-44.19:3 of the Code of Virginia by adding a requirement for the Board to include the following in its regulations for biosolids that are permitted for land application, marketing, or distribution: "Procedures for addressing administrative, staging, signage, and additional on-site and alternative storage site requirements when routine and on-site storage facility capacity and holding times are anticipated to be exceeded for the purpose of protecting against the release of sewage sludge into state waters, and to account for increased intensity, frequency, and duration of storm events."

Legal Basis

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

The basis for this regulation is Articles 2; 3, 4 and 5 of Chapter 3.1 of the Code of Virginia (§ 62.1-44.2 et seq of the Code of Virginia). Specifically, § 62.1-44.15(5) authorizes the Board to issue, revoke, or amend certificates and certificates and land-disturbing permits under prescribed conditions for the discharge of treated sewage, stormwater, industrial wastes and other waste into or adjacent to state waters and § 62.1-44.15(7) authorizes the Board to adopt rules governing the procedures of the Board with respect to the issuance of permits. Furthermore, § 62.1-44.15(10) authorizes the Board to adopt such regulations as it deems necessary to enforce the general water quality management program and § 62.1-44.15(14) authorizes the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes. § 62.1-44.16 specifies the Board's authority to regulate discharges of industrial wastes; § 92.1-44.19:3 requires the Board to include in regulation certain requirements pertaining to the land application of biosolids; § 62.1-44.20 provides that agents of the Board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations; and § 62.1-44.21 authorizes the Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

Extended periods of precipitation or drought affect the timing of land-application of biosolids (treated sewage sludge). During 2018-2019, a record-year for precipitation in some parts of the Commonwealth, many biosolids storage facilities reached or exceeded their capacity. This regulatory action is needed to establish procedures for addressing administrative, staging, signage, and additional on-site and alternative storage site requirements for biosolids when extreme weather conditions, over an extended period of time, affect routine and on-site storage facility capacity and holding times. Establishing regulatory requirements helps to prevent and protect against the release of biosolids into state waters and accounts for increased intensity, frequency, and duration of storm events.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

This regulatory amendment will establish procedures for addressing administrative, staging, signage, and additional on-site and alternative storage site requirements when routine and on-site storage facility capacity and holding times are anticipated to be exceeded. Typically, entities have sufficient capacity to store biosolids material for several months, allowing end-users to land-apply during optimal times for nutrient application and uptake. Extended periods of precipitation or drought affect the timing of land-application. During 2018-2019, a record-year for precipitation in some parts of the Commonwealth, many biosolids storage facilities reached or exceeded their capacity. At the time, owners of those facilities applied to DEQ on a case-by-case basis for variances to their permits to store and manage biosolids that could not be land-applied or stored in the usual manner. Processing variances does not provide a timely solution for acute weather-related storage issues. DEQ also has the option to exercise enforcement discretion based on weather related circumstances and where non-compliance would pose minimal risk to the environment and human health. DEQ could initiate enforcement action where non-compliance with storage requirements would result in a discharge to state waters. However, neither variances nor enforcement discretion provide regulatory certainty for the permittees or the public. The amendments to

the VPA Permit Regulation will provide permittees a way to plan in advance with regulatory certainty for alternative storage and handling solutions when extreme weather conditions result in long periods of time when biosolids cannot be land-applied, authorizing management actions that protect human health and the environment while providing more flexibility with storage and land application when the amount of biosolids exceeds normal storage facility capacity. This will reduce or eliminate the need for permittees to apply for a variance from the regulation and allow permittees to have an approved alternative that can be quickly implemented in the event acute weather-related storage issues arise.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

Alternatives to the regulatory change were not considered because Chapter 209 of the 2024 Virginia Acts of Assembly (HB 870) mandates the development of regulatory requirements.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board is providing an opportunity for comments on this regulatory proposal through a public comment forum, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation. The Board 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) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or less costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to Jeanette Ruiz, Regulatory and Guidance Analyst, DEQ Office of Water Permitting, P.O. Box 1105, Richmond, Virginia 23218, 804-494-9636, and

jeanette.ruiz@deg.virginia.gov. To be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Public Hearing at Proposed Stage

A public hearing will not be held following the publication of the proposed stage of this regulatory action unless requests for a public hearing are received during the NOIRA public comment period from at least 25 persons.

Regulatory Advisory Panel

A regulatory advisory panel will be involved in the development of the proposed regulation.

The Board is using a panel to develop a proposal. Persons interested in assisting in the development of a proposed regulation should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and the organization they represent (if any). The primary function of the panel is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the panel will be sent to all applicants.