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Regulatory
Town Hall

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Proposed Regulation Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation	12 VAC 5 -590-505
Regulation title	Waterworks Regulations
Action title	Amendment Requiring Development of Emergency Management Plans for Community Waterworks During Extended Power Outages.
Document preparation date	July 8, 2005

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*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

These regulations will replace emergency regulations that became effective February 10, 2005. The emergency regulations and proposed regulations require community waterworks to develop and maintain an emergency management plan to provide pure water during extended power outages of no less than five days. The plan will address procedures for obtaining and distributing potable water, notification procedures to public officials, customers and the media, emergency disinfection procedures and telephone numbers for state regulatory personnel, waterworks personnel, and energy suppliers to the waterworks.

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.

Section 32.1-12 of the Code of Virginia provides that the State Board of Health “may...promulgate...such regulations...as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by it, the Commissioner, or the Department.”

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 and the problems the proposal is intended to solve.

In preparation for another event such as was seen during the aftermath of Hurricane Isabel, this regulation will better prepare the community waterworks in Virginia to respond to an extended power outage. Although some community waterworks have emergency standby power, there is no permanent requirement for community waterworks to develop and maintain an emergency management plan to verify they are prepared for an extended power outage.

Substance

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

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
None	12VAC 5-590-505	None	This amendment will require owners of community waterworks to develop and maintain an emergency management plan to better prepare these waterworks for an extended power outage, in accordance with the revisions in § 32.1-170 of the <u>Code of Virginia</u> .

Issues

The primary advantage of the proposed regulatory action is to better protect public health by preparing the community waterworks owners in Virginia to respond to extended power outages, which will decrease the likelihood of issuing boil water advisories or other emergency declarations involving the state’s drinking water. The proposed regulatory action will also improve the Virginia Department of Health and the Commonwealth’s ability to monitor and manage extended power outage events, which in turn will allow for better allocation of resources. Additionally, the proposed regulation will facilitate better communication between community waterworks owners and public and government officials in times of emergency to help ensure safe drinking water.

The proposed regulatory action poses no disadvantages to the public or the Commonwealth.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	Virginia Department of Health efforts to implement the proposed regulation will cost approximately \$10,000 for internal work group meetings and regional public meetings with stakeholders to plan and implement the regulatory action.
Projected cost of the regulation on localities	Projected cost of the proposed regulation on localities is minimal.
Description of the individuals, businesses or other entities likely to be affected by the regulation	Community waterworks owners, which are small businesses, will be affected by the proposed regulation.
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, 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.	There are approximately 1300 community waterworks (small businesses) in the Commonwealth that will be affected.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	The projected cost of the regulation to the community waterworks (small business) owners is approximately eight hours of work per year, consisting of telephone calls, information gathering, and updating records. The monetary cost would be minimal.

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.

No viable alternatives are available. This regulatory action provides for enhanced public health protection and economic stability during natural and manmade disasters.

Public comment

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

Commenter	Comment	Agency response
Skyline Water Company, Inc.	The proposed regulation should include emergency generators as a long term solution.	The proposed regulation does not require a specific solution, such as generators because the cost may be prohibitive for some waterworks. However, the guidance document developed by the Virginia Department of Health to implement the proposed regulation gives each waterworks owner the option of including a generator in its emergency management plan.
City of Portsmouth Waterworks	The deadlines given in the Emergency Regulations did not give the City of Portsmouth enough time to develop an adequate emergency management plan, so they asked for an extension.	The Virginia Department of Health responded that each community waterworks owner should do its best to meet the deadline and that the Agency would work with each waterworks owner towards this goal. The deadlines have been removed from the proposed regulations.
Newport News Waterworks	Requested that the Virginia Department of Health establish a technical advisory group of stakeholders to review and comment on the emergency regulations before they are made permanent.	The Waterworks Advisory Committee to the State Health Commissioner, representing large and small community waterworks throughout the Commonwealth, collaborated with the Virginia Department of Health to draft the proposed regulation.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

This emergency regulatory action will have no anticipated or associated impacts on family rights to educate and supervise children, nor will it discourage economic self-sufficiency and family responsibilities and commitments or decrease disposable family income. On the contrary, the provision of safe drinking water to the home will increase economic self-sufficiency by making this resource readily available and will decrease the number of illnesses which lead to lost productivity and personal income.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

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

Changes Made Since the Publication of the Emergency Regulation:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
Section A	Same	"Each community waterworks shall develop and maintain an Emergency Management Plan for extended power outages."	"Each community waterworks <u>including consecutive waterworks</u> shall develop and maintain an Emergency Management Plan for extended power outages." The proposed regulation includes consecutive waterworks (those that purchase or receive water from another community waterworks for resale) because consecutive waterworks may independently need to provide separate equipment, such as pumps and/or chemical feeders, which require electricity.
Section C	Same	"Each community waterworks shall certify to the appropriate field office of the Office of Drinking Water in the Department of Health that the waterworks has completed such plan."	"Each community waterworks shall certify <u>in writing</u> to the appropriate field office of the Office of Drinking Water in the Department of Health that the waterworks has completed such plan." Requiring written certification allows VDH to maintain a written record of the certification for compliance tracking reporting purposes.
Section D.4	Same	"Notification procedures and example notices to the public and media (radio stations, etc.) including conservation and boil water advisories."	"Notification procedures and example notices to the public and media (<u>local radio stations, television stations, local newspapers, etc.</u>) including conservation and boil water advisories." The proposed regulation clarifies what is meant by the word "media" to ensure notification to the targeted local audience.
Section E	Deleted	Gives the effective date for compliance of the Emergency Regulation by waterworks serving a population of 3,300 or	The proposed regulation omits any reference to effective dates for compliance because VDH intends to work with the waterworks to establish an acceptable schedule.

		greater by April 15, 2005 and September 5, 2005 for waterworks serving a population under 3,300.	
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