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Fast-Track Regulation Agency Background Document

Agency name	Department of Mines, Minerals and Energy
Virginia Administrative Code (VAC) citation(s)	4 VAC 25-160
Regulation title(s)	Virginia Gas and Oil Board Regulations
Action title	Clarifying amendments as the result of periodic review
Date this document prepared	March 21, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

As a result of periodic review, the Department of Mines, Minerals and Energy (DMME) and the Virginia Gas and Oil Board (VGOB) are amending 4VAC25-160, Virginia Gas and Oil Board Regulations. The amendments require electronic submissions and filings to the VGOB and DMME. The amendments allow for the use of electronic mail, major commercial carriers, or certified mail for notifying certain interest owners regarding hearings for an exception to statewide well spacing requirements. The amendments also provide for notice of hearings appearing in the newspaper to require a map or a description of the location rather than requiring both. The amendments contain clarifying language to replace the general term "evidence" with an affidavit to be submitted to the VGOB to release a previous unit operator from responsibility as the unit operator.

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.

DGO	Division of Gas and Oil
DMME	Department of Mines, Minerals and Energy
VGOB	Virginia Gas and Oil Board

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On March 21, 2017, the Virginia Gas and Oil Board voted to adopt the amendments to the Virginia Gas and Oil Board Regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

DMME has the authority to promulgate regulations generally under § [45.1-161.3](#) The VGOB has the authority to promulgate this regulation under § [45.1-361.15](#) of the Code of Virginia. The Board is not mandated to promulgate this regulation, but it is necessary to ensure the Board can meet its mandated authority to promote the safe and efficient exploration for, development, production, and utilization of gas and oil resources and protect the correlative rights of resource owners.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this regulatory action is to require electronic submissions and filings, eliminating unnecessary paper submissions, to remove unnecessary requirements, and to clarify ambiguous language throughout the regulation. As business practices continue to evolve with technology, it is important to ensure that the necessary regulation is as up to date as possible.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

This rulemaking is expected to be noncontroversial as it does not represent a substantive change to the regulation. The amendments are to clarify language, remove unnecessary requirements, and enhance the efficiency of notifications, submissions, and filings.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

The amendments will ensure the language of the regulation reflects current business practices for DMME and the VGOB. The amendments specifically provide for electronic submission of information, alternative methods for notifying property owners, more efficient public notice requirements, and clarifying language for providing evidence of record transfer between new and previous unit owners.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage to the public and regulated entities will be a clearer, more updated regulation, which reflects current business practices and regulatory needs. There are no disadvantages.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need 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 applicable 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.

No locality would be disproportionately affected.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

The amended regulation better reflects current businesses practices, allowing regulated entities to use the most efficient means possible when submitting or filing information and removing unnecessary recordkeeping requirements. It is anticipated there will be no adverse impact on small businesses or any need to exempt them.

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 requirement creates the anticipated economic impact.

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	Any costs of implementation, which are expected to be minimal, would be absorbed by DMME.
Projected cost of the new regulations or changes to existing regulations on localities.	\$0. The minor changes to this regulation will not affect localities.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	Individuals, businesses, or other entities in or doing business with the Gas and Oil industry in Virginia.
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: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	About 20 natural gas operators and approximately 200 contractors and subcontractors may be affected by these regulations. It is believed that the majority of the contractors and subcontractors would meet the definition of a small business.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including:	Projected costs are expected to be minimal. The requirements should impose no additional costs on permittees. Additional administrative costs are also anticipated to be minimal as the proposed application and reporting requirements are

<p>a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) 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>contained within the existing electronic permitting and reporting systems. The notification and recordkeeping provisions ease or clarify current regulatory requirements.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The proposed regulation allows for electronic submission, eliminate unnecessary paper submissions, and clarify ambiguous language throughout the regulation.</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.

One alternative is to keep the current, outdated language in the regulation. This would result in less efficient, more burdensome practices that do not reflect existing technology.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. 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 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please 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.

DMME received no public comments following publication of the Notice of Periodic Review.

This regulation is necessary for the protection of public health, safety, and welfare. The regulation is vital to ensuring the safety and welfare in the development of gas and oil resources in the Commonwealth. The regulation is clearly written and easily understandable.

Family impact

Please assess the impact of this 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.

This regulation will have no impact on the institution of the family or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
4VAC25-160-30		Paper copies of certain information including applications and exhibits in support of applications to the Gas and Oil Board must be filed.	The amendment requires electronic submission of information replacing paper copies.
4VAC25-160-40		Requires applicants for a hearing to establish an exception to statewide spacing to notify by certified mail all gas, oil, coal or mineral owners having an interest underlying particular tracts.	The amendment allows for notification to be made by electronic mail or another commercial carrier, with return receipt requested, or by the current method of certified mail.
4VAC25-160-40		Requires a notice of hearing for unknown or unfound individuals to be published in a newspaper of general circulation including, among other information, a map	The amendment requires a notice including a map or a description of the location but not both, as under the current regulations.

		showing the general location of the area that would be affected by the proposed action and a description that clearly describes the location or boundaries of the area that would be affected by the proposed action sufficient to enable local residents to identify the area	
4VAC25-160-110		Requires evidence that the records of a previous unit operator have been received by the new unit operator.	Clarifies the language by requiring an affidavit and removing the general term "evidence."