



Virginia
Regulatory
Town Hall

Emergency Regulation Agency Background Document

Agency Name:	Virginia Department of Environmental Quality
VAC Chapter Number:	9 VAC 25-650-10 et seq.
Regulation Title:	Closure Plans and Demonstration of Financial Capability
Action Title:	Proposed Emergency Regulation
Date:	September 1, 2000

Emergency Preamble

Emergency Regulation is necessary because Section 62.1-44.18:3 requires that the State Water Control Board promulgate regulations necessary to carry out the provisions of the act to be effective within 280 days of its enactment. The regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).

The emergency regulation will require that persons operating a privately owned sewerage system or sewerage treatment works that discharges more than 1,000 gallons per day and less than 40,000 gallons per day obtain a Virginia Pollution Discharge Elimination System Permit. The regulation will require any owner of such a facility to file with the State Water Control Board a plan to abate, control, prevent, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if such facility ceases operations. The regulation will also require the plan to include a demonstration of financial capability to implement the plan.

The Department of Environmental Quality intends to promulgate a permanent regulation to replace the proposed emergency regulation.

Basis

The basis for the proposed regulation is Section 62.1-44.18:3 of the Code of Virginia. Under Section 62.1-44.18:3, the promulgation of a regulation is mandatory. “The Department of Environmental Quality shall promulgate regulations necessary to carry out the provisions of this section.” (Cite Section 62.1-44.18:3(B)). The regulation is to require a Virginia Pollution Discharge Elimination System (VPDES) permit, closure plan and demonstration of financial capability to implement the plan for privately owned sewerage treatment systems and sewerage treatment works that discharge more than 1,000 gallons per day and less than 40,000 gallons per day.

The office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that the regulation comports with applicable state and/or federal law.

Substance

This is a new regulation. Therefore, all provisions thereof are new.

Ceasing operation of a sewage treatment facility that discharges to State waters creates the concern that substantial and imminent threat to public health or the environment is caused. When a sewage treatment facility is privately owned, there exists the threat of cessation of operations at the facility resulting from abandonment such that it would be reasonable to expect that operation at the facility will not be resumed by the owner. When such a facility treats domestic waste generated by private residences, abatement of flow is often impractical or impossible, as this may require the condemnation of property and eviction of homeowners or residents. Therefore, untreated sewage may be directly discharged to State waters, resulting in a substantial threat to public health or the environment. To protect public health and the environment, it has become necessary to continue operation of such facilities and/or connect to a publicly owned sewage treatment works using public funds.

To ensure there is a plan in place for continued operation in the event the owner of a privately owned sewage treatment plant ceases operation of the facility and to reduce the potential for continued operation of such system using public funds, the State Water Control Board has determined that closure plans and demonstration of financial capability to implement the plans are appropriate.

The Department of Environmental Quality intends to promulgate a permanent regulation to replace the proposed emergency regulation. Potential issues that may need to be addressed as a permanent final regulation is developed include the following:

- 1) Section 62.1-44.15:1.1 of the Code of Virginia has identical requirements as Section 62.1-44.18:3 regarding closure plans and demonstration of financial capability. Therefore, the final regulation is anticipated to incorporate the requirements of this section. However, Section 62.1-44.18:3, under which this emergency regulation is being promulgated, is

very specific as to the population of facilities to which the law applies. Section 62.1-44.15:1.1 is not specific at all in this regard. The issue is therefore to what facilities other than as specified in Section 62.1-44.18:3 the regulation will apply.

- 2) The instruments by which the State Water Control Board can require closure plans and demonstration of financial assurance differ under Section 62.1-44.15:1.1 and Section 62.1-44.18:3 of the Code of Virginia. Section 62.1-44.15:1.1 limits the Board to the issuance of special orders in compliance with the Administrative Process Act, whereas Section 62.1-44.18:3 does not. This issue is that if the population of facilities to which the regulation applies is expanded beyond those specified in Section 62.1-44.18:3, this disparity will need to be addressed in the regulation.

Alternatives

1. No Action Alternative

This alternative is not recommended. Section 62.1-44.18:3 of the Code of Virginia mandates that the Department of Environmental Quality promulgate regulations necessary to carry out the provisions of the section.

2. In accordance with Section 62.1-44.15:1.1 of the Code of Virginia, expand the population of facilities to which the regulation applies.

This alternative is not recommended. Because this regulation is being developed as an emergency regulation pursuant to the requirements of Section 62.1-44.18:3 of the Code of Virginia, its scope must be limited to the requirements of that section of the Code. This alternative will be considered in developing the final regulation.

3. Promulgate emergency regulation in strict accordance with Section 62.1-44.18:3 of the Code of Virginia

This alternative is recommended. Section 62.1-44.18:3 of the Code of Virginia specifically requires submittal of a closure plan and demonstration of financial capability to implement the plan, and is specific as to the population of facilities to which the requirements apply. Because the regulation is being promulgated as an emergency regulation, consideration of other sections of the Code of Virginia pertaining to financial assurance is not possible.

Family Impact Statement

The Department of Environmental Quality has considered the effects of this proposed regulation on the institution of family and family stability including the extent to what 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.

Because this regulation will increase the cost associated with owning and operating a privately owned sewerage or sewage treatment works, it is anticipated that owners of such facilities will attempt to recoup this cost by increasing connection and user fees charged to customers served by the facilities. Therefore, disposable family income is anticipated to be negatively impacted for those families that utilize the services of facilities affected by the regulation.