



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Virginia Department of Health
VAC Chapter Number:	12 VAC 5-585
Regulation Title:	Biosolids Use Regulations
Action Title:	2002 Revisions to the Biosolids Use Regulations
Date:	April 8, 2002

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The Virginia Department of Health received a petition for rulemaking from specific regulated entities, pursuant to Section 2.2-4007 (A) of the Virginia Code, requesting that the Biosolids Use Regulations be amended to address certain issues raised by various local governments and to set forth consistent and uniform requirements relating to the application of biosolids onto approved lands in Virginia. In response, the Department of Health brought the petition before the State Board of Health in April 2002 for consideration; the Board authorized the Department to initiate the rulemaking process.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

The Biosolids Use Regulations (12 VAC 5-585) were adopted by the Board of Health in 1995, pursuant to Section 32.1-164.5 of the Virginia Code and in accordance with the Virginia Administrative Process Act (APA), Section 2.2-4000 et seq. The Biosolids Use Regulations were subsequently revised, effective on October 15, 1997. Section 2.2-4007 (A) of the Code provides that any person may petition an agency to amend an existing regulation.

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

The Petition for Rulemaking was submitted by Synagro WWT, Inc., Recyc Systems, Inc., and Nutri-Blend Inc., corporations that have been issued permits for land application of biosolids in various Virginia counties, through the Biosolids Use Regulations (12 VAC 5-585). The petition for rulemaking requests that the Biosolids Use Regulations be amended with respect to the following requirements:

1. Posting of informational signs at permitted sites prior to and during land application of biosolids. Specifying sign dimensions, informational content and location;
2. Evidence of financial responsibility (such as liability insurance or other financial resources) in a determined amount, provided by permit applicants and maintained by permitted entities, established for the purpose of compensating third parties for personal injury or property damage, and removing or remediating any established environmental contamination, resulting from the land application of biosolids;
3. Notification of local governments prior to the land application of biosolids at specific sites. The contents and timing of such notices is to be specified;
4. Development and implementation of spill prevention and response plans by permitted entities. Such plans are to also address the tracking of residues on State Roads by biosolids transport vehicles; and
5. Methods for communicating information on complaints and reported incidents related to or arising from the land application of biosolids.

The Department of Health agrees that such revisions would improve the state-wide program by which biosolids are applied onto approved lands in Virginia. The requested amendments to the Biosolids Use Regulations will involve the following specific sections of the regulations:

1. 12 VAC 5-585-310
2. 12 VAC 5-585-460
3. 12 VAC 5-585-480
4. 12 VAC 5-585-490

These intended revisions will be designed to provide a consistent and uniform set of state requirements that will address a number of issues with which local governments must routinely contend. It is anticipated that the development of state requirements will eliminate the need to develop non-uniform local requirements in these areas of concern and prevent extended litigation, brought by permitted entities, concerning restrictive local government ordinances.

The intended revisions have been discussed by the regulations advisory committee established by the Biosolids Use Regulations. This committee will assist the Virginia Department of Health in the development of the revisions to the Biosolids Use Regulations.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

The Department has several years' experience with administering the biosolids program and the attendant regulations. This experience strongly suggests the need for improving the program as outlined above. No alternative to amending the regulations could accomplish the purpose of the intended regulatory action.

Failure to provide specific State requirements as requested will likely result in local adoption of ordinances with varying non-uniform requirements, that could have significant financial impacts on the regulated entities. Court challenges are likely to result from inconsistent and overly restrictive local ordinances, leading to expensive litigation. Although additional requests for revisions to the Biosolids Use Regulations have been submitted by local governments and private individuals, the process of revising the the Biosolids Use Regulations, as suggested by the entities listed above, will improve the program and may obviate the need for additional revisions.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the proposed 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.

The proposed regulatory action will have no direct or anticipated impacts on family rights to educate and supervise children, neither will it discourage economic self-sufficiency and family responsibilities and commitments, nor will it decrease disposable family income.