



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation	12 VAC 5 - 585
Regulation title	Biosolids Use Regulations
Action title	Permit Fee Amendment
Date this document prepared	5/30/06

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*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Biosolids Use Regulations (12 VAC 5-585) are to be amended to provide the Virginia Department of Health (VDH) with the authority to collect fees from all applicants for a permit, permit modification, or permit reissuance, for the land application, distribution or marketing of treated sewage sludge (biosolids) in accordance with the regulations.

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., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

House Bill 1134 (2006) amended § [32.1-164.5](#) of the Code of Virginia (Chapter 353), establishing a Sludge Management Permit Fee Fund (available electronically at: <http://leg1.state.va.us/cgi-bin/legp504.exe?061+ful+CHAP0353>). The legislation requires that the State Board of Health adopt regulations prescribing a fee to be collected from all permit holders and persons applying for permits and permit modifications pursuant to the

regulations. The fee for the initial issuance of a permit shall be \$5,000. The fee for the reissuance, amendment or modification of a permit for an existing site shall not exceed \$1,000 and shall be charged only for permit actions initiated by the permit holder. Fees collected under the regulations shall be exempt from statewide indirect costs charged and collected by the Department of Accounts and shall not supplant or reduce the general fund appropriation to VDH.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The Biosolids Use Regulations (Regulations) provide the means to protect public health from improper and unregulated disposal of sewage sludge. However, individuals have expressed opposition to the land application of biosolids and have insisted that land application operations on permitted sites are not being adequately evaluated and supervised. This amendment to the Regulations is designed to provide a state requirement for permit fees that will add **additional** resources to the VDH biosolids program to support permitting and surveillance of land application of biosolids. Thus, it is anticipated that the development of permit fee requirements will help improve the credibility of the VDH biosolids program.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

Section 130 of the Regulations is to be amended to clarify that permit reissuance will include all sites approved for land application under the issued permit. A new section 135 will be added through this amendment to require that applicants must pay a fee of \$5,000.00 for a new permit that includes 2500 acres or less, of specific land application sites and up to \$1,000.00 for subsequent modifications, or reissuance of a permit, for 2500 acres or less. Exemptions to the fee are to be provided for permit modifications initiated by VDH and those modifications involving the addition of only new approved sources of biosolids.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

No **Alt** alternatives have been considered as the development of this regulation has been clearly authorized and mandated in Section 32.1-164.5 of the *Code of Virginia*.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency 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) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to: C. M. Sawyer, P.E., Director, Division of Wastewater Engineering, VDH, 109 Governor Street, Fifth Floor, Richmond, VA 23219, Phone: 804-864-7463, Fax: 804-864-7475 (email: cal.sawyer@vdh.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Biosolids Use Regulations Advisory Committee (BURAC) will assist VDH in the development of the permit fee amendment.

Family impact

Assess 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 anticipated or associated impacts on family rights to educate and supervise children. It will not discourage economic self-sufficiency and family responsibilities and commitments or decrease disposable family income.