



Periodic Review / Retain Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-650
Regulation title	Closure Plans and Demonstration of Financial Capability
Document preparation date	June 30, 2014

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.

The State Water Control Board is directed by § 62.1-44.18:3 of the Code of Virginia to adopt regulations that require privately owned sewerage systems and sewerage treatment works that discharge more than 1,000 gallons per day and less than 40,000 gallons per day to develop closure plans and provide financial assurance for closure of the sewerage systems or sewage treatment works. The State Water Control Board previously adopted this regulation in 2001.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

The purpose of the regulation is to ensure that owners or operators of privately owned sewerage systems and sewerage treatment works that discharge between 1,000 gallons and 40,000 gallons per day are

capable of continuing to treat sewage and are capable of properly closing facilities. These smaller sewage systems and sewage treatment works are private companies providing a service to paying customers. The financial stability of the business to continue to properly operate a sewage system or sewage treatment works directly relates to the business’s ability to properly treat sewage before it is discharged into state waters.

State statute requires plans to be developed by the owner of these smaller sewage systems or sewage treatment works 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 and to demonstrate their financial capability to implement the plan. Statute specifies that a trust fund, bond, corporate guarantee, or other mechanism deemed appropriate by the board may be used to demonstrate financial capability.

Due to the specific requirements of statute, there are limited viable alternatives that can be considered. The regulation does include additional ways that are not specifically mentioned in statute for demonstrating financial capability. This regulation includes options of using a letter of credit or certificate of deposit to demonstrate financial stability. The content of the regulation is also similar to other regulations concerning financial assurance.

One alternative would be to allow additional mechanisms such as the corporate financial test and the corporate guarantee to be used to provide financial assurance. The addition of a corporate financial test and corporate guarantee as financial mechanisms would provide more options for owners to provide financial assurance. The agency plans to retain the regulation and undertake a fast track regulatory action to add these additional mechanisms to the regulation.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Philip Abraham, on behalf of Aqua Virginia	Aqua Virginia believes that amending the current regulations to provide a corporate guarantee for certain types of wastewater systems could be of benefit and possibly reduce the cost of complying with these regulations for a company of the size and financial strength of Aqua. As such, Aqua Virginia recommends that these regulations be amended to provide for a corporate guarantee as an option to demonstrate financial capability.	The agency plans to begin a fast track regulatory process to amend the regulation to include a corporate guarantee as an available mechanism for providing financial assurance.

An informal advisory group was not formed for the purpose of assisting in the periodic review.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

This regulation is necessary to protect public health, safety and welfare. The purpose of the regulation is to ensure that owners or operators of privately owned sewerage systems and sewerage treatment works that discharge between 1,000 gallons and 40,000 gallons per day are capable of continuing to treat sewage and are capable of properly closing facilities. The proper operation of a sewage system or sewerage treatment works to properly treat sewage before it is discharged into state waters is critical to protect public health and the environment.

The regulation is clearly written and easily understandable.

Result

Please state that the agency is recommending that the regulation should stay in effect without change.

In general, this regulation satisfies the provisions of the law and legally binding state requirements, and is effective in meeting its goals. The agency is recommending the regulation state in effect.

In response to comments, the agency will begin the fast track regulatory process to add an additional financial assurance mechanism to this regulation. The agency plans to include a corporate financial test and corporate guarantee in this regulation.

Additionally there are some editorial changes that need to be made to the regulation and the agency plans to include these changes in the fast track amendment. The regulation references 12VAC5-585-140 in 9VAC25-650-60. 12VAC585-140 has been repealed and the requirements are now found in the Sewage Collection and Treatment Regulations at 9VAC25-790-120-E3. The regulation needs to be revised to correct these references. Additionally, definitions within this regulation need to be updated to be consistent with definitions of terms used in other water program regulations.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, 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. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

This regulation is necessary to protect public health, safety and welfare. The purpose of the regulation is to ensure that owners or operators of privately owned sewerage systems and sewerage treatment works that discharge between 1,000 gallons and 40,000 gallons per day are capable of continuing to treat sewage and are capable of properly closing facilities. The proper operation of a sewage system or sewerage treatment works to treat sewage before it is discharged into state waters is critical to protect public health and the environment. If a sewage treatment plant ceased to operate, untreated sewage would be discharged into state waters, and would negatively impact state waters, and would cause impacts to human health and the environment.

One commenter submitted a requested change to the regulation. Aqua Virginia believes the regulation should be amended to include a corporate guarantee as an option to demonstrate financial capability. They believe this change would be beneficial for them and possibly reduce the cost of complying with these regulations for a company of the size and financial strength of Aqua. The agency will begin the fast track regulatory process to add an additional financial assurance mechanism to this regulation. The agency plans to include a corporate financial test and corporate guarantee in this regulation.

The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost-effectively as possible. Multiple financial mechanisms are available for use to demonstrate financial capability. In response to comments, the agency will begin the fast track regulatory process to add an additional financial assurance mechanism to this regulation. The agency plans to include a corporate financial test and corporate guarantee in this regulation.

The regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

This regulation was last revised in 2001. Since that time, technology has become more advanced and more treatment methods are available to be used at these types of sewage systems and sewerage treatment works. Newer technologies are capable of removing more nutrients from sewage before it is discharged to state waters. Additionally, some smaller sewage systems are now no longer independently operated, but operated by larger companies.

This regulation satisfies the provisions of the law and legally binding state requirements, and is effective in meeting its goals. The agency is recommending the regulation state in effect.

The agency plans to begin a fast track regulatory action to include a corporate financial test and corporate guarantee in this regulation to provide more options for owners to provide financial assurance. The agency also plans to make some editorial changes to the regulation.

Family impact

Please provide an analysis of the regulation's impact on the institution of the family and family stability.

It is not anticipated that the regulation will have a direct impact on the institution of the family or family stability. The proper operation of a sewage system or sewerage treatment works to treat sewage before it is discharged into state waters is critical to protect public health. Families benefit from the proper operation of sewage systems and sewerage treatment works.