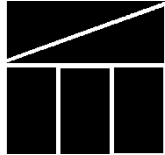


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes¹ Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

9 VAC 5-160 Voluntary Remediation Regulations
Department of Environmental Quality
Town Hall Action/Stage: 5215 / 8518
March 4, 2019

Summary of the Proposed Amendments to Regulation

The Virginia Waste Management Board (Board) proposes to eliminate and amend some requirements concerning applications to the Virginia Voluntary Remediation Program (VRP) and make clarifying changes.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Background

The purpose of this regulation is to establish standards and procedures pertaining to the eligibility, enrollment, reporting, characterization, remediation, and termination criteria for the VRP in order to protect human health and the environment. VRP is a streamlined mechanism for site owners or operators to voluntarily address contamination at sites with concurrence from the Virginia Department of Environmental Quality (DEQ). When the remediation is satisfactorily completed, DEQ issues a certification of satisfactory completion of remediation. This certification provides assurance that the remediated site will not later become the subject of a

¹ Adverse impact is indicated if there is any increase in net cost for any entity, even if the benefits exceed the costs for all entities combined.

DEQ enforcement action unless new issues are discovered. DEQ believes that the VRP facilitates the sale and reuse of industrial and commercial properties in the Commonwealth.

VRP registration fees are paid in three phases. The phase 1 registration fee (\$2,000) is due when the application is submitted. Payment of the phase 2 registration fee (\$7,500) is required after eligibility has been verified by DEQ and prior to technical review of submittals. The phase 3 registration fee (\$4,500) is charged annually to any site participating in the program.

Analysis

Under the current regulation, applicants who are not the site owner must demonstrate that they have access to the property at the time of payment of the **phase 1** registration fee. The Board proposes to amend the requirement to be that the applicants who are not the site owner demonstrate that they have access to the property at the time of payment of the **phase 2** registration fee. At times it can take weeks or months to get a formal agreement between the applicant and the site owner.² This change would be beneficial in that it would speed the approval process, and perhaps make remediation more likely to occur. According to DEQ, this amendment would not induce any unauthorized access.

The regulation defines "authorized agent" as "any person who is authorized in writing to fulfill the requirements of this program." The current text requires that the application for participation in VRP include "For authorized agents, a letter of authorization from an eligible party." The Board has determined that this is not necessary as part of the application, and thus proposes to eliminate the requirement. This would save staff time and perhaps legal fees for the applicant.

The current text also requires the following as part of the application package: "If the applicant is not the owner of the property, the applicant shall provide written documentation that the owner of the property: a. Consents in writing to the submission of the application; and b. Agrees in writing that the information set forth in the application is substantially correct to the best of the owner's knowledge." The Board proposes to eliminate this text and requirements. In cases where the current owner is not the applicant to the VRP, the Board and DEQ believe this requirement places a burden on the site owner that is unnecessary. In some cases the site owner

² Source: Department of Environmental Quality

and applicant may have an agreement for the transfer of the property that will occur prior to remediation of the site. In such cases, the information in this subdivision is irrelevant. The goal of the VRP is to remediate sites. If an applicant that is not the property owner is willing and able to participate in the program for the site, this requirement would potentially hinder the site from participating in the program. Thus removing this requirement is potentially beneficial.

Businesses and Entities Affected

The proposed amendments potentially affect land developers, builders, contractors, and firms that invest in real estate, as well as businesses that cleanup contaminated sites. According to DEQ, as of September 12, 2018, 143 sites were enrolled in VRP; and five additional sites had submitted applications to participate.

Localities Particularly Affected

The proposed amendments would particularly affect localities with disproportionately more contaminated properties.

Projected Impact on Employment

To the extent that the proposed amendments increase the occurrence of contaminated industrial and commercial properties being cleaned up and redeveloped, employment associated with remediation and redevelopment of property may increase.

Effects on the Use and Value of Private Property

The proposed amendments may increase the likelihood that contaminated industrial and commercial properties are cleaned up, sold and reused.

Real Estate Development Costs

The proposed amendments may moderately reduce real estate development costs.

Small Businesses:

Definition

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

Costs and Other Effects

The proposed amendments would moderately reduce costs for small firms to participate in VRP.

Alternative Method that Minimizes Adverse Impact

The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses:

The proposed amendments do not adversely affect businesses.

Localities:

The proposed amendments do not adversely affect localities.

Other Entities:

The proposed amendments do not adversely affect other entities.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.