



Virginia
Regulatory
Town Hall

townhall.virginia.gov

Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Mines, Minerals, and Energy
Virginia Administrative Code (VAC) citation	4 VAC 25-160
Regulation title	Virginia Gas and Oil Board Regulations
Action title	Amendments regarding the regulation of the Virginia Gas and Oil Board
Date this document prepared	May 1, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) 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.

As a result of periodic review, the Department of Mines, Minerals and Energy is amending 4VAC25-160, Virginia Gas and Oil Board Regulations, to make technical corrections, improve clarity, increase efficiency, and to restore consistency with other chapters.

Sections 4VAC25-160-30, 4VAC25-160-40, 4VAC25-160-50, 4VAC25-160-60, 4VAC25-160-70, 4VAC25-160-100, and 4VAC25-160-200 will be amended to correct several technical areas for accuracy, and provide clarity. These amendments regarding process will aid the gas and oil industry, as well as the Gas & Oil Board in the approval and regulation of gas and oil permits.

Amending Section 4VAC25-160-30 will reduce workload and increase efficiency for applicants by providing flexibility and economy in the permit process.

Amendments to 4VAC25-160-40, 4VAC25-160-50, and 4VAC25-160-70 are being made to bring consistency to data submission requirements for the Division of Gas & Oil. The use of latitude and longitude and the Virginia Coordinate System of 1927 have been replaced by the Virginia Coordinate System of 1983 in other Division of Gas & Oil regulations. Current industry practice is to use the more modern 1983 coordinate system for describing the locations of wells and core holes. Applicants for permits under this

chapter must currently convert their coordinates back to the 1927 system, as required by the regulation, in order to submit them to the Department of Mines, Minerals and Energy's Division of Gas & Oil. The amendment will allow applicants to use the updated 1983 coordinate system.

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.

The Department of Mines, Minerals and Energy (DMME) has authority to promulgate this regulation under authority found in § 45.1-161.3, Powers of the Department, § 45.1-361.4, Duties and responsibilities of the Director, and § 45.1-361.15, Additional duties and responsibilities of the Board.

- Section 45.1-161.3 of the Code of Virginia empowers DMME, with the approval of the Director, to promulgate regulations necessary or incidental to the performance of duties or execution of powers under Title 45.1 of the Code of Virginia.
- Section 45.1-361.4 of the Code of Virginia empowers the Director with the power and duty to regulate gas, oil, or geophysical operations, collect fees, and perform other responsibilities as may be prescribed in regulations promulgated by the Department of Mines, Minerals and Energy, or the Virginia Gas & Oil Board.
- Section 45.1-361.15 of the Code of Virginia empowers the Virginia Gas & Oil Board to have the specific authority to issue rules, regulations or orders pursuant to the provisions of the Administrative Process Act

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 Department of Mines, Minerals and Energy has determined the proposed regulatory amendments to various sections of 4VAC25-160 (4VAC25-160-30; 4VAC-25-160-40; 4-VAC25-160-50; 4VAC25-160-70) are necessary to protect the health, welfare, and safety of citizens, reduce workload and increase efficiency for applicants. The proposed regulatory actions to Section 4VAC25-160-200 will update references to external technical documents.

The proposed regulatory actions to various sections of 4VAC25-160 are also essential to protect the health and welfare of citizens by providing clear language that is consistent with state law and regulation.

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.

The Department of Mines, Minerals and Energy is proposing amendments to sections of 4VAC25-160, Virginia Gas and Oil Board Regulations as described in the following table.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
4VAC25-160-30 B.2.	N/A	When required, two copies of the following material must be filed with the division at least <u>seven calendar days</u> prior to the regularly scheduled meeting of the board in order for the application to be considered a complete application	Change the required submission time for Gas & Oil Board Submissions from 7 days prior to a hearing to the time of the hearing; <i>accuracy of acceptable time frame</i>
4VAC25-160-30 D.	N/A	The division shall assign a docket number to each application or petition at the time of filing, and shall notify the applicant of the docket number.	Clarify that payment is due prior to assignment of docket number, "time of filing" does not clarify; <i>clarification of when a docket number is assigned</i>
4VAC25-160-30 E.4.	N/A	Persons shall submit 10 sets of each application and exhibit.	Reduce the number of copies to be submitted from 10 to 8; <i>accuracy of number needed</i>
4VAC25-160-30 E.4.	N/A	Each person offering exhibits into evidence shall also have available a reasonably sufficient number of exhibits for other persons who are subject to the provisions of §§ 45.1-361.19 and 45.1-361.23 of the Code of Virginia and are expected to be in attendance at the hearing.	Allow for exhibits to be made available with certified mail notice; <i>accuracy</i>
4VAC25-160-30 F.	N/A	Applications for the establishment of units, spacing or pooling shall be accompanied by a \$130 nonrefundable fee, payable to the Treasurer of Virginia.	Insert "and modification" between "establishment" and "of units"; <i>clarification that fee applies to modifications</i>
4VAC25-160-40 B.6.a.	N/A	Use of latitude and longitude (the Virginia Coordinate System of 1927).	Change the requirements from the Virginia Coordinate System of 1927 to the Virginia Coordinate System of 1983; <i>consistency with current standards.</i>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
4VAC25-160-40 B.6.a.	N/A	6. a. For a pooling order, the notice should include: a plat showing the size and shape of the proposed unit and boundaries of tracts within the unit. The location of the proposed unit shall be shown in accordance with the Virginia Coordinate System of 1927, as defined in Chapter 17 (§55-287 et seq.) of Title 55 of the Code of Virginia, also known as the State Plane Coordinate System. <u>The proposed unit shall also be located by taking the measured distance in feet from the unit to the nearest 2.5 minute longitude line to the east and the nearest 2.5 minute latitude line to the north on the 7.5 minute (1:24,000) topographic map, with a notation of the 7.5 minute topographic map name and series.</u> The plat containing the percentage of acreage in each tract shall be certified by a licensed land surveyor or a licensed professional engineer and attested by the applicant as to its conformity to existing orders issued by the board;	Strike "The proposed unit shall also be located by taking the measured distance in feet from the unit to the nearest 2.5 minute longitude line to the east and the nearest 2.5 minute latitude line to the north on the 7.5 minute (1:24,000) topographic map, with a notation of the 7.5 minute topographic map name and series."; <i>technical correction</i>
4VAC25-160-50 A.5.c.	N/A	Use of latitude and longitude (the Virginia Coordinate System of 1927).	Change the requirements from the Virginia Coordinate System of 1927 to the Virginia Coordinate System of 1983; <i>consistency with current standards.</i>
4VAC25-160-50 A.5.c.	N/A	c. A description of the pool or pools included in the field, based on geological and technical data, including the boundaries of the pool or pools and field, shown in accordance with the Virginia Coordinate System of 1927, as defined in Chapter 17 (§55-287 et seq.) of Title 55 of the Code of Virginia, also known as the State Plane Coordinate System. <u>The boundaries of the pool or pools and field shall also be located by taking the measured distance in feet from the unit to the nearest 2.5 minute longitude line to the east and the nearest 2.5 minute latitude line to the north on the 7.5 minute (1:24,000) topographic map, with a notation of the 7.5 minute topographic map name and series;</u>	Strike "The boundaries of the pool or pools and field shall also be located by taking the measured distance in feet from the unit to the nearest 2.5 minute longitude line to the east and the nearest 2.5 minute latitude line to the north on the 7.5 minute (1:24,000) topographic map, with a notation of the 7.5 minute topographic map name and series;"; <i>technical correction</i>
4VAC25-160-50 A.1.1.	N/A	Citation: 4VAC25-160-40 C	Change "4VAC25-160-40 D" to "4VAC25-160-40 C"; <i>accuracy, section is incorrectly cited</i>
4VAC25-160-70 A.7.	N/A	Use of latitude and longitude (the Virginia Coordinate System of 1927).	Change the requirements from the Virginia Coordinate System of 1927 to the Virginia Coordinate System of 1983; <i>consistency with current standards.</i>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
4VAC25-160-70 A.7.	N/A	7. A plat showing the size and shape of the proposed unit and boundaries of tracts within the unit, shown in accordance with the Virginia Coordinate System of 1927, as defined in Chapter 17 (§ 55-287 et seq.) of Title 55 of the Code of Virginia, also known as the State Plane Coordinate System. <u>The proposed unit shall also be located by taking the measured distance in feet from the unit to the nearest 2.5 minute longitude line to the east and the nearest 2.5 minute latitude line to the north on the 7.5 minute (1:24,000) topographic map, with a notation of the 7.5 minute topographic map name and series.</u> Also included shall be the names of owners of record of the tracts, and the percentage of acreage in each tract, certified by a licensed land surveyor or a licensed professional engineer and attested by the applicant as to its conformity to existing orders issued by the board;	Strike "The proposed unit shall also be located by taking the measured distance in feet from the unit to the nearest 2.5 minute longitude line to the east and the nearest 2.5 minute latitude line to the north on the 7.5 minute (1:24,000) topographic map, with a notation of the 7.5 minute topographic map name and series."; <i>technical correction</i>
4VAC25-160-70 A.15.	N/A	Citation: 4VAC25-160-40 D	Change "4VAC25-160-40 D" to "4VAC25-160-40 C"; <i>accuracy, section is incorrectly cited</i>
4VAC25-160-70 C.	N/A	C. After the time for election provided in any pooling order has expired, the unit operator shall file an affidavit with the board stating whether or not any elections were made.	Insert "Within 45 days" before "after the time for election provided in any pooling order has expired, the unit operator shall file an affidavit with the board stating whether or not any elections were made"; <i>clarification</i>
4VAC25-160-100	N/A	Direct Costs and Indirect Costs are identified	Consider "post-production costs" as a new section; <i>clarification</i>
4VAC25-160-200 B.3.	N/A	Citation: "Manual of Back-Pressure Testing of Gas Wells," 1979	Update the title to "Manual of Back-Pressure Testing of Gas Wells," 2000, and add any subsequent revisions; <i>accuracy</i>

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.

There are no other alternatives that would meet the requirement that Virginia’s regulations are clear, consistent, and necessary to protect the health, welfare, and safety of Virginia’s citizens. The alternative of not amending this chapter would have left unresolved inconsistency and uncertainty in the regulation for the agency’s customers.

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 **Tabitha Hibbitts Peace, Policy Analyst, P.O. Drawer 900, Big Stone Gap, VA 24219, phone 276-523-8212, fax 276-523-8148, or Tabitha.Peace@dmme.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.

In addition, the agency is seeking information on (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) 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. }

A public hearing will be held and notice of the hearing may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

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 agency is using a participatory approach and will convene an ad hoc advisory committee for the development of the proposed regulation.

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 actions will have no impact on the family or family stability.

Periodic review – Public comment

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section.

If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 36, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Commenter	Comment	Agency response

No public comment was received following the January 7, 2008 publication of the Notice of Periodic Review.

Periodic review – Discussion

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section.

If this NOIRA is the result of a periodic review or if the periodic review is to be performed in combination with the NOIRA, please include a discussion of the agency’s consideration of: (1) the continued need for the rule; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) 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.

The Department of Mines, Minerals and Energy contends there is a continued need for the Virginia Gas & Oil Board Regulation due to growing natural gas industry in the Commonwealth, and the need for regulation of this industry to protect the health, safety, and welfare of Virginia’s citizens. The regulation does not overlap, duplicate, or conflict with any federal or state law or regulation. The regulation was last evaluated by periodic review in 2000, and since that time, the industry has seen unprecedented growth.

DMME’s position is that the regulation should be amended, consistent with the stated objectives of applicable law, and that the amendments will have a minimal economic impact on small business.