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## Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-32
VAC Chapter title(s)	Virginia Pollution Abatement (VPA) permit
Date this document prepared	September 22, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

## Acronyms and Definitions

*Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

Board- State Water Control Board  
EO - Executive order  
EQ- exceptional quality  
MCL- Maximum Contaminant Levels  
NMP- Nutrient Management Plan  
PFAS- per- and polyfluoroalkyl substances  
VPA- Virginia Pollution Abatement  
VPAPR- Virginia Pollution Abatement Permit Regulation

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

Section 62.1-44.15 (5) of the Code of Virginia authorizes the Board "To issue, revoke or amend certificates under prescribed conditions for: (a) the discharge of sewage, industrial wastes and other wastes into or adjacent to state waters;" The Virginia Pollution Abatement (VPA) permit regulation defines

the procedures and requirements to be followed in connection with VPA permits issued by the board pursuant to the State Water Control Law.

Section 62.1- 44.15 (10) of the Code of Virginia authorizes the Board "To adopt such regulations as it deems necessary to enforce the general water quality management program of the Board in all or part of the Commonwealth." The State Water Control Board has adopted this regulation under this authority.

### Alternatives to Regulation

*Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.*

Alternatives to this regulation were considered by the Department. One alternative considered was the repeal of the regulation. This alternative was rejected. This regulation is a necessary component of protecting water quality within the Commonwealth since it regulates the discharge of sewage, industrial wastes and other wastes that may occur adjacent to state waters.

### Public Comment

*Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

An advisory group was not formed for the purposes of assisting with the periodic review.

Commenter	Comment	Agency response
James Pletl, Hampton Roads Sanitation District	The regulation is unclear on whether Class A/EQ biosolids land application should be regulated under the same restrictions imposed on Class B biosolids. The definition of "land application" states "for the purpose of this regulation, the use of biosolids in agricultural research and the distribution and marketing of exceptional quality biosolids are not land application." Currently DEQ and permittees interpret the regulatory language differently concerning these requirements. Permittees understand this definition to mean that the general land application requirements of the VPA regulation do not apply to the use of Class A/EQ biosolids and that all Class A/EQ requirements are articulated in 9VAC25-32-570, which differs from DEQ's interpretation.	Part IX of the VPA regulation (9VAC25-32-303 through 9VAC25-32-5850) specify minimum standards for biosolids use for land application, marketing and distribution, including biosolids quality and site specific management practices, and other management requirements. In certain places in the regulation, land application requirements that apply specifically to Class B biosolids are specified. Requirements specific to Exceptional Quality/Class A (EQ) biosolids are stated in 9VAC25-32-570.  Notwithstanding the specific requirements, the board may impose standards and requirements that are more stringent than those contained in this regulation according to the provisions of 9VAC25-32-100 E, 9VAC25-32-315, and 9VAC25-32-560 B.3. In light of the evolving management of EQ biosolids cake, a relatively new product in Virginia, DEQ has chosen to apply additional restrictions. No change is being made to the regulation at this time.

<p>James Pletl, Hampton Roads Sanitation District</p>	<p>9VAC25-32-305, titled "Permits" refers to a requirement for land application sites to be approved relative to Class B biosolids. A similar requirement does not exist for Class A/EQ biosolids. If DEQ's position on distribution and marketing of Class A/EQ biosolids is correct, it is difficult to understand why Section 305 does not address Class A/EQ biosolids.</p>	<p>9VAC25-32-305.C. states that "[n]o person shall land apply Class B biosolids on any land in Virginia unless that land has been identified in an application to issue, reissue or modify a permit and approved by the board."</p> <p>This is an example of a requirement specific to Class B biosolids, and representative of the regulatory constraints necessary to ensure that site management necessary to address the pathogen content of Class B biosolids are addressed, including individual notification of adjacent residents. All such requirements are not necessary for EQ biosolids.</p> <p>No change is being made to the regulation at this time,</p>
<p>James Pletl, Hampton Roads Sanitation District</p>	<p>The different fees associated with the land application of Class B and Class A/EQ biosolids supports the conclusion that land application of Class A/EQ biosolids does not require the same level of regulatory oversight as land application of Class B biosolids. Lower fee rates for Class A/EQ biosolids translates to lower risk of public health, safety and welfare, but DEQ's interpretation of the regulation with regards to third party liability and buffers for land application does not align with this logic.</p>	<p>The fees for land application of biosolids are not addressed in this regulation. The fee for Class A (EQ) biosolids was developed by the General Assembly and included in Budget Item 361 of the 2015 budget. Beginning October 1, 2015, a fee of \$3.75 is required to be paid on each dry ton of exceptional quality biosolids cake sewage sludge that is land applied. The fee for Class A (EQ) biosolids was not developed by the State Water Control Board; the State Water Control adopted the fee based on the budget language passed by the Virginia General Assembly.</p> <p>Even so, the lower fee should encourage further treatment to reduce pathogens, which is more protective, and DEQ uses this fact to justify a reduced inspection frequency of sites where EQ biosolids are applied, as well as reduced permitting effort necessary to evaluate individual sites in permit applications.</p> <p>Nutrient management is not related to pathogen content, and is as important for EQ biosolids as for Class B biosolids, which share similar nitrogen and phosphorous ratios. DEQ is thus concerned that NMPs be implemented where required for EQ biosolids as well.</p> <p>No change is being made to the regulation at this time.</p>

<p>James Pletl, Hampton Roads Sanitation District</p>	<p>HRSA understands that there is concern from DEQ that although the regulations may be met relative to the quality standards set for Class A/EQ biosolids, some sources of Class A/EQ biosolids can have other characteristics that are not acceptable to the public (odor, aesthetics). The regulation needs to be updated to set performance standards rather than depending on techniques or behaviors if current standards for quality are not always acceptable. The regulation needs to be amended to address the shortcomings of the current standards.</p>	<p>9VAC25-570 addresses the minimum treatment requirements to be met for the distribution and marketing of exceptional quality biosolids. These requirements address factors such as vector control and the pollutant content of the biosolids. Variability in odor and aesthetics have not been directly correlated to public concern, and thus performance standards are not an adequate substitute for certain permit requirements related to EQ biosolids. Also, nutrient management is critical regardless of the treatment mechanism.</p> <p>The agency believes that the current regulatory requirements contain appropriate flexibility and no change is being made to the regulation at this time.</p>
<p>James Pletl, Hampton Roads Sanitation District</p>	<p>9VAC25-32-570 does not identify the responsible party for developing and implementing a Nutrient Management Plan (NMP). DEQ has interpreted this to mean that the permittees generating Class A/EQ biosolids are responsible for the land application practices of third parties. This is inconsistent with how DEQ regulates poultry waste (9VAC25-630). The poultry waste regulation does not require generators of poultry waste to take responsibility for uses of that waste once the waste is transferred to third parties.</p>	<p>The infrastructure and logistics for land application of poultry waste and biosolids have historically been very different, with the majority of poultry waste transferred to third parties, contrasting with biosolids typically being land applied by the permit holder or an agent thereof.</p> <p>While there may be value in applying the responsibility to implement an NMP to the end-user of biosolids through a regulatory amendment, compliance with this requirement of the VPA regulation may be accomplished by distributing to users with a history of NMP implementation, and discontinuing distribution to those that do not.</p> <p>While DEQ may consider end-user responsibility for NMP implementation in a future regulatory action, no changes are being made to the regulation at this time.</p>

<p>James Pletl, Hampton Roads Sanitation District</p>	<p>9VAC25-32-313 refers to persons preparing bulk biosolids and differentiates them from persons land applying without reference to Class A/EQ biosolids. 9VAC25-32-313 F states that it is the person land applying biosolids that must coordinate with the state to ensure that pollutant loading rates are not exceeded. This part of the regulation requires owners only need to provide information to a person land applying and appears to separate responsibilities for nutrient management and liability between the owner and the person land applying. This would not need to be stated if the owner was responsible for NMP and third-party actions. The regulation is not clearly written.</p>	<p>The language contained in section 9VAC25-32-313 is taken verbatim from the Code of Federal Regulation Section 503 that pertains to application of sewage sludge to the land. It is necessary that these requirements be included in the VPA regulation to ensure that federal requirements are met. Virginia regulations are more stringent than federal based on requirements in Virginia State Water Control Law.</p> <p>Further, 9VAC25-32-313.F. applies specifically to biosolids that exceed certain pollutant thresholds, not nutrient content or nutrient management. The federal regulations do not require preparation or implementation of nutrient management plans, thus the notification and responsibility requirements speak to disparate concerns.</p> <p>No changes are being made to the regulation at this time.</p>
<p>James Pletl, Hampton Roads Sanitation District</p>	<p>DEQ's application of a more rigorous Class B land application setback requirement is not supported by 9VAC25-32-665 or -675 which state site restrictions specifically for the land application of Class B biosolids but do not refer to similar restrictions for Class A/EQ biosolids. The setbacks documented in 9VAC25-32-560 B.3.e.(1) are intended specifically for public health protection and are not appropriate for Class A/EQ biosolids which are considered pathogen free. The setbacks make it impractical to utilize Class A/EQ biosolids in beneficial projects with relatively low acreage, such as municipal parks and other municipal projects. The inconsistency between the language of the VPAPR and DEQ's interpretation is not supporting clarity and understanding with permittees, land appliers and the public. DEQ's approach to regulating the land application of Class A/EQ biosolids beyond the level needed to adequately address risk does not align with EO 14 which required regulations to be necessary for the protection of public health, safety and welfare.</p>	<p>DEQ only applies setback requirements for EQ biosolids when a nutrient management plan (NMP) is required. DEQ acknowledges that the setback requirements in 9VAC25-32-560 B.3.e.(1) were developed during the regulatory development process that focused on NMPs for Class B biosolids, and involved consultation with the Virginia Department of Health (VDH) regarding the setbacks and extended setback procedures necessary to be protective of human health and the environment. No changes are being made to the regulation at this time.</p>

<p>James Pletl, Hampton Roads Sanitation District</p>	<p>HRSD supports the concept of a General VPAPR permit ((VAC25-32-260) for all POTWs and land application activities. A general permit would provide an opportunity to clarify state objectives for this specific source of biosolids and use as well ensure that requirements are achieved in the most efficient and cost-effective manner and are necessary for the protection of public health, safety and welfare. HRSD has expended significant resources to achieve a NPDES permit that includes land application activities, and objective of this subject regulation, without resolution due to the lack of clarity in the regulation and the intent of the State Water Control Board.</p>	<p>DEQ recognizes the efficiencies afforded by a general permit regulation, and acknowledges HRSD’s interest in refining clarity of requirements. Nonetheless, authorization to treat biosolids for land application of Class B and EQ biosolids, as well as marketing and distribution of EQ biosolids, may currently be achieved with the issuance of an individual permit.</p> <p>The agency will continue to dialogue with interested parties concerning the potential development of a GP for the application of EQ biosolids. There have been concerns raised by the environmental community concerning the potential for biosolids to be monitored for PFAS, which would pose another challenge for adopting a GP for EQ biosolids. Depending on the needs identified by the PFAS working group, DEQ may consider promulgating a general permit for EQ biosolids, but no changes are being made to the regulation at this time.</p>
<p>James Pletl, Hampton Roads Sanitation District</p>	<p>HRSD requests the State Water Control Board begin a formal evaluation of the VPAPR to amend this regulation by addressing multiple instances in this regulation when EO 14 is not followed. This would include a NOIRA, public hearing, and formation and meetings of a Regulatory Advisory Panel.</p>	<p>See the response to the commenter’s request to develop a general permit above.</p>
<p>Southern Environmental Law Center*</p>	<p>The current regulations must be strengthened to expressly regulate per- and polyfluoroalkyl substances (PFAS) in biosolids. DEQ should amend the VPA permit regulations to establish (i) explicit monitoring requirements and pollutant limitations for PFAS in biosolids; and (ii) site monitoring requirements and other site controls if biosolids containing PFAS are land-applied.</p>	<p>See PFAS comment response below.</p>

<p>Southern Environmental Law Center</p>	<p>Permit limitations and conditions under current law should regulate PFAS contamination in biosolids without the need for explicit PFAS-related requirements. In practice, however, VPA permits do not currently control PFAS contamination. In order to protect the public health, safety, and welfare, the VPA permit regulations should be amended to explicitly regulate PFAS in biosolids.</p>	<p>See PFAS comment response below.</p>
<p>Southern Environmental Law Center</p>	<p>Suggests integrating regulation of PFAS in biosolids into the VPA permit program in several ways, including by (1) promulgating monitoring requirements and pollutant limitations for PFAS in biosolids applicable to all VPA permits; and (2) requiring site monitoring and site controls when biosolids with PFAS are landapplied</p>	<p>See PFAS comment response below.</p>
<p>Southern Environmental Law Center</p>	<p>While DEQ has the authority to establish additional permit limitations on a case-by-case basis, the prevalence of PFAS in biosolids suggests that all biosolids should be monitored for PFAS, and that DEQ should establish pollutant limitations for PFAS in biosolids applied to land. DEQ should establish pollutant limitations to ensure that activities permitted under the VPA permit program do not violate Virginia's general water quality criteria.</p>	<p>See PFAS comment response below.</p>
<p>Southern Environmental Law Center</p>	<p>The VPA permit program should be modified to require site monitoring for PFAS after biosolids have been land-applied. This monitoring should include groundwater, surface water, soil, and crop monitoring by the permittee to ensure public health and the environment is being adequately protected and that land application activities are not violating Virginia's general water quality criteria.</p>	<p>See PFAS comment response below.</p>

<p>Southern Environmental Law Center</p>	<p>DEQ should assess whether existing controls (such as setback requirements for agricultural use of land applied biosolids) need to be expanded or modified to adequately protect human health and the environment from PFAS contamination. Ultimately, site monitoring and implementation of site controls will be effective only if DEQ is aware of the types and quantity of PFAS present in biosolids, meaning the monitoring of PFAS in biosolids prior to land application recommended above is a critical first step in strengthening the VPA permit program.</p>	<p>See PFAS comment response below.</p>
<p>Virginia Association of Municipal Wastewater Agencies' (VAMWA)</p>	<p>9VAC-25-32-570 (Distribution and Marketing), is of interest to VAMWA members because it restricts marketing and distribution of the EQ biosolids that VAMWA members generate at their wastewater plants. Current restrictions have chilled the development of a competitive market for EQ materials in Virginia; as a direct result of the VPA regulation, many of VAMWA's members have turned to other nearby states to sell EQ biosolids because of more favorable (but still environmentally safe and responsible) requirements for these products. If a POTW operator makes the substantial financial commitment to generate biosolids with very low pollutant levels and a near-zero level of pathogens, these materials should be subject to very limited regulatory oversight. There is no need to treat EQ biosolids any differently than other commercially available fertilizers and soil amendments, which are freely marketed and sold across the Commonwealth.</p>	<p>EQ biosolids are potentially different from commercial fertilizers. The near-zero level of pathogens is not the only criteria examined when considering the need to regulate the application of EQ biosolids. DEQ also considers the potential presence of other pollutants in EQ biosolids and persistent public concern regarding biosolids land application. Perhaps the most important additional consideration is the nutrient concentrations, specifically the ratio of nitrogen to phosphorous that occur in both Class B and EQ biosolids. This nutrient ratio, which is not aligned with plant needs, warrants additional attention to appropriate nutrient management of materials that can elevate soil phosphorous and increase losses to the environment if not properly managed.</p> <p>No change is being made to the regulation at this time.</p>

<p>VAMWA</p>	<p>Develop and issue a general permit (GP) for distribution, marketing, and land application of EQ cake biosolids to give generators a streamlined, straightforward set of rules to follow with regard to use of these products. As more POTWs consider whether to upgrade their plants to generate EQ biosolids, they need a set of clear, consistent, and reliable statewide requirements for the use of this material so they know whether it makes sense to move forward. A GP allows the Department and permittees to bypass the lengthy permit negotiations involved with an individual permit, saving valuable time and resources. VAMWA requests the initiation of a regulatory process to develop this GP.</p>	<p>DEQ recognizes the efficiencies afforded by a general permit regulation, and acknowledges VAMWA's interest in refining clarity of requirements. Nonetheless, authorization to treat biosolids for land application of Class B and EQ biosolids, as well as marketing and distribution of EQ biosolids, may currently be achieved with the issuance of an individual permit.</p> <p>The agency will continue to dialogue with interested parties concerning the potential development of a GP for the application of EQ biosolids. There have been concerns raised by the environmental community concerning the potential for biosolids to be monitored for PFAS, which would pose another challenge for adopting a GP for EQ biosolids. Depending on the needs identified by the PFAS working group, DEQ may consider promulgating a general permit for EQ biosolids, but no changes are being made to the regulation at this time.</p>
<p>VAMWA</p>	<p>VAMWA requests that DEQ allow application of bulk EQ materials on non-agricultural sites without requiring a nutrient management plan (NMP). Requiring an NMP, which in turn requires setbacks, means that EQ generators must turn away some customers that want to apply cake EQ biosolids because they do not have adequate square footage to make the application worthwhile. Setbacks are unnecessary for EQ materials; EQ materials have a near-zero level of pathogens, meaning there is absolutely no justification for imposing a buffer between application and a nearby property. Specific edits to the regulation were provided.</p>	<p>DEQ acknowledges that the requirements in 9VAC25-32-560 B.3.e.(1) were developed during the regulatory development process that focused on NMPs for Class B biosolids, and involved consultation with the Virginia Department of Health (VDH) regarding the setbacks and extended setback procedures necessary to be protective of human health and the environment. DEQ recognizes that the setbacks do in part limit the use of biosolids on small sites where the setbacks are difficult to achieve. DEQ is currently engaged in discussion with VDH and the US EPA related to PFAS.</p> <p>Depending on the outcome of the current discussions, DEQ may consider revising the regulation in the future, but no changes are being made to the regulation at this time.</p>

<p>VAMWA</p>	<p>VAMWA requests that DEQ clarify that the recommended setback areas in the Nutrient Management Standards &amp; Criteria (S&amp;C) do not apply to EQ applications. Specific edits to the regulation were provided.</p>	<p>The Nutrient Management Standards and Criteria apply to any biosolids requiring an NMP. However, 4VAC50-85-140.A.2.e. specifies that the “setbacks recommended [in an NMP] shall be consistent with criteria contained in Virginia Nutrient Management Standards and Criteria, revised July 2014, unless alternative setbacks or buffers are specified in regulations or permits pertaining to the site.” Thus, the VPA permit regulation could be amended in order to effect specific exemptions.</p> <p>Depending on the outcome of the current discussions with VDH and EPA regarding PFAS, DEQ may consider revising the regulation in the future, but no changes are being made to the regulation at this time.</p>
<p>VAMWA</p>	<p>DEQ should clarify that “Distribution &amp; Marketing” is not “Land Application,” and is therefore not subject to the same restrictions as land application. DEQ has included Class B land application requirements (for example, requirements for signage) in previous permits for EQ cake bulk material applied on agricultural land. VAMWA believes this is not necessary given the quality of the product, and it adds cost, making it more difficult for generators to compete with other products in the market. Specific edits to the regulation were provided. VAMWA believes that adoption of their recommendations will prompt additional EQ generation. EQ biosolids can reduce the impacts of climate change.</p>	<p>Part IX of the VPA regulation (9VAC25-32-303 through 9VAC25-32-5850) specify minimum standards for biosolids use for land application, marketing and distribution, including biosolids quality and site specific management practices, and other management requirements. Certain regulatory requirements apply specifically to Class B due to the pathogen content, while others are related to managing public concern. Requirements specific to Exceptional Quality/Class A (EQ) biosolids are stated in 9VAC25-32-570.</p> <p>Notwithstanding the specific requirements, the board may impose standards and requirements that are more stringent than those contained in this regulation according to the provisions of 9VAC25-32-100 E, 9VAC25-32-315, and 9VAC25-32-560 B.3. In light of the evolving management of EQ biosolids cake, a relatively new product in Virginia, DEQ has chosen to apply additional restrictions, such as signage.</p> <p>No change is being made to the regulation at this time.</p>

<p>Virginia Biosolids Council</p>	<p>The VPA regulations are without consideration of force majeure events, and should be amended to include force majeure events. High rainfall amounts in 2018 made it difficult for POTWs and contractors to execute biosolids management plans. The ability to consider this event a catastrophic event and the ability to initiate force majeure projects would have permitted a more flexible and timely approach to proactively address these challenges while still fully protecting public health and the environment.</p>	<p>DEQ will continue to work with permit holders to address the type of events mentioned by the commenter on a case by case basis.</p> <p>No changes are being made to the regulation at this time.</p>
<p>Virginia Biosolids Council</p>	<p>Long term scientific studies have consistently demonstrated that biosolids land application when performed according to regulations, is safe for human health and the environment. Additionally a 2008 study showed that coronaviruses die off very rapidly in wastewater (a 99.99% reduction on 2-3 days). Wastewater treatment processes and disinfectant methods already in place are effective to protect public health.</p>	<p>The agency agrees that the regulations, as currently written, are protective of human health and the environment.</p>
<p>Virginia Biosolids Council</p>	<p>The use of EQ biosolids should be less restrictive since EQ biosolids contain pathogen densities that have been reduced to below detection levels. The setbacks documented in 9VAC25-560 B.3.e.(1) are intended to protect human health. These setbacks are not appropriate for EQ biosolids considered pathogen free. This setback makes it difficult to utilize EQ biosolids on low acreage sites.</p>	<p>DEQ only applies setback requirements for EQ biosolids when a NMP is required. DEQ acknowledges that the setback requirements in 9VAC25-32-560 B.3.e.(1) were developed during the regulatory development process that focused on NMPs for Class B biosolids, and involved consultation with the Virginia Department of Health (VDH) regarding the setbacks and extended setback procedures necessary to be protective of human health and the environment.</p> <p>Depending on the outcome of the current discussions with VDH and EPA regarding PFAS, DEQ may consider revising the regulation in the future, but no changes are being made to the regulation at this time.</p>
<p>Virginia Biosolids Council</p>	<p>The generation and use of EQ biosolids should be encouraged. One means of providing an incentive is to exempt EQ biosolids from the general requirements.</p>	<p>The agency believes that requirements applicable to Class A (EQ) biosolids are needed in the regulation to be protective of human health and the environment.</p>

\* Southern Environmental Law Center submitted comments on behalf of the following organizations: Southern Environmental Law Center; James River Association; Virginia League of Conservation Voters; and Clean Water Action.

Response to PFAS related comments

DEQ is aware of the concerns related to PFAS expressed by the commenters; however, it is premature to initiate a regulatory amendment to address PFAS at this time. EPA is currently working to establish drinking water standards (Maximum Contaminant Levels (MCLs)) for PFAS and to develop validated analytical methods for groundwater, surface water, wastewater, and solids, including soils, sediments, biota, and biosolids. DEQ has also established a PFAS working group to help provide information concerning the science of PFAS as it becomes available and is supporting EPA, following EPA's lead on PFAS strategies as they unfold. Additionally, the Virginia Department of Health (VDH) has been directed by the 2020 General Assembly to research MCLs for PFAS and provide an update to the General Assembly on their findings by November 1, 2020. VDH has also been directed by the General Assembly to establish MCLs for PFAS in water supplies and waterworks that does not exceed any MCL established by EPA.

The State Water Control Board has the authority to amend individual VPA permits at any time based on site specific information to further protect human health and the environment from constituents, including PFAS. As more information related to PFAS becomes available in the future, including site specific monitoring information of PFAS levels present in Virginia's environment, science based decisions will be made concerning future methods of regulating PFAS in Virginia.

**Effectiveness**

*Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.*

This regulation is necessary for the protection of public health, safety and welfare since it regulates the discharge of sewage, industrial wastes and other wastes that may occur adjacent to state waters. Examples of activities covered by this regulation include, land application of biosolids and industrial sludge or spray irrigation of industrial and municipal wastewater. This regulation defines the procedures and requirements to be followed in connection with VPA permits issued by the Board. Commenters indicated some areas of the regulation could be amended to be further clarified; however, the agency believes the regulation is clearly written and easily understandable. The agency will continue to utilize guidance documents to assist the regulated community with understanding situational specific regulatory requirements.

**Decision**

*Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).*

The regulation is effective and continues to be needed and is being retained.

**Small Business Impact**

*As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

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The regulation continues to be needed. Without this regulation, there would not be a mechanism to permit and regulate individual permits related to the application of biosolids, and industrial sludge or spray irrigation of industrial and municipal wastewater to the land in the Commonwealth. This regulation ensures that these activities are conducted in a manner that is protective of human health and the environment.

Comments were received from the regulated community and environmental organizations during the public comment period. In general, the regulated community suggested clarifications to be made to the regulation and also requested the board develop and adopt a general permit for the management of EQ cake biosolids. Environmental organizations requested the board to strengthen the regulation to include monitoring requirements related to PFAS. The comments received, and the responses to those comments are further detailed in the *Public Comment* section of this document.

The regulation is complex in nature to the general reader since it contains many scientific terms and standards; however, the complexity of the regulation is appropriate for the user of the regulation.

The corresponding federal authority for the criteria for land application of biosolids is found at 40 CFR Part 503.

This regulation was last amended in 2018 to update the date of the federal CFR incorporated by reference and to incorporate EPA's Methods Update Rule (MUR) amendments to 40 CFR Part 136.

This regulation contains the requirements for individual permits. The requirements found in this regulation are necessary to protect human health and the environment. It would not be protective of human health and the environment to allow small businesses to comply with less stringent standards.

## **Family Impact**

*Please assess the potential impact of the regulation's impact on the institution of the family and family stability.*

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This regulation does not have a direct impact on the family or family stability.