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Periodic Review and Small Business Impact Findings Where Result is "Retain the Regulation As Is" Agency Background Document

Agency name	Department of Environmental Quality
Virginia Administrative Code (VAC) citation	9 VAC 15-90
Regulation title	Uniform Environmental Covenants Act Regulation
Date	September 21, 2017

This information is required pursuant to Executive Order 17 (2014) 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 Uniform Environmental Covenants Act (UECA) (Section 10.1-1238 et seq. of the Code of Virginia) provides a framework that defines how activity and use limitations prescribed by an agency pursuant to an environmental response project are to be drafted, recorded, and enforced as a UECA "environmental covenant." The UECA statute defines "environmental covenant" as "a servitude arising under an environmental response project that imposes activity and use limitations." Section 10.1-1250 directs the Department to adopt regulations, as necessary, to implement the provisions of the UECA. The Director of the Department of Environmental Quality adopted the initial UECA regulation in 2011.

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.

State statute allows the Director the option of adopting a UECA regulation. (§10.1-1250 of the Code of Va.). One viable option explored was the removal of the regulation and the use of guidance to implement UECA. This option was rejected. The regulation adopted provides certainty to all parties participating in the program and establish standard requirements that must be met pertaining to UECA covenants.

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.

An informal advisory group was not formed as part of this review. No public comments were received during the public comment period.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The regulation is clearly written and easily understandable. This regulation contains a framework that defines how activity and use limitations prescribed by an agency pursuant to an environmental response project are to be drafted, recorded, and enforced as a UECA “environmental covenant.” The regulation is clearly written and easily understandable. Additionally, the regulation includes a template for the environmental covenant. This promotes consistency between environmental covenants in Virginia.

Result

Please state that the agency is recommending that the regulation should stay in effect without change and provide the reason why.

The agency is recommending the regulation stay in effect without change. The regulation is beneficial to both the regulated community and DEQ. The regulation details specific requirements for UECA environmental covenants.

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 basis for the agency’s determination to retain the regulation as is, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The current regulation continues to be needed and no public comments were received concerning the content of this regulation during the public comment period. The regulation contains a framework that defines how activity and use limitations prescribed by an agency pursuant to an environmental response project are to be drafted, recorded, and enforced as a UECA “environmental covenant.”

This regulation was adopted in 2011 to implement the Virginia Uniform Environmental Covenants Act and the content of the regulation continues to be consistent with state law. The regulations are explanatory in nature and do not place any additional regulatory burden on the regulated community including small businesses.

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 this regulation will have a direct impact on families.