



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9VAC25-31
<b>Regulation title</b>	Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation
<b>Action title</b>	VPDES Final Exempt Updates
<b>Document preparation date</b>	December 19, 2013

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 A of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 14 (2010) and 58 (99).

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The VPDES permit regulation governs the discharge of pollutants from various sources into state waters. The State Water Control Board has the authority to administer the federal National Pollutant Discharge Elimination System (NPDES) program within the Commonwealth, and as such, the program is called the Virginia Pollutant Discharge Elimination System (VPDES). Operations subject to these regulations are required to be covered under the VPDES permit regulation (9VAC25-31) or VPDES general permit regulation (9VAC25-191) if they discharge.

Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) has been amended, where applicable, to reflect recent changes to 40 CFR 122.26, to 40 CFR Parts 449 and 451, and to the Code of Virginia §§ 54.1-2301 and 62.1-44.5 and to update the regulation to allow the use of the latest versions of federal effluent guidelines.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency, including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

On December 17, 2013, the State Water Control Board took final action to adopt amendments to regulations entitled Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. The regulatory action is to be effective as provided in the Administrative Process Act.

The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 3, A 4 a, and A 4 c of the Administrative Process Act because they either consist only of changes in style or form or corrections of technical errors, or are necessary to conform to Virginia statutory law or the appropriation act where no agency discretion is involved, or are necessary to meet the requirements of the federal Clean Water Act and do not differ materially from the pertinent federal law or U.S. Environmental Protection Agency (EPA) regulations.

In adopting these amendments, the Board affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC25-31, Part I, (Definitions and General Program Requirements)			
10.		Terms used in the chapter are defined.	A new term ""Municipal separate storm sewer" is defined. Necessary to conform to changes to federal regulation (specifically, 40 CFR 122.26 (b) (8)).
10.		The term "storm water discharge associated with industrial activity" is defined.	A federal reference (40 CFR Subchapter N) is added to the existing definition to clarify which water effluent guidelines pertain. Necessary to conform to federal regulation (specifically, 40 CFR 122.26 (b) (14) (i)).
25.		July 1, 2012 is specified as the reference date for all federal regulations incorporated into VPDES regulations by reference.	The date of the Code of Federal Regulations book incorporated by reference is updated to the latest version published on July 1, 2013. Necessary to conform to the latest federal regulations.
30.		Certain federal effluent guidelines are incorporated by reference.	Two additional federal effluent guidelines are added to the list of guidelines incorporated by reference (specifically, Airport Deicing Operations 40 CFR Part 449 and Concentrated Aquatic Animal Production 40 CFR Part 451). One existing guideline is corrected to remove a reference to an earlier CFR publication date. Necessary to conform to changes to federal

			regulation (specifically, 40 CFR Parts 449 and 451) and to make a technical correction to allow the CFR reference date in 9VAC25-31-25 to specify the use of the latest version of the referenced federal effluent guideline.
50 A.		Certain types of discharges to state waters are prohibited except in compliance with permits issued by the board	The discharge of storm water from MS4s and land disturbing activities is added to the list of prohibited discharges (except in compliance with a permit which may include certain exemptions for MS4 and land disturbing storm water discharges). Flexibility is provided to allow permits to be issued by entities authorized by the board. Necessary to comply with § 62.1-44.5 A and A 5 of the Code of Virginia.
200 C 1.		The license regulation for waterworks and wastewater works operators is referenced.	The name of the regulation governing licensure is corrected to reflect the revised title of the referenced regulation (18VAC160-20). Necessary to technically correct the title of the referenced regulation.
300.		Any member of the public is allowed to comment on a draft permit and request a public hearing. Requirements for requests for a public hearing reference a board procedural rule.	The reference for information requirements for requests for the public hearing is updated from a board procedural rule to the applicable state law. Necessary to conform to the requirements of § 62.1-44.15:02 B of the Code of Virginia.
310 A.		Requirements for holding a public hearing are specified by situation.	The requirements are changed from situational requirements to a reference to the applicable state law. Necessary to conform to the requirements of § 62.1-44.15:02 of the Code of Virginia.
310 D.		Requirements for proceedings at, and decisions from, a public hearing are specified as governed by a board procedural rule.	The requirements are changed from situational requirements to a reference to the applicable state law. Necessary to conform to the requirements of § 62.1-44.15:02 of the Code of Virginia.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: (1) the establishment of less stringent compliance or reporting requirements; (2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) the consolidation or simplification of compliance or reporting requirements; (4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and (5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

As the changes are being made to correct technical errors, or conform to state law or federal regulation, options for regulatory flexibility were not available in this case.

### Family impact

*Assess the impact of this regulatory action on the institution of the family and family stability.*

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It is not anticipated that these regulation amendments will have a direct impact on families.

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