



Exempt Action Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-193
Regulation title	General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Concrete Products Facilities
Action title	Amend and Reissue the Existing Regulation
Document preparation date	August 25, 2012

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 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.

This rulemaking is proposed in order to reissue the existing VPDES general permit which expires on September 30, 2013. The general permit contains limitations and monitoring requirements for point source discharge of treated wastewaters from concrete products facilities to surface waters. The general permit regulation is being reissued in order to continue making it available for these facilities to continue to discharge.

Substantive changes proposed are: added two reasons authorization to discharge cannot be granted (if the antidegradation policy is not met or if the discharge is not consistent with a total maximum daily load (TMDL)), added language to allow for 'administrative continuances' of coverage, added approval of representative outfalls and closure plans for portable plants as part of the registration, reduced monitoring requirements from monthly to quarterly, clarified that total petroleum hydrocarbon monitoring was only necessary when vehicle degreasing was occurring on site, added benchmark monitoring concentrations for storm water and removed total petroleum hydrocarbon and iron monitoring from the storm water limits page. In the special conditions, added that no oil sheen shall be present, waste water should be reuse or recycled when feasible, clarified what information is required for temporary and long-term facility closure

plans, added that settling basins must be lined if they are expanded, added quantification levels of total suspended solids and total petroleum hydrocarbons, added that discharges to TMDL waters must implement measures and controls consistent with the TMDL, added an allowance for deleting or adding outfalls, added procedures for termination of coverage, added instructions for allowing temporary closures for inactive and unstaffed sites, added that discharges must meet water quality standards and that coverage under the permit did not relieve an owner of compliance with any other federal, state or local statute, ordinance or regulation. All the language in Part II (Storm Water Management) was revised to be more consistent with the 2009 Industrial Storm Water General Permit (9VAC25-151) conditions. Changes were made to make this general permit similar to other general permits issued recently and in response to staff and technical advisory committee members' requests to clarify and update permit limits and conditions.

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., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the Board to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters, and § 62.1-44.15(14) authorizes the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes. § 62.1-44.15:5.2 specifies any general permit issued for discharges from ready-mixed concrete plants shall apply to both permanent and portable plants, and it requires all settling basins constructed on or after February 2, 1998 to be lined with concrete or any other impermeable materials. Further, § 62.1-44.16 specifies the Board's authority to regulate discharges of industrial wastes, § 62.1-44.20 provides that agents of the Board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations, and § 62.1-44.21 authorizes the Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters. Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the EPA. This Memorandum of Understanding was modified on May 20, 1991 to authorize the Commonwealth to administer a General VPDES Permit Program.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The proposed regulatory action is needed in order to establish permitting requirements for discharges from concrete products facilities to protect the quality of state waters. The existing permit expires on September 30, 2013, and the regulatory action is necessary in order to reissue the permit for another five-year term. The goal of the regulatory action is to continue the existence of the general permit that establishes limitations and monitoring requirements for point source discharges from concrete products facilities that ensures protection of the environment.

Substance

Please briefly identify and explain the new substantive provisions (for new regulations), the substantive changes to existing sections, or both where appropriate.

The general permit will establish limitations and monitoring requirements for point source discharges from concrete products facilities. As with an individual VPDES permit, the effluent limits in the general permit will be set to protect the quality of the waters receiving the discharges. The primary issue that needs to be addressed is that the existing concrete products facilities general permit expires on September 30, 2013 and must be reissued in order to continue making it available after that date. Substantive changes proposed are: added two reasons authorization to discharge cannot be granted (if the antidegradation policy is not met or if the discharge is not consistent with a total maximum daily load (TMDL)), added language to allow for 'administrative continuances' of coverage, added approval of representative outfalls and closure plans for portable plants as part of the registration, reduced monitoring requirements from monthly to quarterly, clarified that total petroleum hydrocarbon monitoring was only necessary when vehicle degreasing was occurring on site, added benchmark monitoring concentrations for storm water and removed total petroleum hydrocarbon and iron monitoring from the storm water limits page. In the special conditions, added that no oil sheen shall be present, waste water should be reuse or recycled when feasible, clarified what information is required for temporary and long-term facility closure plans, added that settling basins must be lined if they are expanded, added quantification levels of total suspended solids and total petroleum hydrocarbons, added that discharges to TMDL waters must implement measures and controls consistent with the TMDL, added an allowance for deleting or adding outfalls, added procedures for termination of coverage, added instructions for allowing temporary closures for inactive and unstaffed sites, added that discharges must meet water quality standards and that coverage under the permit did not relieve an owner of compliance with any other federal, state or local statute, ordinance or regulation. All the language in Part II (Storm Water Management) was revised to be more consistent with the 2009 Industrial Storm Water General Permit (9VAC25-151) conditions. Changes were made to make this general permit similar to other general permits issued recently and in response to staff and technical advisory committee members' requests to clarify and update permit limits and conditions.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The advantages to the public and the agency are that a Virginia Pollutant Discharge Elimination System general permit will continue to be available to concrete products facilities to enable them to discharge safely to surface waters. The regulatory action poses no disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements that exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected by the proposed regulation.

Public Participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts of the regulation on the regulated community and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the State Water Control Board is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and on any impacts of the regulation on farm and forest land preservation. Also, the Board is 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 at the public hearing or by mail, fax or email to Elleanore Daub, P.O. Box 1105, Richmond, VA 23218, (804) 698-4111 (phone), (804) 698-4032 (fax) or elleanore.daub@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by DEQ by the close of the comment period.

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

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

There are currently 239 active concrete products facilities in Virginia covered under this general permit. The permit specifies what is required in a closure plan for long and temporary closures of facilities. These clarifications may require some facilities to edit their closure plans and ensure monies are available to implement the closure plans. Also, the industry will save money in that sampling requirements have been reduced from monthly to quarterly monitoring and total petroleum hydrocarbon and iron has been eliminated from storm water monitoring.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

These discharges are point sources of pollutants and thus are subject to regulation under the VPDES permit program. There are two alternatives for compliance with federal and state requirements to permit discharges. One is to issue individual VPDES permits to each facility. The other is to reissue the general VPDES permit to cover this category of discharger. A general VPDES is the least burdensome, intrusive and costly to achieve the purpose of the regulation.

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.

The reissuance of the general VPDES permit accomplishes the objectives of applicable law and minimizes the costs to a small business owner and simplifies the application process. Without the general permit, a small business owner would be required to obtain an individual permit which would increase the complexity of a permit application and permit costs.

The proposal establishes less stringent reporting requirements from monthly to quarterly. The agency has followed the monitoring from the industry and it remains consistent such that the agency does not see the need for monthly reporting. In addition, total iron and total petroleum hydrocarbon analysis has been eliminated from storm water monitoring. Total petroleum hydrocarbons are not suggested for monitoring in this type of industrial storm water by the EPA. Also, levels consistently have remained undetectable or very low over the years. Iron was eliminated in storm water primarily because iron is naturally high in soils in Virginia and expected to be high in storm water. There is no feasible alternative to remove iron in storm water when it is naturally occurring (except to the amount the existing technology removes solids and solids are limited under the permit).

The proposal also includes an allowance for continuance of permit coverage in instances where a permittee has submitted a timely registration and is in compliance with their existing permit. This will allow the permittee to legally and safely discharge if the permit is not reissued on time by the Department.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Chandler Concrete	Guidance for reduced monitoring from monthly to quarterly states that monitoring may be reduced to once per quarter when 12 data points are gather in the first year. However, s well designed and operated plant may have few or no discharges during any given year. If there are no discharges during the year, there will be no data point to sample and no way fulfill the 12 point requirement in the guidance. If full compliance is the goal of the regulation, it appears that an outfall with no discharges indicates better compliance than one which has regular discharges to test within the guidelines.	The proposal establishes less stringent reporting requirements from monthly to quarterly for all facilities. Staff review of monitoring data associated with the existing general permit showed that monthly reporting from any facility is not necessary.
Precast Concrete Association of Virginia - David Holsinger, III, PCAV Designee	The agency did not indicate the nature of any new reasons why authorization to discharge shall not be granted, that it intends to require more specifics regarding the listing of chemicals on the General Permit registration statement, that it intends to update and change the existing storm water pollution prevention section, that it may impose new special conditions and additional total petroleum hydrocarbon monitoring or reporting requirements. We request specific information about these intended actions.	The agency invited the precast association to participate on the technical advisory committee to discuss these items. As part of the technical advisory committee these issues were discussed and consensus was reached.

Family impact

Assess the impact of this 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.

This regulation will have no direct impact on the institution of the family or family stability.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

EPA - means the Environmental Protection Agency.

TMDL - mean a total maximum daily load and is defined in the regulation.

Total petroleum hydrocarbons - are organic compounds typically found in fuels, greases and oils.

VPDES - means the Virginia Pollutant Discharge Elimination System which is a permit or document issued by the board pursuant to this chapter authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge.