



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9VAC25-31, Part II (Permit Applications and Special VPDES Permit Programs)
<b>Regulation title</b>	Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation
<b>Action title</b>	Concentrated Animal Feeding Operations Final Exempt
<b>Document preparation date</b>	September 30, 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 authorization to manage pollutants from various sources, including concentrated animal feeding operations (CAFO). 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 that meet the federal definition of CAFO found in 40 CFR 122.23(b) must seek coverage under a NPDES permit if the operation discharges or proposes to discharge. Concentrated Animal Feeding Operations currently covered under these regulations are required to be covered under the VPDES permit regulation (9VAC25-31) or VPDES general permit regulation (9VAC25-191) if they discharge or propose to discharge.

The existing Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) has been amended, where applicable, to reflect changes to 40 CFR 122.23 published in the Federal Register in 77 FR 44494, dated July 30, 2012. This amendment removes the requirement to apply for and obtain a VPDES permit if the CAFO "proposes to discharge," clarifies the responsibility to apply for and get a permit prior to discharging, and removes separate permit deadlines and permit coverage requirements applicable to CAFO operations.

**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.*

The final action on the amendments to this regulation was taken on September 30, 2013 by the State Water Control Board. The title of the regulation is the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

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 4 c of the Administrative Process Act because they are necessary to meet the requirements of the federal Clean Water Act and do not differ materially from the pertinent 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 II, (Permit Applications and Special VPDES Permit Programs)			
100 A.		Requires owners and operators of sludge-only facilities discharging without a permit to submit an application for a permit and specifies separate requirements for CAFO operations as described in 9VAC25-31-130 subdivisions C 1 and C 3.	The reference for requirements for CAFO operations in 9VAC25-31-130 is amended to refer to subdivisions C 1 and C 2 instead of subdivisions C 1 and C 3. Necessary to reflect amendments to 9VAC25-31-130 subsection C that were required to conform to changes to federal regulation (specifically 40 CFR 122.23) that were effective July 30, 2012.
100 J 1.		Lists the application information requirements for CAFO operations. Subdivision i requires a nutrient management plan that satisfies requirements in other sections of the	The reference for requirements for CAFO operations in 9VAC25-31-130 is amended from subdivision C 9 to subdivision C 5. Necessary to reflect amendments to 9VAC25-31-130 subsection C that were required to conform to changes to federal regulation (specifically 40 CFR 122.23) that

		regulation and references 9VAC25-31-130 C 9 for some requirements.	were effective July 30, 2012.
130 A 1.		Identifies CAFOs as point sources that require VPDES permits for either discharges or proposed discharges.	Language concerning "proposed discharges" is deleted from the conditions under which a VPDES permit is required for CAFOs. Necessary to conform to changes to federal regulation (specifically 40 CFR 122.23) that were effective July 30, 2012.
130 C 1.		Requires CAFO owners or operators discharging or proposing to discharge to seek coverage under an individual VPDES permit or a VPDES general permit by applying for the permit.	The language of the requirement is amended to prohibit CAFO owners and operators from discharging unless the discharge is authorized under a VPDES permit, requires the owner or operator to apply for either an individual VPDES permit or a VPDES general permit to get that authorization, and requires the owner or operator to have that authorization at the time of discharge. Necessary to conform to changes to federal regulation (specifically 40 CFR 122.23) that were effective July 30, 2012.
130 C 2.		Provides an exception from the requirement to seek a VPDES permit for large CAFOs if the owner or operator certifies to the board that the CAFO does not discharge or propose to discharge manure, litter, or process wastewater.	The subdivision C 2 exception is deleted. Necessary to conform to changes to federal regulation (specifically 40 CFR 122.23) that were effective July 30, 2012.
130 C 3 & 4.	130 C 2 & C 3.	Provides references for the information that is required to be submitted with the permit application	Subdivisions are renumbered to reflect the deletion of the old subdivision C 2 requirement. Necessary to conform to changes to federal regulation (specifically 40 CFR 122.23) that were effective July 30, 2012.
130 C 5.		Provides a no discharge certification option for CAFOs meeting certain criteria.	The subdivision C 5 no discharge certification option is deleted. Necessary to conform to changes to federal regulation (specifically 40 CFR 122.23) that were effective July 30, 2012.
130 C 6.		Specifies when CAFOs must have or must seek coverage under a VPDES permit.	The subdivision C 6 permit coverage timing requirement is deleted. Necessary because the timing is now covered by amendments to subdivision C 1 and to conform to changes to federal regulation (specifically 40 CFR 122.23) that were effective July 30, 2012.
130 C 7.		Specifies a permittee's duty to maintain permit coverage and when a permittee need not seek continued coverage.	The subdivision C 7 separate continued coverage requirement for CAFOs is deleted. (Continued coverage is required for all VPDES permits in 9VAC25-31-100.) Necessary to conform to changes to federal regulation (specifically 40 CFR 122.23) that were effective July 30, 2012.

130 C 8, 9 & 10.	130 C 4, 5, & 6.	Provides procedures for CAFOs seeking coverage under a general permit, provides procedures to apply when a CAFO owner or operator makes changes to the CAFO's nutrient management plan; and specifies that incorporation of a nutrient management plan is not a cause for permit modification.	Subdivisions are renumbered to reflect the deletion of the old subdivision C 5, C 6, and C 7 requirements. A reference to old subdivision C 8 in the old subdivision C 10 is revised to reflect the renumbering of old subdivision C 8 to C 4. Necessary to conform to changes to federal regulation (specifically 40 CFR 122.23) that were effective July 30, 2012.
170 B 2 g.		Subsection B provides general administrative requirements for coverage of a CAFO under a general permit. Subdivision 2 g specifies that the general permit process requirements are to be found in 9VAC25-31 subdivision C 8.	The reference to 9VAC25-31 subdivision C 8 is revised to refer to subdivision C 4 instead, to reflect the renumbering of those subdivisions. Necessary to conform to changes to federal regulation (specifically 40 CFR 122.23) that were effective July 30, 2012.
200 E.		Provides additional conditions applicable to CAFO VPDES permits and refers to 9VAC25-31-130 subdivision C 4 for the definition of agricultural storm water discharges that are permitted.	The reference to 9VAC25-31 subdivision C 4 is revised to refer to subdivision C 3 instead, to reflect the renumbering of those subdivisions. Necessary to conform to changes to federal regulation (specifically 40 CFR 122.23) that were effective July 30, 2012.
400 G.		Provides that changes to a VPDES permit to incorporate a CAFO's revised nutrient management plan may be made as a minor modification if the plan revision was made in accordance with 9VAC25-31-130 subdivision C 9.	The reference to 9VAC25-31 subdivision C 9 is revised to refer to subdivision C 5 instead, to reflect the renumbering of those subdivisions. Necessary to conform to changes to federal regulation (specifically 40 CFR 122.23) that were effective July 30, 2012.

**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 conform to federal regulations, 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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