



Fast Track Proposed Regulation Agency Background Document

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| Agency name | Department of Environmental Quality |
| Virginia Administrative Code (VAC) citation | 9 VAC 25-32-10 et seq. |
| Regulation title | Virginia Pollution Abatement (VPA) Permit Regulation |
| Action title | Amendments to VPA Permit Regulation to conform with revisions to Code of Federal Regulations and Virginia poultry regulations |
| Document preparation date | December 17, 2004 |

This information is required for executive review (www.townhall.state.va.us/dbppages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dbppages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

The Virginia Pollution Abatement (VPA) Permit Regulation (9 VAC 25-32-10 et seq.) is proposed to be amended. This action is necessary to reflect changes to 40 CFR Parts 9, 122, 123, and 412 as published in the Federal Register Volume 68, No. 29, dated February 12, 2003. Proposed amendments to 9 VAC 25-32 will also align this regulation with requirements specified in the VPA General Permit Regulation for Poultry Waste Management (9 VAC 25-630).

The VPA Permit Regulation contains provisions specifying permit requirements for animal feeding operations, including a general permit for animal feeding operations (AFO's) confining at least 300 animal units utilizing a liquid manure collection and storage system. A new general permit regulation 9VAC25-191 has been adopted in accordance with §62.1-44.17:1 of the Code of Virginia to regulate certain AFO's that meet the federal definition of concentrated animal feeding operation (CAFO). CAFO's will be

regulated under the Virginia Pollutant Discharge Elimination System (VPDES) permits as required by the federal CAFO rule, which became effective April 14, 2003.

The proposed action is being taken to amend 9VAC25-32 to exclude the CAFO's that will be regulated by 9VAC25-191, and to make the definitions consistent with the federal regulations.

The VPA General Permit Regulation for Poultry Waste Management (9 VAC 25-630) specifies VPA requirements for confined poultry feeding operations. Amendments to 9 VAC 25-32 are proposed that align the requirements of these two regulations.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Changes were made by the U.S. EPA to 40 CFR Parts 9, 122, 123, and 412. In response to these changes, the Virginia State Water Control Board has voted to adopt amendments to the VPDES Permit Regulation (9 VAC 25-31) in accordance with §62.1-44.17:1 of the Code of Virginia that requires VPDES permits to be issued to animal feeding operations that meet the federal definition of CAFO. §62.1-44.17:1 A1. of the Code of Virginia stipulates that "notwithstanding the provisions of subsection B, the Board shall promulgate regulations requiring Virginia Pollutant Discharge Elimination System permits for confined animal feeding operations to the extent necessary to comply with §402 of the federal Clean Water Act (33 U.S.C. §1342), as amended." Subsection B. requires VPA permits be issued to confined animal feeding operations of a size that may or may not be covered by the VPDES permits.

The proposed amendments to the VPA permit regulation (9 VAC 25-32) in response to the federal changes are discretionary in that the federal regulations do not specify that a CAFO permitted by a VPDES permit cannot also be covered by a VPA permit. However, the requirements of the VPDES permit include all of the provisions of the VPA permit, and no purpose would be served by issuing two permits to the same facility.

The proposed amendments to the VPA permit regulation (9 VAC 25-32) to align with 9 VAC 25-630 are proposed in response to § 62.1-44.17:1.1 of the Code of Virginia. This section of the law specifies that "the Board shall develop a regulatory program governing the storage, treatment and management of poultry waste".

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The VPDES General Permit Regulation for Concentrated Animal Feeding Operations (9 VAC 25-31) has been amended to include requirements that VPDES permits be issued to concentrated animal feeding operations (CAFO's). CAFO's are a subset of animal feeding operations currently permitted by VPA individual or general permits. The proposed amendments to the VPA Permit Regulation (9 VAC 25-32)

will exclude CAFO's from the requirement to obtain a VPA permit, as they will be covered by a VPDES permit that provides equivalent protection of the environment.

The amendments to 9 VAC 25-32 with regard to 9 VAC 25-630 are proposed to align the VPA permit regulation requirements with those included in the poultry waste management general permit requirements.

The amendments to the VPA Permit Regulation are necessary in order to ensure clear and effective administration of the VPA permit program, thus ensuring protection of the health, safety, and welfare of citizens.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The proposed amendments are expected to be non-controversial, as the changes proposed serve only to: 1) exclude VPA permit requirements for those animal feeding operations that will be permitted by a VPDES permit and the VPDES permit will be as protective of the environment as the VPA permit, and 2) align VPA permit requirements with those that already exist in the VPA poultry waste management permit regulations.

The proposed amendments to the VPA Permit Regulation are not exempt from the Administrative Process Act as specified in § 2.2-4006 A.4.c., as the changes in the federal code make no requirements that a CAFO cannot also be permitted by a VPA permit.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The proposed amendments to the VPA Permit Regulation will change the definitions used to describe an animal feeding operation to be consistent with those in the federal code. The amendments will also change any reference to operations excluded from VPA requirements to include those operations required to obtain VPDES coverage.

The proposed amendments to the VPA Permit Regulation will also specify that confined poultry feeding operations are animal feeding operations that are covered by the VPA requirements. The existing regulation only specifies requirements for animal feeding operations with 300 or more animal units using a liquid manure handling system.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

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- 1) The primary advantage to the public is summarized by the following:
 - a) An animal feeding operation will not be required to obtain two permits that have relatively identical requirements. Paperwork is reduced without any impact to environmental protection.
 - b) Requirements for confined poultry feeding operations are clarified and aligned with existing regulation.
 - 2) The primary advantage to the agency is reduction in resources necessary to administer permit requirements for a CAFO.
 - 3) There are no perceived disadvantages to the public or the Commonwealth.

Financial impact

Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:

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| Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures | No change |
| Projected cost of the regulation on localities | No change |
| Description of the individuals, businesses or other entities likely to be affected by the regulation | Animal feeding operations that meet the requirements to be defined as a “concentrated animal feeding operation” (CAFO) |
| Agency’s best estimate of the number of such entities that will be affected | 152 |
| Projected cost of the regulation for affected individuals, businesses, or other entities | No change |

The proposed amendments will not affect the cost currently required to implement the existing regulation.

The proposed amendments will not affect confined poultry feeding operations, as they are already permitted by existing regulation. These amendments do not add additional requirements for these facilities.

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.

As the problem proposed to be solved is a result of current regulatory language, there are no suitable alternatives to eliminate the regulatory requirements for both a VPA and VPDES permit for CAFO's.

Impact on family

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

As the proposed amendments serve only to specify the type of permit required, and either permit includes similar requirements, no impact on the family should be expected.

Detail of changes

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

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change and rationale |
|---------------------------|--|--|--|
| 9VAC 25-32-10 Definitions | N/A | Includes definitions that are not aligned with similar definitions in the federal code, and does not include some definitions necessary for clarity. | Adds the following definitions: 1) "agricultural storm water" 2) "animal feeding operation" 3) "animal unit" 4) "manure" Changes the following definitions: 1) "confined animal feeding operation" 2) "Department" 3) "Director" 4) "Point source" Deletes the following definitions: 1) "concentrated confined animal feeding operation" Rationale: The changes are proposed to conform with federal definitions and add clarity. |

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| <p>9VAC 25-32-30 Requirements and Prohibitions</p> | <p>N/A</p> | <p>Specifies that a VPA permit can authorize pollutant management activities at animal feeding operations</p> | <p>Excludes animal feeding operations that are required to obtain a VPDES permit. Rationale: Pollutant management activities at these facilities must be covered by a VPDES permit.</p> |
| <p>9VAC 25-32-40 Exclusions</p> | <p>N/A</p> | <p>Does not exclude animal feeding operations that are required to obtain a VPDES permit</p> | <p>Excludes animal feeding operations that are required to obtain a VPDES permit. Rationale: These operations will be covered by a similar permit.</p> |
| <p>9VAC 25-32-250 Animal Feeding Operations</p> | <p>N/A</p> | <p>Describes requirements for “concentrated confined animal feeding operations”</p> | <p>Eliminates the term “concentrated confined”, and instead uses numbers of animals. Specifies that “confined poultry feeding operations” are subject to the VPA permit program. Eliminates information regarding adjoining animal feeding operations, as this is now contained in the definitions section. Rationale: Clarity and consistency</p> |
| <p>9VAC 25-32-300 Transition</p> | <p>N/A</p> | <p>Describes procedure for transition from No-Discharge Certificate program to VPA Permit Program</p> | <p>Deletes this description Rationale: The transition from No-Discharge Certificates to VPA permits was completed in 1999.</p> |