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Exempt Action Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9VAC25-31 [Primary] 9VAC25-870
Regulation title(s)	Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation, 9VAC25-31 Virginia Stormwater Management Program (VSMP) Regulation, 9VAC25-870
Action title	Incorporation of EPA's NPDES Electronic Reporting Rule
Final agency action date	May 17, 2017
Date this document prepared	March 2, 2017

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, 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, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The EPA published the *National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule* in the Federal Register, 80 FR 64063 (October 22, 2015). This rule provides requirements for the electronic reporting and sharing of NPDES program information. The rule requires the use of electronic reporting instead of paper-based reporting in order to: (i) save time and limited resources; (ii) increase data accuracy, improve compliance; and, (iii) support of better protection of waters. The goal is to improve the ability of authorized programs, such as Virginia's VPDES program, to target the most serious water quality and compliance problems while also helping to shift limited resources to more pertinent tasks by reducing time and resources necessary for the paper-based reporting activities. This rule provides important flexibility during the move from paper-based reporting to electronic reporting while still implementing electronic reporting in a timely manner. The final exempt regulatory action will amend Chapters 31 and 870 in order to incorporate the federal electronic reporting rule.

This amendment is exempt from the APA as it is necessary to conform to the changes in the federal regulations (§2.2-4006.A.4.c) and also provides clarification of the 24 hour reporting provisions (§2.2-4006.A.4.a).

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.

At its meeting on May 17, 2017, the State Water Control Board adopted this final exempt action, incorporating EPA's *NPDES Electronic Reporting Rule*, by amending the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation, 9VAC25-31, and the Virginia Stormwater Management Program (VSMP) Regulation, 9VAC25-870. The Board also affirmed that it will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision.

Family impact

Please 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 regulatory amendment has no direct impact on the institution of the family and family stability.

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	Current requirement	Proposed change and rationale
9VAC25-31-25		The incorporation date of the CFR is listed as July 1, 2013.	Updated the incorporation date of references to 40 CFR to the regulation as published on July 1, 2016.
9VAC25-31-110		Provides requirements for signatories to permit applications and reports.	Added criteria for signatories for electronic submittal in the new subsection E (40 CFR 122.22(e)).
9VAC25-31-120		Provides the requirements for discharging storm water.	Under subdivision E.1.c, added language to incorporate the provisions for electronically submitting certifications (40 CFR 122.26(g)(1)(iii)).
9VAC25-31-170		Provides conditions and requirements applicable to general permits.	Under subdivisions B.2.a and B.2.b, added language for the electronic submittal of notices of intent (40 CFR 122.28(b)(2)(i)) and (40 CFR 122.28(b)(2)(ii)).
9VAC25-31-190		Provides conditions applicable to all permits.	<u>Subsection L</u> Added language to incorporate the electronic reporting provisions for DMRs into subdivision L.4.a (40 CFR 122.41(l)(4)(i)). Added language to incorporate the electronic reporting provisions for 24 hour reporting into subdivision L.7 and 8 (40

Current section number	Proposed new section number	Current requirement	Proposed change and rationale
			<p>CFR 122.41(l)(6)(i) and 40 CFR 122.41(l)(7)). Clarified the header for subdivision L.7 to include the five-day follow-up report and clarified subdivision L.7.b which includes what events to report. Added subdivision L.10 to incorporate the electronic reporting provisions of 40 CFR 122.41(l)(9). Subsection M Under subdivisions M.2.a and subdivision M.2.b, added language to incorporate the electronic reporting provisions for notification of an anticipated bypass (40 CFR 122.41(m)(3)(i)) and unanticipated bypass notices (40 CFR 122.41(m)(3)(ii)).</p>
9VAC25-31-200		Provides additional permit conditions applicable to specific categories of VPDES permits.	Under subdivision E.4, added language to incorporate the electronic reporting provisions for CAFO annual report submittal (40 CFR 122.42(e)(4) and (e)(4)(vi)).
9VAC25-31-210		Establishes permit conditions.	Added language to conform to the federal rule requirements into subsection A (40 CFR 122.43(a)).
9VAC25-31-220		Provides requirements for monitoring.	Added language to include electronic reporting for monitoring requirements in subsection I (40 CFR 122.44(i)(2)).
9VAC25-31-400		Provides provisions for minor modifications of permits.	Added subsection H in order to allow for a minor modification of permits in order to include electronic reporting conditions (40 CFR 122.63(f)).
9VAC25-31-410		Provides provisions to terminate permits.	Added a new subsection C in order to incorporate the provisions for the electronic submittal of a notice of termination (40 CFR 122.64(c)).
9VAC25-31-840		Reporting requirements for POTWs and industrial users.	<p>Added language to subdivision E.1 and subsection H for electronic reporting of reports from industrial users (40 CFR 403.12(e)(1) and 12(h)). Added the electronic reporting language to subsection I for annual POTW reports (40 CFR 403.12(i)).</p>
	Part XI		<p><i>VPDES Electronic Reporting Requirements.</i> Added a new part to the chapter to incorporate the electronic reporting requirements of 40 CFR Part 127. The new part includes sections 950 through 1030.</p>
	9VAC25-31-950		<p><i>Purpose and scope.</i> Added a new section which incorporates the applicable requirements of 40 CFR 127.1 for the purpose and scope of this new part.</p>
	9VAC25-31-960		<p><i>Definitions.</i> Added a new section to incorporate the applicable definitions of 40 CFR 127.2.</p>
	9VAC25-31-970		<p><i>Types of data to be reported electronically by VPDES permittees, facilities, and entities subject to this part.</i> Added a new section which incorporates the types of data to be electronically reported/submitted (40 CFR 127.11).</p>
	9VAC25-31-980		<p><i>Signature and certification standards for electronic reporting.</i> Added a new section which incorporates the standards for signature and certification for electronic submittals (40 CFR 127.12).</p>
	9VAC25-31-990		<p><i>Requirements regarding quality assurance and quality control.</i> Added a new section incorporating 40 CFR 127.13, the quality assurance and quality control provisions for the</p>

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			electronic reporting of data.
	9VAC25-31-1000		<i>Requirements regarding timeliness, accuracy, completeness, and national consistency.</i> Added a new section incorporating the requirements of 40 CFR 127.14.
	9VAC25-31-1010		<i>Waivers from electronic reporting.</i> Added a new section which incorporates the provisions for requesting a waiver from e-reporting (40 CFR 127.15) and the processing criteria for a waiver request (40 CFR 127.24).
	9VAC25-31-1020		<i>Implementation of electronic reporting requirements for VPDES permittees, facilities, and entities subject to this part.</i> Added a new section incorporating the implementation criteria and timeline for electronic reporting (40 CFR 127.16).
	9VAC25-31-1030		<i>Adoption by reference of Appendix A to 40 CFR Part 127—Minimum Set of NPDES Data.</i> Added a new section adopting Appendix A of 40 CFR 127 by reference. Appendix A includes the minimum set of data required for electronic reporting.
9VAC25-870-10		Definitions.	Added language for the electronic submittal for waiver certifications for a small construction activity (40 CFR 122.26(b)(15)(i)(C)).
9VAC25-870-15		Provides the incorporation date for references to 40 CFR.	Updated the incorporation date of references to 40 CFR to the regulation as published on July 1, 2016.
9VAC25-870-370		Provides the requirements for signatories to state permit applications and reports.	Added criteria for signatories for electronic submittal in the new subsection E (40 CFR 122.22(e)).
9VAC25-870-400		Provides the requirements for small municipal separate storm sewer systems.	Under subdivision D.7, added language to incorporate the provisions for electronically submitting annual reports for regulated small MS4s (40 CFR 122.34).
9VAC25-870-410		Provides conditions and requirements applicable to general permits.	Under subdivisions B.2.a and B.2.b, added language for the electronic submittal of notices of intent (40 CFR 122.28(b)(2)(i)) and (40 CFR 122.28(b)(2)(ii)).
9VAC25-870-430		Provide conditions which are applicable to all state permits.	<u>Subsection L</u> Added language to incorporate the electronic reporting provisions for DMRs into subdivision L.4.a (40 CFR 122.41(l)(4)(i)). Added language to incorporate the electronic reporting provisions for 24 hour reporting into subdivision L.7 and 8 (40 CFR 122.41(l)(6)(i) and 40 CFR 122.41(l)(7)). Clarified the header for subdivision L.7 to include the five-day follow-up report and clarified subdivision L.7.b which includes what events to report. Added subdivision L.10 to incorporate the electronic reporting provisions of 40 CFR 122.41(l)(9). <u>Subsection M</u> Under subdivisions M.2.a and subdivision M.2.b, added language to incorporate the electronic reporting provisions for notification of an anticipated bypass (40 CFR 122.41(m)(3)(i)) and unanticipated bypass notices (40 CFR 122.41(m)(3)(ii)).
9VAC25-870-440		Additional conditions applicable to municipal	Added the e-reporting requirements for MS4s of 40 CFR 122.42(c).

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		separate storm sewer state permits.	
9VAC25-870-450		Establishes state permit conditions.	Added language to subsection A to include conditions for electronic reporting requirements in state permits (40 CFR 122.43(a)).
9VAC25-870-460		Establishes limitations, standards, and other state permit conditions.	Added language to include electronic reporting for monitoring requirements in subsection H (40 CFR 122.44(i)(2)).
9VAC25-870-640		Provides requirements for minor modifications of individual state permits.	Added a new item 6 to allow for the minor modification of permits in order to include electronic reporting conditions (40 CFR 122.63(f)).
9VAC25-870-650		Provides criteria for the termination of state permits.	Added a new subsection C incorporating the provisions for the electronic submittal of a notice of termination from permittees (40 CFR 122.64(c)).

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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 regulations apply to all persons, including small business owners, who are subject to the VPDES permit program and its requirements for reporting to the department. Any (1) establishment of less stringent compliance or reporting standards; (2) establishment of less stringent schedules or deadlines for compliance and reporting requirements; (3) consolidation or simplification of compliance or reporting requirements; (4) establishment of performance standards for small businesses to replace design or operational standards required in the regulation; or (5) exemption of small businesses from all or any part of the requirements contained in this regulation for all small businesses would directly, significantly and adversely affect the benefits that would be achieved through the implementation of the regulations. As explained in EPA’s adoption of the federal rule, there is more flexibility and savings for reporting using the electronic based system over the current paper-based system.

Additionally, conforming state regulations to those of the EPA is necessary to maintain authority to implement the national programs. Facilities benefit from state implementation of the program as they have easier access to decision makers with a clearer understanding of state-specific issues and needs. The amendment also includes compliance flexibility by allowing for waivers from electronic reporting for those persons that are approved under the waiver provisions.

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.

APA – Administrative Process Act
DMR – Discharge Monitoring Report
EPA – Environmental Protection Agency
NPDES – National Pollutant Discharge Elimination System
VPDES – Virginia Pollutant Discharge Elimination System