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Exempt Action Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9VAC25-194
Regulation title(s)	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Vehicle Wash Facilities and Laundry Facilities
Action title	Amend and Reissue the Existing Vehicle Wash and Laundry Facilities General Permit
Date this document prepared	November 10, 2016

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Administrative Process Act (APA), the agency is still 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

This rulemaking is proposed in order to reissue the existing VPDES general permit which expires on October 15, 2017. The general permit contains limitations and monitoring requirements for point source discharge of wastewaters from vehicle wash facilities and laundry facilities. The general permit regulation is being reissued in order to continue making it available for these facilities to continue to discharge.

In addition, a periodic review/small business impact review was conducted as part of this regulatory action. Please see the periodic review/small business impact review result section for additional information.

Substantive changes to the existing regulation include:

- Clarifying that vehicle washing includes towed small (less than 8.6' beam and 25' length) recreational boats;
- Requiring the permittees to notify the Municipal Separate Storm Sewer System (MS4) owners before getting coverage under the general permit if their discharge is into the MS4;
- Clarifying that inspections (visual examinations) of the effluent include sheen, floating solids, visible foam, examination date and time and examination personnel; and,
- Requiring the effluent to be free of sheens.

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
 BMP: Best Management Practices
 CFR: Code of Federal Regulations
 DEQ: Department of Environmental Quality
 EPA: (U.S. EPA): United States Environmental Protection Agency
 MS4: Municipal Separate Storm Sewer System
 NPDES: National Pollutant Discharge Elimination System
 O&M: Operations and Maintenance
 QL: Quantification Level
 TAC: Technical Advisory Committee
 USC: United States Code
 VAC: Virginia Administrative Code
 VPDES: Virginia Pollutant Discharge Elimination System

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

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(7) authorizes the Board to adopt rules governing the procedures of the Board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the Board to adopt such regulations as it deems necessary to enforce the general water quality management program, §62.1-44.15(14) authorizes the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes, § 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 U.S. 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. Describe the rationale or justification of the proposed regulatory action. Describe 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.

This proposed regulatory action is needed in order to establish appropriate and necessary permitting requirements for discharges of wastewater to surface waters from vehicle wash and laundry facilities. Protecting water quality in the Commonwealth's surface waters is necessary to protect the health, safety and welfare of citizens. These discharges are considered to be point sources of pollutants and thus are subject to regulation under the VPDES permit program. The primary issue that needs to be addressed is that the existing general permit expires on October 15, 2017 and must be reissued in order to continue making it available after that date.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

Substantive changes to the existing regulation include clarifying that vehicle washing includes small towed (less than 8.6' beam and 25' length) recreational boats, requiring the permittees to notify the Municipal Separate Storm Sewer System (MS4) owners before getting coverage under the general permit if their discharge is into the MS4, clarifying that inspections (visual examinations) of the effluent include sheen, floating solids, visible foam, examination date and time and examination personnel, and requiring the effluent to be free of sheens.

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.

The advantages to the public and the agency are that a VPDES general permit will continue to be available to vehicle wash and laundry facilities to enable them to discharge safely to surface waters without the increased cost and more complicated application process associated with issuing an individual permit. Another advantage to the agency is that the clarifications to best management practices and operations and maintenance will assist with inspections and compliance reviews. There are no disadvantages.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is 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 as the regulation applies statewide. Localities with MS4s have expressed interest in the permit as they have concerns about charity car wash fundraisers and mobile operators that might discharge to their system. This is discussed in "Alternatives" below.

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.

There are two alternatives for compliance with federal and state requirements to permit wastewater point source discharges to surface waters. 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 and costly alternative to achieve the purpose of the regulation.

Another alternative considered were whether to automatically cover mobile car wash operators under the general permit and require best management practices. However, the localities participating on the TAC did not prefer a 'blanket coverage' option and expect no discharge as the regulation states under "Authorization to Discharge." The localities preferred that DEQ distribute guidelines to the mobile operators to educate them on the water quality issues associated with car washing and methods available to avoid or minimize discharge.

Another alternative discussed was whether to regulate charity fund raising car washes. DEQ and the TAC agreed that the current method of educating charity wash fund raisers on the water quality issues associated with car washes and methods available to avoid or minimize discharge was preferable. The TAC provided DEQ with ideas on how to improve the guidelines currently on the DEQ website and methods to improve the distribution of the guidelines.

Another alternative discussed was whether to increase monitoring for some or all of the permitted facilities. DEQ didn't see a compelling compliance reason to increase the cost of monitoring for pH, TSS and oil and grease at these small businesses. Most compliance problems are due to incorrect use of detergents and DEQ thinks adding the requirement to look for sheens, foam and floating solids in the weekly visual examination is a better way to address that problem.

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 impacts of the regulated community and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts of this regulatory proposal and 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 for the public comment file may do so by mail, email or fax to Elleanore Daub, P.O. Box 1105, Richmond, Virginia 23218, elleanore.daub@deq.virginia.gov, phone (804) 698-4111, fax (804) 698-4032. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://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 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

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

Periodic review/small business impact review announcement

If you wish to use this exempt proposed stage to announce a periodic review (§ 2.2-4017 & EO-17 (2014)) and a small business impact review (§ 2.2-4007.1) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete this section.

In addition, pursuant to Executive Order 17 (2014) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important

governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Periodic review/small business impact review report of findings

There were no comments received following the publication of the Notice of Periodic Review in the Notice of Intent Comment Period. However, since a proposal is now available and most of these permittees are small businesses, DEQ is electing to announce again the periodic review/small business impact statement.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the pre-emergency regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
		The title of the regulation is "General Permit For Vehicle Wash Facilities and Laundry Facilities"	Changed the title to "Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Vehicle Wash Facilities and Laundry Facilities" to conform to other agency general permit titles.
9VAC25-194-10. Definitions.		None	Added definitions for "Construction Equipment" as this has been questioned in the past.
9VAC25-194-10. Definitions.		"Vehicle wash" is defined and boat washing is excluded from the definition.	The agency has determined that small recreational boats trailered by a passenger car or truck are acceptable for washing at a car wash business. It was determined that boats less the 8.6' beam and 25' in length would include most personal recreational boats that would be trailered by a passenger car or truck.
9VAC25-194-15. Applicability of incorporated references based on the dates that they became effective.		This section updates all Title 40 Code of Federal Regulations (CFR) within the document to be those published as of July 1, 2012. This is a recommendation from the DEQ Office of Policy so dates do not need to be added for each CFR reference.	Simplified this paragraph to match other general permits and changed the dates to July 1, 2016.
9VAC25-194-40. Effective date of the permit.		Effective dates of the permit are for the expiring permit term (2012 – 2017).	Effective dates updated throughout regulation (2017-2022).
9VAC25-194-50.		Requirements are the same as the 2012 regulation.	Section reformatted to match other general permits.

Authorization to discharge. Subsections A and B.			
9VAC25-194-50. Authorization to discharge. Subsection D.		Statement that compliance with the general permit constitutes compliance with other applicable laws and regulations.	Clarified that <i>"Compliance with this general permit constitutes compliance for purposes of enforcement with the federal Clean Water Act §§ 301, 302, 306, 307, 318, 403 and 405 (a) through (b), the State Water Control Law, and applicable regulations under either, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation"</i> which better mirrors the language in the permit regulation at 9VAC25-31-60.
9VAC25-194-50. Authorization to discharge. Subsection E.		Allows for continuation of coverage after permit expiration if certain conditions are met.	Same conditions but the subsection is clarified and dates are updated to reflect the new permit term. This language is being updated with each reissued general permit so permittees can discharge legally and safely if the permit reissuance process is delayed.
9VAC25-194-60. Registration statement. Subdivision A.		Laundry facilities were required to register for coverage prior to September 16, 2012. This date was specified because the laundries were covered in a different general permit with different due dates.	Requirement not needed in 2017 reissuance. Laundries have been covered under the last 5 year reissuance and are on the same time table as the vehicle washes.
9VAC25-194-60. Registration statement. Subdivision B.		Instructions for late registrations statement submittal.	Instructions not changed but paragraph is clarified and dates are updated.
9VAC25-194-60. Registration statement. Subdivision C.		Registration statement information includes the requirement to notify the owner of an MS4 within 30 days of coverage under the general permit.	Requirement changed so that the notification to the MS4 owner occurs at the time of registration under the permit and that notification must be included with the registration. This was added after TAC discussion that the localities would like to be notified before DEQ provides coverage so they may comment on the availability of central sewer connections.
9VAC25-194-70. General permit.		Cover page of permit states that the discharge shall be in accordance with the permit.	Added that the discharge shall be in accordance with the permit and accordance with the information submitted with the registration statement. Recognition of the registration in this statement is necessary because it contains the information on which we base the decision to allow coverage under the general permit. It emphasizes the importance of a representative registration statement. A similar statement is already included in VPDES individual permit cover pages.
9VAC25-194-70. General permit. Part I B 1.		Requires weekly inspections of the effluent and document inspections in an operational log.	Added more detail that the visual examination of the effluent include sheens, floating solids and foam. Plus added that the date, time and personnel must be noted in the log.
9VAC25-194-70. General permit. Part I B 2.		Requires that there is no discharge of floating solids or visible foam other than in trace amounts.	Added that the effluent shall be free of sheens. This is a common special condition for facilities that could have petroleum product in the discharge.
9VAC25-194-70. General permit. Part I B 7.		Prohibition to washing vehicles or containers bearing residue of animal manure or toxic chemicals <i>into the wastewater treatment system</i> is prohibited.	Clarified prohibition that washing of vehicles with animal manure or toxic residuals is prohibited under this permit; regardless of whether it goes to the vehicle wastewater treatment system, storm sewer or surface water.
9VAC25-194-70. General permit. Part I B 9.		Requirement for permittees that discharge into a MS4 must notify the MS4 owner of the existence of the discharge within 30 days of coverage.	Requirement changed so that the notification to the MS4 owner will occur at the time of registration under the permit. The notification will be submitted with the registration statement to DEQ. This was added after TAC discussion that the localities would

			like to be notified before DEQ provides coverage so they may comment on the availability of central sewer connections.
9VAC25-194-70. General permit. Part I B 11.		Provides notification levels for toxic pollutants.	Clarified that the permittee shall notify the department if they exceed 100 µg/l or 500 µg/l <u>of the toxic pollutant</u> not limited in the permit. This is not a new condition, rather a clarification referring back to what is actually being measured (the toxic pollutant).
9VAC25-194-70. General permit. Part I B 12.		Requires an operation and maintenance (O&M) manual.	Provides same requirement but clarifies that the O&M manual is for the <u>vehicle wastewater</u> treatment works and that the operational log specified by Part I B 1 is part of the O&M manual.
9VAC25-194-70. General permit. Part I B 12 e.		No requirement for visual examination procedures.	Added a requirement for visual examination and maintenance required by Part I B 1 and example log sheets be included in O&M manual.
9VAC25-194-70. General permit. Part I B 13.		Provides quantification levels (QL) for the pollutants limited by the permit.	Provided a definition of QL and added that the QL must be less than or equal to the QL provided in the permit. These clarifications are in other VPDES permits.
9VAC25-194-70. General permit. Part I B 14.		Requirement that samples must be taken in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.	Requirement moved to Part II A as this is a condition applicable to all permits.
9VAC25-194-70. General permit. Part II 1.		Provides noncompliance reporting requirements and an online method to do 24 hour reporting.	Online web link updated.

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 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.