



Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-32-10 et seq.
Regulation title	Virginia Pollution Abatement Permit Regulation
Action title	Amend the Virginia Pollution Abatement (VPA) permit regulation related to Animal Feeding Operations (AFOs)
Date this document prepared	February 18, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The State Water Control Board is amending the Virginia Pollution Abatement (VPA) Permit Regulation in order to facilitate consistency with the other regulations which governs the pollutant management activities at Animal Feeding Operations (AFOs). The VPA permit regulation governs the pollutant management activities of animal wastes at AFOs. The VPA permit regulation contains obsolete definitions which are not consistent with the existing general permit for AFOs as well as related federal definitions. The proposed amendments include language to establish technical requirements for end-users of animal waste which is transferred off the farm. The proposed amendments specify that the technical requirements for end-users will address proper storage, appropriate land application practices and recordkeeping.

Changes have been made to the proposal in Section 10. The changes include modifications to the animal waste and waste storage facility definitions.

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 or board taking the action, and (3) the title of the regulation.

The State Water Control Board during their regular meeting on March 28, 2014, voted to adopt the final amendments to the Virginia Pollution Abatement General Permit for Animal Feeding Operations as presented and recommended by Department of Environmental Quality staff.

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. The identification should include a reference to the agency/board/person's overall regulatory authority, as well as a specific provision authorizing the promulgating entity to regulate this specific subject or program; and a description of the extent to which the authority is mandatory or discretionary.

Virginia Code §62.1-44.15. (5) authorizes the State Water Control Board to permit the management and discharge of sewage, industrial wastes and other wastes into or adjacent to state waters; and the alteration otherwise of the physical, chemical or biological properties of state waters. The Virginia Pollution Abatement Regulation defines the procedures and requirements to be followed in connection with VPA permits issued by the Board pursuant to the State Water Control Law.

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 it 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 primary purpose of this action is to amend the Virginia Pollution Abatement (VPA) permit regulation in order to facilitate consistency with the other regulations which governs the pollutant management activities at AFOs. The VPA permit regulation governs the pollutant management activities of animal wastes at AFOs. The VPA permit regulation contains obsolete definitions which are not consistent with the existing general permit for AFOs as well as related federal definitions.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The proposed amendments include amendments to definitions, terms and procedures in the VPA Permit Regulation in order to bring consistency to the regulations which govern AFOs. Additionally, the

proposed amendments include language to establish technical requirements for end-users of animal waste which is transferred off the farm. The language specifies that the technical requirements for end-users will address proper storage, appropriate land application practices and recordkeeping.

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 indicate.

The primary advantage of the proposed regulatory action is to bring consistency to the regulations which govern AFOs. Establishing and maintaining consistency among the regulations which govern AFOs is an advantage for the public, the regulated community, as well as the Commonwealth. There are no disadvantages of the proposed regulatory action.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
9VAC25-32-10 (Definitions)	“Animal waste” means liquid, semi-solid, and solid animal manure, poultry waste and process wastewater, compost or sludges associated with livestock and poultry animal feeding operations including the final treated wastes generated by a digester or other manure treatment technologies.	Removed "poultry waste" from the definition. “Animal waste” means liquid, semi-solid, and solid animal manure [poultry waste] and process wastewater, compost or sludges associated with [livestock and poultry] animal feeding operations including the final treated wastes generated by a digester or other manure treatment technologies.	Amended definition so as not to conflict with the poultry waste regulation (9VAC25-630)
9VAC25-32-10 (Definitions)	Added Waste storage facility definition to read: "Waste storage facility" means a waste holding pond or tank used to store manure prior to land application, or a lagoon or treatment facility used to digest or reduce the solids or nutrients.	Amended Waste storage facility definition to read: "Waste storage facility" means a waste holding pond or tank used to store manure prior to land application, or a lagoon or treatment facility used to digest or reduce the solids or nutrients [<u>or (iii) a structure used to store manure or waste</u>].	Amended the definition by adding "or (iii) a structure used to store manure or waste." in order to make sure the changes are consistent with the changes being made to the VPA General Permit for Animal Feeding

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Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Katie K. Frazier – Virginia Agribusiness Council	The Council supports extending the permit as amended for 10 years.	<i>No changes are being proposed to address this comment as the comment applies to the regulatory action for the VPA GP Regulation for AFOs. For a response, please see the response to comments for the VPA GP Regulation for AFOs.</i>
Katie K. Frazier – Virginia Agribusiness Council	There was disagreement about thresholds that would trigger recordkeeping and utilization requirements for animal waste transferred offsite. One concern that was raised was that thresholds that are too low would actually contradict the purpose of establishing a transfer program. Furthermore, any notions of basing this threshold on the number of acres the waste is applied to by an end-user would complicate this process significantly and effect both compliance and enforceability. The Council supports the threshold requirements as they are proposed.	DEQ acknowledges the support. <i>No changes are being proposed to address these comments.</i>
Katie K. Frazier, President – Virginia Agribusiness Council	There were members of the TAC that advocated for the permit to include the mandate of Best Management Practices (BMPs) as listed within the Chesapeake Bay Watershed Implementation	DEQ acknowledges the support. <i>No changes are being proposed to address these comments.</i>

	<p>Plan (WIP). However, the Council, along with many other members of the TAC did not support this proposal, as many operators of AFO's are utilizing rented land over which they have no control of many practices, such as stream exclusion and vegetated buffers. Furthermore, the Code is explicit in what requirements can be included in a general permit regulation and does not allow for the addition of BMP requirements. This permit also covers operations across the state, not just those that lie within the Bay watershed, making it inappropriate to apply these standards to this regulation. Finally, the BMPs contained in the WIP are meant to be voluntarily implemented, and mandating them would be counter to this specification. This proposal was not included in the final amended regulations, and the Council would like to see this remain unchanged.</p>	
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p>CBF opposes issuance of this proposed VPA General Permit for AFOs without significant modification. CBF finds that the AFO VPA General Permit is not consistent with the Virginia Chesapeake Bay Total Maximum Daily Load Phase I Watershed Implementation Plan (WIP) (dated November 29, 2010) and the Final Chesapeake Bay Total Maximum Daily Load (TMDL)</p>	<p><i>No changes are being proposed to address this comment as the comment applies to the regulatory action for the VPA GP Regulation for AFOs. For a response, please see the response to comments for the VPA GP Regulation for AFOs. No changes are being proposed to address this comment as the comment applies to the regulatory action for the VPA GP Regulation for AFOs. For a response, please see the response to comments for the VPA GP Regulation for AFOs.</i></p>

	<p>for Nitrogen, Phosphorus and Sediment (dated December 29, 2010). The Board, at its March 14, 2013 meeting during which this proposal was discussed, specifically directed DEQ staff to address the role of this general permit in implementing the WIP. We are disappointed that no modifications were made to the proposed AFO VPA General Permit following that direction from the Board. CBF, therefore, maintains its longstanding position that the proposed AFO VPA General Permit is not consistent with the WIP and, thus, not consistent with the State Water Control Law and the federal Clean Water Act.</p>	
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p>First, CBF finds that the AFO VPA General Permit must provide greater consistency with the federal Clean Water Act and the Chesapeake Bay TMDL by specifying a waste load allocation (WLA) for animal feeding operations. The TMDL, on pages 8-28, clearly states that “Virginia shifted the entire AFO load into the WLA ...” during negotiations with the Environmental Protection Agency regarding Virginia’s final WIP, and it also allocated annual aggregate WLAs in Virginia for “regulated agriculture” (TMDL, Appendix Q). While a WLA is typically reserved for activities regulated pursuant to a Virginia Pollution Discharge Elimination System</p>	<p><i>No changes are being proposed to address this comment as the comment applies to the regulatory action for the VPA GP Regulation for AFOs. For a response, please see the response to comments for the VPA GP Regulation for AFOs.</i></p>

	<p>(or VPDES) permit, Virginia has utilized the AFO VPA program as a surrogate for the VPDES program for Confined Animal Feeding Operations (CAFOs). In fact, Virginia’s WIP indicates on page 71 that “all AFOs and CAFOs are currently covered by VPA permits....” While the WIP also states that DEQ will convert “CAFOs that discharge or propose to discharge” to VPDES permit coverage, to date no such conversions have been completed. As a “de facto” VPDES permit, the AFO VPA General Permit must provide consistency with the federal Clean Water Act and the Chesapeake Bay TMDL. The Board and DEQ Director publicly recognized this as a “gray area” during the Board’s meeting on March 14, 2013.</p>	
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p>Secondly, the pollutant management requirements imposed on AFOs covered under the AFO VPA General Permit must be expanded to include best management practices (BMPs) required in the WIP and Chesapeake Bay TMDL. CBF finds that the proposed AFO VPA General Permit will undermine Virginia’s commitment for aggressive implementation of BMPs on agriculture land. For instance, according to Virginia’s WIP (page 57), only 15 percent of the streams located on Virginia’s agricultural land are currently fenced. In order to</p>	<p><i>No changes are being proposed to address this comment as the comment applies to the regulatory action for the VPA GP Regulation for AFOs. For a response, please see the response to comments for the VPA GP Regulation for AFOs.</i></p>

	<p>comply with the TMDL and WIP, 45 percent of the streams on agricultural land must be fenced by 2017 and 95 percent of the streams must be fenced by 2025. Virginia’s commitment requires that farms managing more than 20 cows (or 58 percent of all farms that manage cattle) exclude access to riparian waterways (WIP, page 63). Without such a requirement for those operations that are currently regulated by state and federal law, it is doubtful that, and in fact calls into question whether, DEQ will be able to secure stream fencing on small AFOs, as called for in Virginia’s <i>Small AFO Evaluation and Assessment Strategy</i>. Without such a requirement in the AFO VPA General Permit, it is also doubtful that Virginia will meet its 2017 or 2025 agriculture BMP implementation commitments (WIP, Table 5.4-1, page 57) or the agriculture sector target loads for nitrogen, phosphorus, and sediment by milestone periods (WIP, Table 5.4-4, page 61). If the WIP target loads are not reached, Virginia has indicated that “authorization to develop and implement mandatory actions or programs will be requested from the legislature” (WIP, page 59).</p>	
<p>Ann F. Jennings, Virginia</p>	<p>CBF maintains its recommendation that the AFO VPA General Permit</p>	<p><i>No changes are being proposed to address this comment as the comment applies to the regulatory</i></p>

<p>Executive Director – Chesapeake Bay Foundation</p>	<p>incorporate requirements for the “stream protection with fencing” BMP to be completed by the end of the permit cycle. Stream fencing is a critical step in protecting local waterways and the Chesapeake Bay from fecal contamination, erosion of stream banks, and phosphorus and nitrogen pollutants contained in animal waste. Further, recognizing the statutory responsibility of the State Water Control Board, assisted by DEQ, to “implement a plan to achieve fully supporting status for impaired waters,” (§ 62.1-44.19:7) we continue to call upon the Board and DEQ to fully evaluate the applicability of the other agriculture BMPs called for in Virginia’s WIP to the current AFO VPA General Permit. The Board must implement its authority to require BMPs to prevent the discharge of pollutants into state waters. Alternatively, DEQ and the Board must commit in the body of the permit to re-open the AFO VPA General Permit if Virginia fails to achieve its 2017 agriculture BMP implementation commitments (Table 5.4-1, page 57, of the WIP) or its 2017 agriculture sector target loads for nitrogen, phosphorus, and sediment (Table 5.4-4, page 61 of the WIP).</p>	<p><i>action for the VPA GP Regulation for AFOs. For a response, please see the response to comments for the VPA GP Regulation for AFOs.</i></p>
<p>Ann F. Jennings,</p>	<p>DEQ and stakeholder reasoning for failing to</p>	<p><i>No changes are being proposed to address this comment as the</i></p>

<p>Virginia Executive Director – Chesapeake Bay Foundation</p>	<p>include additional BMPs from the WIP in the proposed AFO VPA General Permit as noted in public meetings and the “Tentative Agenda and Minibook, State Water Control Board Meeting, Thursday, March 14, 2013,” page 13, are simply inadequate. While the Virginia Code § 62.1-44.17:1 specifies requirements that are to be included in the AFO VPA General Permit, Virginia Code §62.1-44.19:7A mandates that “the Board shall develop and implement a plan to achieve fully supporting status for impaired waters” [emphasis added]. The Commonwealth’s current rate of implementation of the “stream protection with fencing” BMP remains far behind the 2017 and 2025 implementation goals. Therefore, failing to require AFOs to implement stream fencing will ensure that the Commonwealth fails to fully implement the WIP.</p>	<p><i>comment applies to the regulatory action for the VPA GP Regulation for AFOs. For a response, please see the response to comments for the VPA GP Regulation for AFOs.</i></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p>Stream fencing is critical to ensuring an adequate buffer: ensuring that cattle do not compromise riparian vegetation or apply waste within the buffer zone. The AFO VPA General Permit clearly authorizes DEQ to approve “other site-specific conservation practices ... that will provide pollutant reductions equivalent or better than reductions that would be achieved by the</p>	<p><i>No changes are being proposed to address this comment as the comment applies to the regulatory action for the VPA GP Regulation for AFOs. For a response, please see the response to comments for the VPA GP Regulation for AFOs.</i></p>

	100-foot buffer, or 35-foot wide vegetated buffer” (9VAC25-192-70).	
Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation	DEQ can establish different standards for AFOs located within the Chesapeake Bay watershed from AFOs located within the Southern Rivers watershed; therefore, the reasoning for excluding additional WIP BMPs that this proposed AFO VPA General Permit covers operations across the state, is simply not justified. DEQ operates other regulatory permits, such as the Construction General Permit, that impose specific requirements for discharges to impaired waters that are not applicable to other waters.	DEQ acknowledges that separate requirements could be developed; however, there is inherent value in consistency of regulatory requirements when similar goals for water quality protection exist. The basis for not including additional measures for AFOs in the Chesapeake Bay watershed is not based solely on consistency issues. No changes are being proposed to address this comment.
Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation	DEQ points to the Resource Management Plan regulations promulgated by the Soil and Water Conservation Board as the tool for promoting additional voluntary implementation of the agricultural BMPs called for in the WIP. However, the Soil and Water Conservation Board at their November 21, 2013 meeting indefinitely suspended the Resource Management Plan regulations. Therefore, the Commonwealth cannot rely solely on the Resource Management Plan regulations as the tool for reaching the WIP’s aggressive implementation goals for agricultural BMPs, particularly stream fencing.	The Resource Management Plan regulations have not been repealed, and will be implemented as a component of the WIP. DEQ agrees that neither the VPA AFO GP nor the Resource Management Plan program independently suffice to meet WIP goals. The programs are part of a suite of mandatory and voluntary programs. No changes are being proposed to address this comments.
Ann F. Jennings,	TAC members have expressed concerns that	No changes are being proposed to address this comment as the

<p>Virginia Executive Director – Chesapeake Bay Foundation</p>	<p>mandating additional BMPs would bring undue burden to owners of AFOs since much of the land they operate to manage their livestock and raise their crops is rented or leased. It was suggested that by not owning the properties, the owners of the AFOs would be unable to guarantee implementation of the additional BMPs. Yet, the AFO VPA General Permit already mandates very specific requirements for other infrastructure requiring an investment on rented or leased land, such as adequate buffers, liquid manure collection facilities, and implementation of a nutrient management plan.</p>	<p><i>comment applies to the regulatory action for the VPA GP Regulation for AFOs. For a response, please see the response to comments for the VPA GP Regulation for AFOs.</i></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p>Section 9VAC25-192-70 B-8 of the AFO VPA General Permit must more clearly prohibit waste storage unless adequately covered. Unlimited amounts of waste should not be authorized to be stored outdoors for a significant, undetermined period without adequate coverage to prevent polluted runoff regardless of the requirement for a 100-foot buffer. Inadequately covered wastes will allow transport of nutrient and bacterial pollutants from the storage site during rain events, potentially polluting state waters. Several studies have shown that vegetative buffers are not always capable of fully capturing and containing pollutants and that they may</p>	<p>In response to these and other comments, DEQ modified the definition in 9VAC25-32-10 of “waste storage facility” to be more inclusive of the type of wastes managed therein. <i>Storage requirements are contained in the VPA GP Regulation for AFOs. No changes are being proposed to address this comment as the comment applies to the regulatory action for the VPA GP Regulation for AFOs. For a response, please see the response to comments for the VPA GP Regulation for AFOs.</i></p>

	<p>need to be greater than 100 feet wide to provide significant nutrient removal. See, e.g., Department of Soil Science, North Carolina State University, “Riparian Buffers: What Are They And How Do They Work?” Section 9VAC25-192-70 B-8 should incorporate more specifically language that is found under “Storage Requirements” in the proposed “Fact Sheet Requirements for Animal Waste Use and Storage.”</p>	
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p>In section 9VAC25-192-70 B-10, the AFO VPA General Permit fails to provide any indication as to how DEQ will determine approval of a waste treatment process. There is no clarity in the regulations as to how and under what standards or circumstances a waste treatment process on an AFO will be considered appropriate. Without clarity in the AFO VPA General Permit, neither farmers nor the general public will have any guidance on whether or not a waste treatment process is appropriate and under what circumstances a waste treatment process will be authorized by DEQ.</p>	<p><i>No changes are being proposed to address this comment as the comment applies to the regulatory action for the VPA GP Regulation for AFOs. For a response, please see the response to comments for the VPA GP Regulation for AFOs.</i></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p>CBF understands that the Environmental Protection Agency (EPA) is currently undertaking an assessment of Virginia’s “AFO and CAFO programs to determine whether they are consistent with the Clean Water Act NPDES requirements and are</p>	<p><i>No changes are being proposed to address this comment as the comment applies to the regulatory action for the VPA GP Regulation for AFOs. For a response, please see the response to comments for the VPA GP Regulation for AFOs.</i></p>

	<p>implemented effectively to achieve the jurisdiction’s animal-agriculture Watershed Implementation Plan (WIP) commitments to reduce nitrogen, phosphorus, and sediment” pursuant to the May 28, 2013 “Modification Of Settlement Agreement, Fowler et al. v. EPA.” We, therefore, find it suitable for DEQ and the Board to incorporate findings from EPA’s assessment, as appropriate, in the final AFO VPA General Permit.</p>	
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p>CBF incorporates by reference, review and comments provided by the Virginia Coastal Policy Clinic at William & Mary Law School entitled, “Strengthening the VPA General Permit: Managing Animal Feeding Operations in Virginia to Meet State Law and the Bay TMDL,” Fall 2013 (Cannon, R. and Kane, J.), submitted January 21, 2014.</p>	<p>DEQ acknowledges CBF’s concurrence with the named comments. <i>For a response, please see the response to comments for the VPA GP Regulation for AFOs.</i></p>
<p>Shana Jones, Director - Virginia Coastal Policy Clinic at W&M Law School</p>	<p>Virginia Law Requires Implementation of the Bay TMDL and WIPs, Legally Requiring the State to Enact the Provisions and Practices Found within the Plan: Prior to the Bay TMDL process, Virginia enacted a law affirmatively requiring the state to implement TMDLs and the Bay TMDL and Phase I WIP within the law’s requirements. Virginia’s Water Quality Monitoring, Information and Restoration Act requires the State Water Control Board to: “develop</p>	<p>The plan developed and implemented includes the VPA AFO GP as one component of that plan. The VPA AFO GP is consistent with the Chesapeake Bay TMDL and WIP, as it mandates certain BMPs required in State Water Control Law that reduce nonpoint source pollution, while the Resource Management Plan program will address site specific voluntary BMP implementation, rather than implement a “one-size-fits-all” approach through the VPA AFO GP.</p> <p><i>No changes are being proposed to address this comment.</i></p>

	<p>and implement [a plan] pursuant to a schedule total maximum daily loads of pollutants that may enter the water for each impaired water body as required by the Clean Water Act.” The plan must be developed and implemented “to achieve fully supporting status for impaired waters,” and must include elements including target achievement dates, measurable goals, necessary corrective actions, and associated costs, benefits, and environmental impact of addressing water impairment. In other words, the statute requires Virginia’s SWCB to develop and implement a plan that matches the description of the Phase I WIP, which acts as a roadmap to implement the Bay TMDL. In enacting this statute, Virginia provided a foundation independent of the CWA that compels the Commonwealth, to implement the standards and practices identified in the Bay TMDL and WIPs in order to meet its milestones in 2017 and 2025.</p>	
<p>Shana Jones, Director - Virginia Coastal Policy Clinic at W&M Law School</p>	<p>Virginia can provide reasonable assurances to the EPA that its AFO regulatory program is sufficient by including certain BMPs in the VPA general permit. The 2014 revision presents an opportunity to strengthen the general permit to meet Virginia’s milestone commitments under the</p>	<p><i>No changes are being proposed to address this comment as the comment applies to the regulatory action for the VPA GP Regulation for AFOs. For a response, please see the response to comments for the VPA GP Regulation for AFOs.</i></p>

	<p>Virginia WIP, and responsibilities under the Bay TMDL. In presenting an opportunity, the 2014 revisions also presents a risk. If the EPA determines that Virginia is not effectively implementing the Bay WIPs or meeting their milestones, EPA has the authority to withhold funding or take additional backstop measures, such as expanding the coverage of the federal permits (in Virginia, VPDES permits), increasing oversight of any VPDES permits, requiring additional pollution reductions from point sources or revising water quality standards, or increasing federal enforcement in the watershed. Because the VPA general permit program is the primary means to implement an effective AFO waste management scheme, and because the 2014 permit will remain in effect until 2024, it must be strengthened to reasonably assure to the EPA that Virginia will meet its obligations and commitments under the Bay TMDL and WIP.</p>	
<p>Shana Jones, Director - Virginia Coastal Policy Clinic</p>	<p>Although the VPA Provisions in Virginia’s State Water Control Law Prescribe the Contents of the General Permit, They Still Allow for the</p>	<p><i>No changes are being proposed to address this comment as the comment applies to the regulatory action for the VPA GP Regulation for AFOs. For a response, please see the response to comments for the</i></p>

<p>at W&M Law School</p>	<p>Inclusion of Important Phase I WIP BMPs. While the contents of the general permit are prescribed by state statute, many BMPs identified in the Phase I WIP can be added or strengthened within that framework. As the State Water Control Law provides the statutory basis for the VPA permit program, the VPA regulations accordingly must conform to the priorities and standards set out by the legislature in that statute. Some of these criteria are specific in what the general permit shall require. However, some criteria rely on the SWCB’s discretion, enabling it to introduce additional requirements beyond the minimum standards identified, or define the practices that are adequate or necessary. The latter provisions provide an opportunity to include some of the BMPs and priority practices identified in the Phase I WIP into the general permit. For example, one provision in the State Water Control Law states that the VPA general permit shall require “adequate buffer zones” between where operators are allowed to apply waste and features that are likely to lead to harm to water quality or human</p>	<p><i>VPA GP Regulation for AFOs.</i></p>
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	<p>health. One WIP priority practice and BMP, stream fencing, supports farmers in ensuring that these buffer zones are “adequate”. The Phase I WIP commits Virginia to have 45% of streams on agricultural land in Virginia streams fenced by 2017, and 95% fenced by 2025. AS of 2009, 15% of streams on agricultural lands were adequately fenced. By 2013, the milestone target requires only 18.6% of these streams to be adequately fenced. This means stream fencing needs to increase nearly 2.5 times to meet the 2017 milestone expectation, and over 5 times to meet the 2025 expectation. Strengthening the general permit by adding stronger stream fencing provisions is the easiest – and perhaps only – way to satisfy Virginia’s commitment under the WIP.</p>	
<p>Shana Jones, Director - Virginia Coastal Policy Clinic at W&M Law School</p>	<p>Another provision in the statute gives significant discretion given to the Board to determine the structure and content of on-site nutrient management plans, specifying certain minimum criteria, such as that the plans include “storage and land area requirements” and “nutrient management sampling including soil and waste monitoring.” It does not however limit or specifically define what those</p>	<p><i>No changes are being proposed to address this comment as the comment applies to the regulatory action for the VPA GP Regulation for AFOs. For a response, please see the response to comments for the VPA GP Regulation for AFOs.</i></p>

	<p>requirements must be. Several BMPs relating to AFOs could be introduced or strengthened through this authority. By including requirements in the VPA general permit that require implementation of these BMPs on permitted AFOs, Virginia can move closer to achieving these milestones, providing reasonable assurance that it is on target to meet its WIP commitments.</p>	
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All changes made in this regulatory action

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

The changes to the regulation are outlined on the following pages.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC25-32-10. (Definitions)	N/A	Definitions	<p>Added Agricultural storm water definition to read: "Agricultural storm water discharge " means a precipitation-related discharge of manure, litter, or process wastewater which has been applied on land areas under the control of an animal feeding operation or under the control of a poultry waste end-user or poultry waste broker in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater. Added the definition for consistency with other regulations which govern animal feeding operations.</p>
9VAC25-32-10. (Definitions)	N/A	Definitions	<p>Added Animal feeding operation definition to read: "Animal feeding operation" means a lot or facility where the following conditions are met: 1. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and 2. Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility. Two or more animal feeding operations under common ownership are a single animal feeding operation for the purposes of determining the number of animals at an operation, if they adjoin each other, or if they use a common area or system for the disposal of wastes. Added the definition to clarify the use of the term as used in this regulation.</p>
9VAC25-32-10. (Definitions)	N/A	Definitions	<p>Added Animal waste definition to read: "Animal waste" means liquid, semi-solid, and solid animal manure [, poultry waste] and process wastewater, compost or sludges associated with [livestock and poultry] animal feeding operations including the final treated wastes generated by a digester or other manure treatment technologies. Amended definition to remove poultry waste so as not to conflict with the poultry waste regulation (9VAC25-630).</p>
9VAC25-32-10. (Definitions)	N/A	Definitions	<p>Added Animal waste end-user definition to read: "Animal waste end-user" means any recipient of transferred animal waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial use for an operation under his control. Added the definition to make it consistent with other regulations which govern animal feeding operations.</p>
9VAC25-32-10. (Definitions)	N/A	Definitions	<p>Added Animal waste fact sheet definition to read: "Animal waste fact sheet" means the document that details the requirements regarding utilization, storage, and management of animal waste by end-users. The fact sheet is approved by the department. Added the definition to make it consistent with other regulations which govern animal feeding operations.</p>
9VAC25-32-10. (Definitions)	N/A	Definitions	<p>Added Beneficial use definition to read: "Beneficial use" means a use that is of benefit as a substitute for natural or commercial products and does not contribute to adverse effects on health or environment. Added the definition to clarify other terms used in the regulation.</p>

9VAC25-32-10. (Definitions)	N/A	Definitions	Added Confined poultry feeding operation definition to read: "Confined poultry feeding operation" means any confined animal feeding operation with 200 or more animal units of poultry. This equates to 20,000 chickens or 11,000 turkeys regardless of animal age or sex. Added the definition to make it consistent with other regulations which govern animal feeding operations.
9VAC25-32-10. (Definitions)	N/A	Definitions	Added Fact sheet definition to read: "Fact sheet" means the document that details the requirements regarding utilization, storage, and management of poultry waste by poultry waste end-users and poultry waste brokers. The fact sheet is approved by the department, in consultation with the Department of Conservation and Recreation. Added the definition to make it consistent with other regulations which govern animal feeding operations.
9VAC25-32-10. (Definitions)	N/A	Definitions	Added Poultry grower definition to read: "Poultry grower" or "grower" means any person who owns or operates a confined poultry feeding operation. Added the definition to make it consistent with other regulations which govern animal feeding operations.
9VAC25-32-10. (Definitions)	N/A	Definitions	Added Poultry waste definition to read: "Poultry waste" means dry poultry litter and composted dead poultry. Added the definition to make it consistent with other regulations which govern animal feeding operations.
9VAC25-32-10. (Definitions)	N/A	Definitions	Added Poultry waste broker definition to read: "Poultry waste broker" or "broker" means a person who possesses or controls poultry waste that is not generated on an animal feeding operation under his operational control and who transfers or hauls poultry waste to other persons. If the entity is defined as a broker they cannot be defined as a hauler for the purposes of this regulation. Added the definition to make it consistent with other regulations which govern animal feeding operations.
9VAC25-32-10. (Definitions)	N/A	Definitions	Added Poultry waste end-user definition to read: "Poultry waste end-user" means any recipient of transferred poultry waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial end use for an operation under his control. Added the definition to make it consistent with other regulations which govern animal feeding operations.
9VAC25-32-10. (Definitions)	N/A	Definitions	Added Poultry waste hauler definition to read: "Poultry waste hauler" or "hauler" means a person who provides transportation of transferred poultry waste from one entity to another, and is not otherwise involved in the transfer or transaction of the waste, nor responsible for determining the recipient of the waste. The responsibility of the recordkeeping and reporting remains with the entities to which the service was provided: grower, broker, and end-user. Added the definition to make it consistent with other regulations which govern animal feeding operations.

9VAC25-32-10. (Definitions)	N/A	Definitions	<p>Added definition to read: "Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.</p> <p>Added the definition to make it consistent with other regulations which govern animal feeding operations.</p>
9VAC25-32-10. (Definitions)	N/A	Definitions	<p>Added Waste storage facility definition to read: "Waste storage facility" means a waste holding pond or tank used to store manure prior to land application, or a lagoon or treatment facility used to digest or reduce the solids or nutrients [<u>or (iii) a structure used to store manure or waste</u>].</p> <p>Added the definition to make it consistent with other regulations which govern animal feeding operations.</p> <p>Amended the definition by adding "<u>or (iii) a structure used to store manure or waste.</u>" in order to make sure the changes are consistent with the changes being made to the VPA General Permit for Animal Feeding Operations.</p>
9VAC25-32-10. (Definitions)	N/A	Definitions	<p>Added 300 animal units definition to read: "300 animal units" means 300,000 pounds of live animal weight, or the following numbers and types of animals:</p> <ul style="list-style-type: none"> a. 300 slaughter and feeder cattle; b. 200 mature dairy cattle (whether milked or dry cows); c. 750 swine each weighing over 25 kilograms (approximately 55 pounds); d. 150 horses; e. 3,000 sheep or lambs; f. 16,500 turkeys; g. 30,000 laying hens or broilers. <p>Added the definition to make it consistent with other regulations which govern animal feeding operations.</p>
9VAC25-32-10. (Definitions)	N/A	Definitions	<p>Deleted Concentrated animal feeding operations definition which reads: "Concentrated confined animal feeding operation" means an animal feeding operation at which:</p> <ol style="list-style-type: none"> 1. At least the following number and types of animals are confined: <ul style="list-style-type: none"> a. 300 slaughter and feeder cattle; b. 200 mature dairy cattle (whether milked or dry cows); c. 750 swine each weighing over 25 kilograms (approximately 55 pounds); d. 150 horses; e. 3,000 sheep or lambs; f. 16,500 turkeys; g. 30,000 laying hens or broilers; or h. 300 animal units; and 2. Treatment works are required to store wastewater, or otherwise prevent a point source discharge of

			wastewater pollutants to state waters from the animal feeding operation except in the case of a storm event greater than the 25-year, 24-hour storm. Deleted definition: This definition of Concentrated animal feeding operations is obsolete and causes confusion. The federal definition uses the same term with a different meaning.
9VAC25-32-10. (Definitions)	N/A	Definitions	Amended Confined animal feeding operations definitions to read: "Confined animal feeding operation", for the purposes of this regulation, has the same meaning as an "animal feeding operation." Amended the definition to make the regulation consistent with other regulations which govern AFOS.
9VAC25-32-140. (Public notice of VPA permit action and public comment period)	N/A	Public Notice requirements for permit modifications	Amended subdivision A. 1 to read: 1. Except for animal feeding operations as defined in 9VAC25-32-10 , when the modifications are to the nutrient management plan. Amended subdivision A.1 to make the regulation for public notice for AFOs consistent with the VPDES regulation which governs AFOs.
9VAC25-32-250. (Concentrated Animal Feeding Operations)	N/A	Section with specific requirements for Animal Feeding Operations.	Amended section title and language to read: A. All animal feeding operations shall maintain no point source discharge of pollutants to surface waters except in the case of a storm event greater than the 25-year, 24-hour storm. Animal feeding operations having 300 or more animal units utilizing a liquid manure collection and storage system or having 200 or more animal units of poultry are pollutant management activities subject to the VPA permit program. Two or more animal feeding operations under common ownership are a single animal feeding operation for the purpose of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes. B. Case-by-case determination. 1. The board may determine that any animal feeding operation which does not otherwise qualify for coverage under the VPA general permit and has not been required to obtain a VPDES permit be required to obtain an individual VPA permit upon determining that it is a potential or actual contributor of pollution to state waters. In making this determination the following factors shall be considered: a. The size of the operation; b. The location of the operation relative to state waters; c. The means of conveyance of animal wastes and process waters into state waters; d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into state waters; e. The compliance history and the ability to make corrections in order to comply with the VPA general permit conditions; f. The means of storage, treatment, or disposal of animal wastes; g. Other relevant factors. 2. A VPA permit application shall not be required for an animal feeding operation subject to subdivision 1 of this subsection until the board has conducted an on-site inspection of the operation and determined that the operation shall be regulated under the VPA permit program. Amended the section title and language to make the regulation consistent with the other regulations

N/A	9VAC25-32-255. (Requirements for end-users of animal waste and poultry waste)	New section	<p>which govern AFOs. Removed the obsolete terms and procedures.</p> <p>Added new section to read:</p> <p>A. Technical requirements for end-users of animal waste or poultry waste will be established in general permit regulations or individual permits. Technical requirements for end-users of animal waste or poultry waste shall address but not be limited to the following;</p> <ol style="list-style-type: none"> 1. Proper waste storage; 2. Appropriate land application practices; and 3. Recordkeeping. <p>B. End-users of animal waste or poultry waste shall comply with technical requirements established as set forth by subsection A.</p> <p>Added new section which includes language regarding the establishment of technical requirements for end-users of animal waste and poultry waste in general permit regulations or individual permits.</p>
FORMS (9VAC25-32)	N/A	Amended the VPA Permit application form for animal waste operations which was last revised 10/95. Virginia Pollution Abatement Permit Application, Form B, Animal Waste (rev. 10/95)	Amended section to reflect the changes made in 9VAC25-32-250 (amended forms). Revised the application form B to reflect the changes made in 9VAC25-32-250 the section specific to Animal Feeding Operations. Revised Form: Virginia Pollution Abatement (VPA) Permit Application, Form B, Animal Feeding Operations (AFOs) (rev. 2/13)

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 regulation governs the pollutant management activities of animal wastes at AFOs. The amendments are necessary to obtain consistency among the regulations which govern AFOs. Establishing technical requirements for end-users of animal waste allows flexibility is an alternative to requiring animal waste end-users to obtain coverage under the general permit or an individual VPA permit.

Family impact

Please assess the impact of the proposed 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.

It is not anticipated that an amendment to this regulation will have any impacts on the family and 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.

AFO - Animal Feeding Operations

Animal waste - "Animal waste" means liquid, semi-solid, and solid animal manure and process wastewater, compost or sludges associated with animal feeding operations including the final treated wastes generated by a digester or other manure treatment technologies.

Animal waste end-user - "Animal waste end-user" or "end-user" means any recipient of transferred animal waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial use for an operation under his control.

300 A.U. - "300 animal units" means 300,000 pounds of live animal weight, or the following numbers and types of animals:

- a. 300 slaughter and feeder cattle;
- b. 200 mature dairy cattle (whether milked or dry cows);
- c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);
- d. 150 horses;
- e. 3,000 sheep or lambs;
- f. 16,500 turkeys;
- g. 30,000 laying hens or broilers.

VPA - Virginia Pollution Abatement