



## Exempt Action Proposed Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9VAC25-190
<b>Regulation title</b>	General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Nonmetallic Mineral Mining
<b>Action title</b>	Amend and Reissue the Existing Regulation
<b>Document preparation date</b>	May 15, 2013

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 14 (2010) and 58 (99).

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

This rulemaking is proposed in order to reissue the existing VPDES general permit which expires on June 30, 2014. The general permit contains limitations and monitoring requirements for point source discharge of treated wastewaters from nonmetallic mineral mining to surface waters. The general permit regulation is being reissued in order to continue making it available for these facilities to continue to discharge.

Changes proposed are: Section 10 – Definitions. Definitions were added for *best management practices (BMPs)*, *department (DEQ)*, *municipal separate storm sewer system (MS4)*, *significant spills* and *total maximum daily load (TMDL)*. This terminology is used in the regulation and needed explanation. Also deleted metallic products and food processing raw material from the definition of *significant materials* since these materials would not be found at these facilities. Also clarified the *vehicle/equipment washing* definition to mean this is *vehicle or equipment degreasing* to match the terminology used in a similar general permit (concrete products).

Section 15 - Applicability of incorporated references based on the dates that they became effective. A statement was added to update all Title 40 Code of Federal Regulations within the document to be those published as of July 1, 2013. This is a recommendation from the DEQ Office of Policy.

Section 20 and 70 – Purpose and Part I. Effective dates were updated to reflect this reissuance.

Section 50 A, B– Authorization – Reformatted to match structure of other general permits being issued at this time. Also, added that an owner will be denied authorization when the discharge would violate the antidegradation policy. This is based on EPA comments provided on other general permits reissued recently. The requirement that the discharge must meet the assumptions and requirements of a TMDL was reworded to match other general permits.

Section 50 C – Added the statement *"Compliance with this general permit constitutes compliance with the Clean Water Act, the State Water Control Law, and applicable regulations under either, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation."* This was added in response to Attorney General Office comments on other general permits recently reissued to recognize there are some exceptions to compliance with the Clean Water Act as stated in the permit regulation.

Section 50 D– Added language to allow for administrative continuances of coverage under the old expired general permit until the new permit is reissued and coverage is granted or coverage is denied; provided the permittee has submitted a timely registration and is in compliance with the existing permit. This language is being added to all recently reissued general permits so permittees can discharge legally and safely if the permit reissuance process is delayed.

Section 60 A – Registration – Reformatted this section to match the structure of other recently reissued general permits. Facilities currently holding an individual VPDES permit and requesting coverage under this general permit must notify DEQ 210 days prior to the expiration date of their individual permit, rather than 180 days prior to their expiration date. This gives DEQ 30 days to determine whether coverage can be granted and the individual permit holder then still has the required 180 days to submit an individual permit application if their request for coverage under the general permit is denied. Existing facilities registration submittal dates were revised to April 1, 2014, which is 90 days prior to expiration instead of 180 days prior. New facilities must submit a registration statement at least 45 days prior to commencement of discharge rather than 30 days prior. These are substantive changes.

Section 60 B – Added language accepting late registration statements (after July 1, 2014, the effective date) but stated that authorization to discharge will not be retroactive. Also, that existing permittees may be provided administrative continuance of their existing permit if a complete registration statement is submitted before July 1, 2014.

Section 60 C – Several minor edits to the registration statement questions were made for clarification. The following notification requirement was added to the registration statement: *"Whether the facility will discharge to a Municipal Separate Storm Sewer System (MS4). If so, provide the name of the MS4 owner. The owner of the facility shall notify the MS4 owner in writing of the existence of the discharge within 30 days of coverage under the general permit, and shall copy the DEQ regional office with the notification. The notification shall include the following information: the name of the facility, a contact person and phone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number."* This notification is a permit requirement and the TAC thought it should be repeated as a reminder in the registration process. The question *"Indicate if there are vehicle or equipment degreasing activities performed on site. If yes, indicate if there is any process wastewater generated from these activities"* was added because the answer to this question is needed to determine if total petroleum hydrocarbon limits are required. The requirement to submit monitoring data to determine compliance with a new special condition for Chickahominy watershed discharges that reflect the existing Chickahominy special standards in the water quality standards regulation (see Part II B 14 below) was added. Also, vehicle equipment or degreasing activities and vehicle washing and return water from

operations where mined material is dredged was added to the characterization of each outfall's discharge since it is part of the process water definition. These are substantive changes.

Section 60 E - Added the allowance for registration statements to be submitted electronically as well as by postal mail. Previously, registration statements were only submitted as a hard copy with the original signature but the agency and the TAC thought electronic submissions of registration statements are appropriate at this time. This is a substantive change.

Section 65 - Repealed this section "*Termination of permit coverage.*" and moved it inside the permit itself. This section contains requirements for termination so it is more appropriate as part of the permit.

Section 70 Part I A 1 and 2 – General Permit limits pages for process water and storm water. *Special Conditions* have been included in the introductory paragraph to Part I which summarizes the requirements of the permit (along with effluent limitations, monitoring, storm water management and conditions applicable to all permits). The footnotes have been rearranged in parts I A 1 and 2 so they are in order in the limits table. Also, footnote #3 for process water (Part I A 1) states that total petroleum hydrocarbon monitoring is only necessary when vehicle degreasing occurs on site. Vehicle degreasing or equipment degreasing has been clearly defined to mean the washing or steam cleaning of engines or other drive components of a vehicle or equipment in which the purpose is to degrease and clean petroleum products. It does not mean washing sediment off trucks. This has always been unclear to the staff. Also the TPH methods in this footnote for Part I A 1 are included and the requirement for "*no discharge of floating solids or visible foam*" is moved to Part I B 10 (Special conditions). In Part I A 2 (storm water limits table, the timing requirements for collecting a storm water sample (at least three days from preceding storm event and during the first 30 minutes of discharge) has been moved to Part II A (monitoring requirements for storm water) with some changes (see Part II below).

Section 70 part I B 1 - Special conditions. This requirement to clean up spilled fluids was revised to delete the words "*to the maximum extent possible.*" Legal staff recommended that this is difficult to enforce.

Section 70 Part I B 6 – The requirement to modify, revoke and reissue the permit if a more stringent effluent standard or limit is promulgated by EPA was deleted. General permits are not modified, revoked or reissued. The TAC thought a new effluent standard would be incorporated more appropriately during reissuance.

Section 70 Part I B 10 - The requirement that "*There shall be no discharge of floating solids or visible foam in other than trace amounts*" was moved here from the limits table in part I A 1. The addition of the requirement that "*There shall be no solids deposition or oil sheen from petroleum products in surface water as a result of the industrial activity in the vicinity of the outfall*" was added to another general permit (concrete products) and thought applicable to this permit as well. It serves as an added measure of protection and something the inspector can look for to ensure proper BMPs, clean up measures or treatment is occurring.

Section 70 Part I B 11 - A definition of vehicle/equipment washing is deleted because it had no requirement associated with it and was already in section 10 (Definitions).

Section 70 Part I B 14 – A requirement to meet the Chickahominy special standards (from the water quality standards regulation at 9VAC25-260-310 m) was added. These special standards contain more stringent effluent limits for several parameters for discharges to the Chickahominy watershed. It was included so that any nonmetallic mining permits in that watershed could be eligible for this general permit. This is a substantial change.

Section 70 Part I B 15 – Reworded the requirement "*to meet applicable water quality standards*" to match the wording used in other recently reissued general permits.

Section 70 Part I B 16 – Added a new special condition that describes how temporary facility closures at inactive and unstaffed sites will be implemented. The same condition was recently added to another general permit (concrete products). It previously only applied to storm water but now can be implemented for the entire site and now requires board approval and a 30 day reactivation notification. Also, no discharge monitoring reports are required while the facility is inactive and unstaffed. This is a substantive change.

Section 70 Part I B 17 – Added a new special condition that describes how terminations of a general permit will be implemented. This is being added to all general permits as they are reissued.

Section 70 Part II – Storm Water Management – This entire section was revised to match (for the most part) language in the 2009 Industrial Storm Water General Permit. Some minor differences can be found but these were done with TAC consensus. While most of the language changes seem substantive, the actual requirements for storm water management have not changed significantly.

One edition that the TAC discussed in detail was the timing requirements moved from Part I A 2 (storm water limits table). It has been clarified that samples from a storm water management structure (which are a series of large settling lagoons) must meet the *representative samples* requirement. There is no additional timing requirements to obtain a ‘first flush’ of storm water which is, at most industrial sites, considered the worst case scenario and containing the most pollutants. The timing requirements for typical storm water samples are at least three days from the preceding storm event and during the first 30 minutes of discharge. However, this is not the case when the discharge is through a series of large storm water management structures that hold and settle the solids over time and rarely discharge. If they do discharge, the storm water that is discharged is from the end of the series of control structures where the water has been in the ponds the longest and therefore, the most settled. This sampling requirement for a *representative discharge* from the storm water control structure vs. other storm water discharges was in the 2009 permit, but was not clear.

Another edition was included in *sampling waivers*. Previously, when a permittee was unable to collect a sample within the monitoring period (annually) due to adverse weather conditions, the permittee was required to collect a substitute sample from the next qualifying event in the next period. Since this permit only required annual sampling, the TAC added a requirement that the permittee must attempt to sample at least four times during the annual sampling period. This is consistent with the quarterly visual exams and routine inspections.

Part III A– Added "*Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45: Certification for Noncommercial Environmental Laboratories, or 1VAC30-46: Accreditation for Commercial Environmental Laboratories.*" This is a new regulatory requirement effective January 1, 2012, and is being added to all general permits as they are reissued.

Part III L - Removed requirement to meet sewage sludge standards as sewage discharges are not covered by this permit.

Section 70 Part II Y – Transfer of permits – Revised so that the board may waive the automatic transfer timing (30 days in advance of proposed transfer). Permittees are rarely able to meet this requirement and the staff thinks they need some flexibility with this. Also references to modifications and revocations and reissuances have been removed as these events are not appropriate for coverage under general permits.

## Legal basis

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

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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, § 62.1-44.15(10) authorizes the Board to adopt regulations, and § 62.1-44.15(14) authorizes the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes. Further, § 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 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 by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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The proposed regulatory action is needed in order to establish permitting requirements for discharges from nonmetallic mineral mining to protect the quality of state waters. The existing permit expires on June 30, 2014, and the regulatory action is necessary in order to reissue the permit for another five-year term. The goal of the regulatory action is to continue the existence of the general permit that establishes limitations and monitoring requirements for point source discharges from nonmetallic mineral mining that ensures protection of the environment.

**Substance**

*Please briefly identify and explain the new substantive provisions (for new regulations), the substantive changes to existing sections, or both where appropriate.*

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The general permit will establish limitations and monitoring requirements for point source discharges from nonmetallic mineral mining. As with an individual VPDES permit, the effluent limits in the general permit will be set to protect the quality of the waters receiving the discharges. The primary issue that needs to be addressed is that the existing general permit expires on June 30, 2014 and must be reissued in order to continue making it available after that date. Substantive changes proposed are identified in "Summary" above.

**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 so indicate.*

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The advantages to the public and the agency are that a VPDES general permit will continue to be available to nonmetallic mineral mining facilities to enable them to discharge safely to surface waters. The regulatory action poses no disadvantages to the public or the Commonwealth.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which are 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.*

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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.*

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There are no localities particularly affected by the proposed regulation.

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

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In addition to any other comments, the State Water Control Board is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and on 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 may do so at the public hearing or by mail, email or fax to Elleanore Daub, P.O. Box 1105, Richmond, VA 23218, (804) 698-4111 (phone), (804) 698-4032 (fax) or [elleanore.daub@deq.virginia.gov](mailto:elleanore.daub@deq.virginia.gov). Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at [www.townhall.virginia.gov](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 DEQ by the close of the comment period.

A public hearing will be held and notice of the public hearing will appear on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and can be found in the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

### Economic impact

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

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There are currently 166 active nonmetallic mineral mining facilities in Virginia covered under this general permit. There is not expected to be any change in the economic impact as a result of these amendments.

### 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.*

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These discharges are point sources of pollutants and thus are subject to regulation under the VPDES permit program. There are two alternatives for compliance with federal and state requirements to permit discharges. 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, intrusive and costly to achieve the purpose of the regulation.

### 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.*

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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.

The proposal also includes an allowance for continuance of permit coverage in instances where a permittee has submitted a timely registration and is in compliance with their existing permit. This will allow the permittee to legally and safely discharge if the permit is not reissued on time by the Department.

### Public comment

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

Commenter	Comment	Agency response
Sam Hollins Aggregates Program Manager, Virginia Transportation Construction Alliance.	Requested to serve on the technical advisory committee formed to advise the board on amendments to the regulation.	Mr. Hollins was invited to serve on the technical advisory committee.

**Family impact**

*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.

**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.*

DEQ means the Department of Environmental Quality.

EPA means the Environmental Protection Agency.

MS4 means municipal separate storm sewer system and is defined in the regulation.

NPDES means National Pollutant Discharge Elimination System and is the federally recognized pollutant discharge elimination system program. Virginia was authorized to administer this program (VPDES) in 1975. Furthermore, in 1991 the Commonwealth was authorized to administer a General VPDES Permit Program.

TAC means technical advisory committee and is an ad hoc committee consisting of interested stakeholders and staff formed to provide advice to DEQ in drafting amendments to the regulation.

TMDL means a total maximum daily load and is defined in the regulation.

TPH means total petroleum hydrocarbons - are organic compounds typically found in fuels, greases and oils.

USC means United States Congress.

VPDES means Virginia Pollutant Discharge Elimination System.