

TENTATIVE AGENDA AND MINIBOOK

STATE WATER CONTROL BOARD MEETING - MARCH 28, 2014

AGENDA	Pages 2 - 4
MINIBOOK	Pages 4 - 15
9VAC25-32 COMMENT SUMMARY, RESPONSE AND DETAIL OF CHANGES	Pages 16 - 36
9VAC25-192 COMMENT SUMMARY, RESPONSE AND DETAIL OF CHANGES	Pages 37-83

TENTATIVE AGENDA AND MINIBOOK  
**STATE WATER CONTROL BOARD MEETING**  
 FRIDAY, MARCH 28, 2014

Training Room  
 Department of Environmental Quality  
 Piedmont Regional Office  
 4949-A Cox Road  
 Glen Allen, VA 23060

CONVENE – 10:00 A.M.

**TAB**

- |              |  |                       |             |
|--------------|--|-----------------------|-------------|
| <b>I.</b>    | <b>Minutes</b> (December 17, 2013)   |                       | A           |
| <b>II.</b>   | <b>Regulations - Fast-Track</b><br>Tank Vessel Discharge Contingency Plan and Financial Responsibility<br>Regulation (9VAC25-101)  | Porterfield           | B           |
| <b>III.</b>  | <b>Regulations - Final</b><br>Designated Groundwater Management Areas (9VAC25-600)<br>Virginia Pollution Abatement General Permit Regulation for Animal<br>Feeding Operations (9VAC25-192) and<br>Virginia Pollution Abatement Permit Regulation (9VAC25-32)   | Porterfield<br>Bowles | C<br>D<br>D |
| <b>IV.</b>   | <b>Proposed Regulations</b><br>Water Quality Standards - Triennial Review (9VAC25-260)   | Kennedy               | E           |
| <b>V.</b>    | <b>Watershed Programs</b><br>Total Maximum Daily Loads (TMDLs: Phelps Branch Sediment TMDL<br>(Appomattox County, James River Basin); Long Branch and<br>Buffalo River Sediment TMDLs (Amherst County, James River<br>Basin); Chickahominy River Sediment TMDL (Hanover and<br>Henrico counties, James River Basin)<br>Water Quality Management Planning Regulation Amendments: Phelps<br>Branch Sediment TMDL (Appomattox County, James River<br>Basin) –I Sediment; Long Branch and Buffalo River Sediment<br>TMDLs (Amherst County, James River Basin) –Sediment;<br>Chickahominy River Sediment TMDL (Hanover and Henrico<br>counties, James River Basin) - Sediment | McKercher             | F           |
| <b>VI.</b>   | <b>Significant Noncompliers Report</b>   | O'Connell             | G           |
|              | <b>Consent Special Orders</b><br>Tidewater Regional Office<br>Home Associates of Virginia, Inc.  | O'Connell             | H           |
| <b>VII.</b>  | <b>Public Forum</b>  |                       |             |
| <b>VIII.</b> | <b>Other Business</b><br>Division Director's Report  |                       |             |

TMDL Approvals: Potomac River Bacteria TMDLs (Prince William and Stafford counties, Potomac – Shenandoah River Basin); Sugarland Run, Mine Run, and Pimmit Run Bacteria TMDLs (Arlington, Fairfax, and Loudoun counties Potomac – Shenandoah River Basin); Hat Creek, Piney River, Rucker Run, Mill Creek, Rutledge Creek, Turner Creek, Buffalo River and Tye River Bacteria TMDLs (Nelson and Amherst counties, James River Basin); Bent Creek, North Creek, Stonewall Creek, Walkers Ford Creek, and Wreck Island Creek Bacteria TMDLs (Amherst, Appomattox, Buckingham, and Campbell counties, James River Basin); Banister River and Winn Creek Bacteria TMDLs (Halifax and Pittsylvania counties, Roanoke River Basin)

Implementation Plan Approvals: Linville Creek Bacteria and Sediment Watershed Implementation Plan (Rockingham County, Potomac – Shenandoah River Basin); Spout Run Bacteria and Sediment Watershed Implementation Plan (Clarke County, Potomac – Shenandoah River Basin); Rockfish River Bacteria and Sediment Watershed Implementation Plan (Nelson County, James River Basin); Lower Banister River Bacteria Watershed Implementation Plan (Halifax and Pittsylvania counties, Roanoke River Basin)

Future Meetings (June 26-27, September 29-30 & December 11-12)

## ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions arising as to the latest status of the agenda should be directed to the staff contact listed below.

**PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS:** The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for its consideration.

For REGULATORY ACTIONS (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For CASE DECISIONS (issuance and amendment of permits), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is an additional comment period, usually 45 days, during which the public hearing is held.

In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

**REGULATORY ACTIONS:** Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments

presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

**CASE DECISIONS:** Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of the decision. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then allow others who commented during the public comment period (i.e., those who commented at the public hearing or during the public comment period) up to 3 minutes to respond to the summary of the prior public comment period presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

**POOLING MINUTES:** Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

**NEW INFORMATION** will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in rare instances, new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. In the case of a regulatory action, should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

**PUBLIC FORUM:** The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda, pending regulatory actions or pending case decisions. Those wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4378; fax (804) 698-4346; e-mail: [cindy.berndt@deq.virginia.gov](mailto:cindy.berndt@deq.virginia.gov).

---

**Tank Vessel Discharge Contingency Plan and Financial Responsibility Regulation (9VAC25-101):** The staff will bring to the State Water Control Board (Board) at the March 28, 2014 meeting, a request to accept final amendments to the Tank Vessel Discharge Contingency Plan and Financial Responsibility Regulation (9VAC25-101 et seq.) This regulatory amendment will be processed using the fast-track regulatory process. Section 2.2-4012.1 of the Code of Virginia allows for regulations to be modified using the fast track process when changes are expected to be noncontroversial.

This regulation establishes requirements tank vessels must meet in order to transport oil on state waters. It requires a plan to be developed to address any spill that may occur and establishes financial assurance requirements that vessels must meet to demonstrate that they will be able to fund clean-up of any spill that may

occur. This regulatory amendment is needed to update the regulation with state statute, to add clarity to the applicability of the regulation, to correct a statutory citation and to remove an obsolete section.

Section 62.1-44.15 of the Code of Virginia requires operators of tank vessels transporting or transferring oil as cargo upon state waters to develop contingency plans. Section 62.1-44.16 of the Code of Virginia requires financial responsibility to be provided by an operator of a tank vessel demonstrating the owner's financial stability to conduct a proper response to a discharge of oil. The State Water Control Board previously adopted this regulation to implement these statutory requirements.

The federal Oil Pollution Act of 1990 also places requirements on vessels transporting oil and requires vessels to have vessel response plans and to obtain a Certificate of Financial Responsibility from the U.S. Coast Guard. Virginia's statute recognizes the requirements of the Oil Pollution Control Act of 1990 and deems vessels in compliance with Virginia requirements if they have a vessel response plan approved by the U.S. Coast Guard and/or a Certificate of Financial Responsibility, as applicable.

Staff recently reviewed this regulation and four minor changes were identified as being needed to the regulations. This regulation regulates vessels transporting oil and requires vessel operators to develop spill response plans and to provide financial assurance. In 2004 the regulation was revised in response to statutory changes. The regulation was modified to reduce the regulatory burden on operators that have received approval for their vessel response plan and/or financial assurance. Operators of tank vessels with a vessel response plan approved by the U.S. Coast Guard and/or a Certificate of Financial Responsibility are deemed to meet the requirements of Virginia's regulation.

This regulatory action does not place any additional regulatory requirements on operators of tank vessels within the Commonwealth. The fast track regulatory process has been used for this regulatory amendment since the revisions to this regulation are not expected to be controversial.

The changes to the regulation are minor and not substantive and are as follows:

- The ability of the Water Board to revoke the approval of an Oil Discharge Contingency Plan (ODCP) if a vessel is no longer operating is being removed since it is not listed as a reason the State Water Control Board may revoke an ODCP.
- The regulation is also being revised to clarify that if a vessel's financial assurance has been approved by the Coast Guard, no financial assurance is required to be provided to Virginia.
- An incorrect citation is being corrected.
- The regulation is being modified to remove the obsolete section that requires the regulations to be reviewed every three years. The regulation is reviewed as required by the Governor's executive order that is in place as well as the Administrative Process Act.

After review by the Governor, a notice of a proposed fast-track rulemaking will be published in the Virginia Register and will appear on the Virginia Regulatory Town Hall. This will be followed by a 30 day public comment period before the amendments become final.

**Designated Groundwater Management Areas (9VAC25-600):** At the March 28, 2014 meeting of the State Water Control Board, the department will request the State Water Control Board (Board) to adopt an amendment to the Designated Groundwater Management Areas Regulation (9VAC25-600 et seq.) This regulatory amendment is exempt from the state administrative procedures for adoption of regulations because it is a technical correction. (§2.2-4006 A 3 of the Code of Virginia)

Currently the regulation lists areas of Arlington County that are located east of Interstate 95 as being part of the Eastern Virginia Groundwater Management Area. Arlington County is located entirely to the west of Interstate 95. This regulatory amendment removes the reference to Arlington County from the regulation.

The basis for this regulatory action is provided for in § 62.1-44.15(10) and § 62.1-256 8. of the Code of Virginia. The process to be used to designate a groundwater management area is outlined in 9VAC25-610-70 and 9VAC25-610-80.

On January 1, 2014, amendments became effective to the Designated Groundwater Management Areas Regulation. This amendment expanded the Eastern Virginia Groundwater Management Area to include the entire localities within the entire coastal plain. After this amendment process was finalized, a technical error was discovered in the regulation. The regulation lists the area of Arlington County that is east of Interstate 95 as being part of the Eastern Virginia Groundwater Management Area. Arlington County is located entirely to the west of Interstate 95 and is not part of the Eastern Virginia Groundwater Management Area.

This regulatory action does not remove any locality from the groundwater management area; this action removes a reference to Arlington County which is not necessary since Arlington County is located entirely west of Interstate 95 and not part of the Eastern Virginia Groundwater Management Area.

This regulatory action amends the Designated Groundwater Management Area Regulation (9VAC25-600-10 et seq.) to remove the reference to Arlington County.

**Virginia Pollution Abatement General Permit Regulation for Animal Feeding Operations (9VAC25-192) and Virginia Pollution Abatement Permit Regulation (9VAC25-32):** At the March 28, 2014 meeting, staff will bring to the Board a request to adopt the final amendments to the Virginia Pollution Abatement (VPA) General Permit Regulation for Animal Feeding Operations (AFOs) (9VAC25-192-10 et seq.) and the VPA Permit Regulation (9VAC25-32-10 et seq.) related to AFOs.

The primary purpose of this regulatory action is to propose changes in order to reissue the VPA general permit for AFOs. The current VPA General Permit Regulation for AFOs will expire on November 15, 2014.

The VPA Permit Regulation, or “parent” regulation for general permit regulations, contains obsolete definitions. Changes are being proposed to facilitate consistency with other state and federal regulations which govern the pollutant management activities at AFOs, and to clarify permitting procedures for AFOs.

These final amendments will ensure that animal waste is being used in a manner in which state waters are being protected from improper use or storage of animal waste, not only on permitted farms, but on farms that receive transferred material. The final amendments require that persons receiving transferred animal waste abide by certain minimum requirements regarding application rates, timing, storage and recordkeeping. The end-user will not be required to obtain a permit unless they are found to be non-compliant with the requirements of the technical regulation. These new requirements mirror those in the regulation governing poultry waste management (9VAC25-630).

#### VPA General Permit Regulation for AFOs (9VAC25-192-10 et seq.)

Virginia Code §62.1-44.17:1 authorizes the State Water Control Board to establish and implement the general permit for confined AFOs having 300 or more animal units and utilizing a liquid manure collection and storage system.

#### VPA Permit Regulation (9VAC25-32-10 et seq.)

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 VPA Permit Regulation defines the procedures and requirements to be followed in connection with VPA permits, including general permits, issued by the Board pursuant to the State Water Control Law.

## Background

### VPA General Permit Regulation for AFOs (9VAC25-192-10 et seq.)

The VPA General Permit Regulation for AFOs (9VAC25-192-10 et seq.) first became effective on November 16, 1994. The second ten year term of the general permit will expire on November 15, 2014. There are approximately 140 animal feeding operations in the Commonwealth covered under the general permit regulation.

The current VPA General Permit Regulation for AFOs (9VAC25-192-10 et seq.) requires that waste (manure) which is generated at the AFO is applied in accordance with a Department of Conservation and Recreation (DCR) approved nutrient management plan on lands owned by or under the operational control of the permitted owner of the AFO. Where the land application of waste is limited by reasons such as elevated phosphorus soil test levels, the further treatment and transfer of waste off the farm is becoming necessary. Emerging manure handling and treatment technology is making the transfer and possible marketing of manure based products off the farm more common as well as prompting the consideration of importing other wastes to supplement treatment processes. The current VPA AFO general permit regulation does not address waste (manure) transfer, the construction and operation of alternative manure treatment and storage facilities, or the management of off-site generated waste materials to be used to feed an on-farm digester or other manure treatment technology.

DEQ developed a mechanism to regulate manure transferred from permitted poultry farms to end-users in 2009. The State Water Control Board approved this mechanism as a final regulatory amendment to the VPA General Permit for Poultry Waste Management, and it became effective on January 1, 2010. Under this mechanism, an end-user of poultry waste must follow technical requirements in the regulation when managing waste they receive, but are not required to obtain general permit coverage. However, if an end-user demonstrates continued non-compliance with the technical requirements, DEQ may require the end-user to obtain general or individual VPA permit coverage.

Amendments are being proposed to address alternative waste treatment and storage, management of off-site generated materials, and end-users of waste which is transferred off farms covered by the VPA General Permit for AFOs. The proposed end-user requirements are modeled after the requirements for transfer of poultry waste.

### VPA Permit Regulation (9VAC25-32-10 et seq.)

The VPA Permit Regulation (9VAC25-32-10 et seq.) governs the pollutant management activities of animal wastes at AFOs, and is the regulation under which an individual permit would be issued to an AFO if the facility did not meet the requirements for general permit coverage. Currently, the VPA Permit Regulation contains obsolete definitions, and amendments are being proposed to address these inconsistencies and clarify certain permitting procedures for AFOs. The proposed amendments also address requirements for end-users of waste transferred from permitted AFOs.

## Notice of Intended Regulatory Action (NOIRA) and Technical Advisory Committee (TAC)

### VPA General Permit Regulation for AFOs (9VAC25-192-10 et seq.)

A NOIRA was published in the Virginia Register of Regulations on July 16, 2012. A 30-day public comment period followed which ended on August 15, 2012. The only public comments received were requests to participate on the TAC.

### VPA Permit Regulation (9VAC25-32-10 et seq.)

A NOIRA was published in the Virginia Register of Regulations on August 13, 2012. A 30-day public comment period followed which ended on September 12, 2012. No public comments were received.

The Department utilized the participatory approach by forming an ad hoc TAC for both regulatory actions to ensure consistency among the regulations which govern AFOs. The Department held three (3) public noticed TAC meetings occurring on October 25, November 26, and December 20, 2012.

The members of the TAC discussed and reached general consensus regarding amendments necessary to reissue the VPA General Permit for AFOs and address inconsistencies in the VPA Permit Regulation.

The members of the TAC also discussed establishing requirements related to:

- a) the transfer of waste (manure) from permitted AFOs;
- b) the construction and operation of alternative manure treatment technologies; and
- c) the management of off-site generated waste materials to be used to feed an on-farm digester or other manure treatment technology.

General consensus was reached to amend the VPA General Permit Regulation (9VAC25-192-10 et seq.) in order to provide flexibility by establishing appropriate requirements to allow for alternative waste technologies and management on the farm, including the ability to transfer waste off the farm without compromising compliance with the regulations or water quality protection.

#### Proposed Regulation and Changes Made Due to Public Comments

##### VPA General Permit Regulation for AFOs (9VAC25-192-10 et seq.)

The proposed regulatory language was noticed for public comment on November 18, 2013. Four public hearings were held around the state (December 11, 2013, December 12, 2013, December 18, 2013 and December 19, 2013). Upon the closing of the comment period on January 21, 2014, staff received comments from 14 individuals and organizations regarding the proposed amendments.

During the public comment period, comments were received regarding waste storage as well as adding the Best Management Practices (BMPs) listed in the Chesapeake Bay Watershed Implementation Plan (WIP) to the general permit regulation.

##### Waste Storage Requirements

Comments were received related to requirements for storing waste outside. In response to these comments, staff made changes to waste storage requirements found in the contents of the general permit and the end-user technical regulations. These changes were made in order to ensure adequate controls are required of semi-solid and solid waste storage and were consistent with the regulation governing poultry waste (9VAC25-630).

##### Additional Best Management Practices

Comments were received advocating to amend the VPA General Permit for AFOs to mandate the implementation of Best Management Practices (BMPs) such as livestock stream exclusion, conservation planning, and vegetated buffers. Equally received were comments opposing the addition of such BMPs.

As the proposed regulation did not include additional BMPs, DEQ evaluated the comments advocating BMP addition carefully. The final regulation does not include the addition of additional BMPs from the Chesapeake Bay WIP for two primary reasons:

- i. The Virginia Code §62.1-44.17:1 is explicit in the requirements that are to be included in the general permit regulation and therefore does not allow for adding the additional BMPs to the general permit conditions. The statutory requirement for adequate buffer zones from surface

water courses is based on areas where waste is land applied, not on presence of grazing animals.

- ii. The VPA AFO GP Regulation is consistent with the Chesapeake Bay WIP, as it is but one of a suite of programs described in the WIP that are designed to effect BMP implementation at AFOs. The WIP specifies that the first order mechanism to increase application of these additional agricultural BMPs will be voluntary implementation. Specifically, the Resource Management Plan regulations were promulgated by the Soil and Water Conservation Board in order to promote additional voluntary implementation prior to additional mandatory regulatory requirements. Further, the Virginia Agricultural BMP Cost-Share program excludes funding for mandatory practices required by environmental permits, which would limit the funding options available for implementation.

DEQ will address promotion of additional voluntary BMPs such as those recommended in the comments through implementation guidance. Specifically, DEQ will add a component to educate permittees on the benefits of the implementation of BMPs to the required permittee training program, as well as during routine inspections..

#### VPA Permit Regulation (9VAC25-32-10 et seq.)

The proposed regulatory language was noticed for public comment on December 30, 2013. Upon the closing of the comment period on February 28, 2014, staff received comments from two organizations regarding the proposed amendments. These comments were identical to those received during the comment period for the VPA General Permit Regulation for AFOs (9VAC25-192-10 et seq.). No changes were made to the VPA Permit Regulation based on these comments because changes were made to the General Permit Regulation for AFOs based on the comments. When an individual permit is issued, applicable conditions from the General Permit Regulation are added to the individual permit.

**Water Quality Standards - Triennial Review (9VAC25-260):** Staff intends to ask the Board for approval to go to public hearing and comment on amendments to the Water Quality Standards regulation (*State Water Control Board, 9 VAC 25-260 Virginia Water Quality Standards, Triennial Review Proposed Amendments*). The Board has a legal mandate for a review of the Water Quality Standards under the Code of Virginia (§62.1-44.15(3a)) and federal regulation at 40 CFR 131, at least once every three years. During this review the Board must adopt, modify or cancel standards as appropriate. This rulemaking is needed because new scientific information is available to update the water quality standards and changes are needed to improve permitting, monitoring and assessment programs. The goal is to provide the citizens of the Commonwealth with a technical regulation that is protective of water quality in surface waters, reflects recent scientific information, reflects agency procedures and is reasonable and practical. An ad hoc Regulatory Advisory Panel advised staff on the amendments. The most important changes are updates to the numeric criteria for several toxic chemicals, new criteria for ammonia, some reclassifications of public water supply designations, new swampwater classifications and special standards to reflect site specific conditions.

A Notice of Intended Regulatory Action was published August 12, 2013. A public comment period was held between August 12 and October 11, 2013, and a public meeting held in Richmond on September 10, 2013. Comments were received from several organizations and individuals (*Summary of Comment from the Notice of Intended Regulatory Action*). An ad hoc Regulatory Advisory Panel consisting of 15 members was formed and held three meetings (November 18, December 13, 2013 and January 16, 2014). The meeting summaries may be seen online at:

[http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/WaterQualityStandards/RulemakingInfo.aspx#Triennial\\_Review](http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/WaterQualityStandards/RulemakingInfo.aspx#Triennial_Review)

The following paragraphs summarize the key sections of the regulation proposed for amendment:

1. Table of Parameters (Toxics) § 9 VAC 25-260-140:

The Table of Parameters contains a list of toxic chemicals and the water quality criteria designed to protect human health and aquatic life. The criteria are expressed as concentrations in parts per billion (micrograms/liter). Triennial Review is the appropriate time to update the Table based on new technical information available on the toxicity of these parameters to human health and aquatic life.

- a) Criteria to Protect Human Health; 8 Revised Parameters - The Table of Parameters has been updated and 8 of the human health parameters' criteria have been recalculated using updated recommendations provided by the U.S. Environmental Protection Agency (EPA) regarding the toxicity of these chemicals. The new criteria concentrations for carbon tetrachloride, Methylene chloride, nitrobenzene and tetrachloroethylene increased between 88 and 1779%. The new criteria for cyanide, Hexachloroethane, pentachlorophenol, and trichloroethylene decreased between 64 and 97% compared to the current criteria. These changes could have an economic impact on permittees if these particular pollutant parameters are present in their effluent.
- b) Criteria to Protect Aquatic Life; Added New Criteria for Acrolein – EPA has issued new criteria recommendations for Acrolein (a biocide) of 3.0 micrograms/liter for the protection of aquatic life. Virginia has an existing criterion of 9.3 microgram per liter for the protection of human health. These changes could have an economic impact on permittees if acrolein is present in their effluent.
- c) Criteria to Protect Aquatic Life; Added Carbaryl - Carbaryl is a widely used pesticide (the active ingredient in the pesticide Sevin) and it is toxic to aquatic life. EPA's new criteria recommendation is for 2.1 microgram/liter in freshwater and 1.6 microgram per liter in saltwater. These changes could have an economic impact on permittees if this pesticide is present in their effluent.
- d) Criteria to Protect Aquatic Life; Revised Cadmium - Staff is recommending a revision to the existing aquatic life criteria for cadmium based on more recent EPA guidance issued in 2001 and updated with additional revisions included in a report published by the U.S Geological Survey in 2010. The proposed cadmium criteria are more stringent by about 50% than the existing Virginia criteria, but less stringent than EPA's 2001 recommendations. These changes could have an economic impact on permittees if cadmium is present in their effluent.
- e) Criteria to Protect Aquatic Life; Copper - EPA has developed new, national recommended criteria for copper in freshwater that is in the form of a computer program called a Biotic Ligand Model (BLM), which is a metal bioavailability model that uses receiving water body chemical and physical characteristics to develop site-specific water quality criteria for copper. EPA considers the BLM as a more accurate means of calculating copper criteria for freshwater. The use of the BLM requires additional data from the local receiving waterbody concerning ten parameters of water quality characteristics; temperature, pH, dissolved organic carbon, calcium, magnesium, sodium, potassium, sulfate, chloride, and alkalinity. EPA expects the application of the BLM will result in more appropriate criteria and eliminate the need for costly and time-consuming site-specific modifications using the water effect ratio. DEQ is proposing adding the BLM as an optional, alternate copper criteria for freshwater. If an individual permittee wants to use the BLM to calculate criteria for copper applicable to the receiving stream, the permittee will be responsible for generating the needed data for the ten water parameters needed to run the BLM model. Without the needed data for these ten parameters, the current hardness-based criteria for copper will continue to be applicable.
- f) Criteria to Protect Aquatic Life; Lead, Total Recoverable Measurements Converted to Dissolved Measurements; - EPA requires that a conversion factor be included in the criteria for metals to allow them to be expressed as dissolved concentrations instead of total recoverable measurements. All current Virginia criteria for metals include a conversion factor except for lead. Staff recommends applying a conversion factor recommended by EPA as being applicable

to the Virginia criteria for lead. This will make the criteria more stringent by approximately 5%-22%.

## 2. Manganese Criterion in Public Water Supplies:

Virginia currently has a water quality criterion for manganese of 50 parts per billion that applies to public water supplies. This manganese criterion is based on a federal recommended secondary Maximum Contaminant Level (MCL) that is intended to be applied to treated drinking water as supplied to the consumers to prevent laundry staining. Secondary MCLs do not address human health concerns, are not regulatory and not required by federal law. Secondary MCLs are recommended guidelines to address aesthetic concerns with treated drinking water such as taste, odor or laundry staining. By applying this manganese criterion to natural river water, we are in essence trying to maintain untreated river water at a level of purity such that the public can use it to wash their clothes without any staining from suspended soil. Manganese is a common element in the soils of Virginia and when soil is suspended in river water it is likely for manganese concentrations to exceed 50 parts per billion. One half of all the water samples in DEQ's historical water monitoring database analyzed for manganese contained values higher than the 50 micrograms/liter criterion. This sets up a situation where many waterbodies could be considered impaired, when in fact they are only impaired if we intend for the public to use natural, untreated river water for washing their laundry which is not the case. When public drinking water plants treat natural river water, the initial step is to remove the suspended soil particles, which include the suspended manganese, so this should not be an issue for the typical drinking water plant treating surface water. This is not a health issue. Manganese is an essential nutrient and the recommended daily intake of manganese ranges from 2,000 to 10,000 micrograms per day. DEQ staff has concluded that this manganese criterion has been inappropriately applied to Virginia's natural waters and it is not needed. Staff recommends deleting this criterion.

## 3. Ammonia Surface Water Quality Criteria § 9 VAC 25-260-155:

EPA completed a reassessment of their recommended national criteria for ammonia in freshwaters in August 2012. The new criteria are approximately one half of the current Virginia ammonia criteria. These changes could have an economic impact on permittees if these particular pollutant parameters are present in their effluent. Most municipal sewage treatment plants can be expected to have ammonia in their effluent.

The new criteria are more restrictive primarily because new toxicity data show that freshwater mussels and snails (including endangered species) are very sensitive to ammonia and the current ammonia criteria do not provide sufficient protection for these species. Consultation with the Virginia Department of Game and Inland Fisheries and U.S. Fish and Wildlife Service indicated that freshwater mussels should be considered ubiquitous and present in all Virginia perennial streams. DEQ staff recommend proposing these new EPA criteria for ammonia. Some headwater streams or intermittent streams may not be able to support populations of freshwater mussels due to inadequate habitat, or intermittent flows. On a site-specific basis, a permittee will have the option to demonstrate that a receiving stream does not contain a population of freshwater mussels, and alternate, less restrictive criteria for ammonia could apply to these streams.

## 4. Bacteria for Recreational Waters § 9 VAC 25-260-170:

EPA published new, final recommended bacteria water quality criteria for the protection of recreational uses (swimming and other water contact recreation) in November 2012. The new EPA criteria recommendations include three components:

1. A number of culturable colony forming units (CFU) of either the bacteria E.coli or Enterococci,
2. a duration of 30 days as an averaging period for a geometric mean, and
3. an allowable excursion rate of no more than 10% of samples allowed to be greater than a statistical threshold value (STV).

The STV is higher than the geometric mean and is set at the 90<sup>th</sup> percentile of all values observed in the dataset that supports the criteria. For example; for E.coli the geometric mean value is 126 CFU per liter (CFU/L) and a STV of 410 CFU/L. This is because in the data set of bacteria samples and the epidemiological studies used to establish the criteria, the geometric mean was calculated to be 126 and 90% of the bacteria counts were at or below 410 CFU/L. The STV is intended to avoid incorrectly classifying a water body as posing an excessive risk to swimmers, when in fact it is likely just demonstrating the same level of variability in bacteria values that would be consistent with a geometric mean of 126 CFU/L. That is, given the normal variability of bacteria

counts in surface waters, we expect about one half of the samples to be above the mean value, but as long as the higher counts are below the 90% STV, this is deemed to be acceptable.

EPA's recommendations also offer two options for intended level of acceptable risk; 36 theoretical illnesses per 1,000 exposed swimmers or the slightly more protective 32 theoretical illnesses per 1,000 exposed. Virginia's current criteria is a geometric mean value of 126 CFU/L for E. coli in freshwater and 35 Enterococci for saltwater, which are the same as EPA's recommendations at the 36/1,000 illness rate. However, Virginia's criteria states that a minimum of 4 samples within a one month period are needed to calculate a reliable geometric mean value, and Virginia also has a higher value that should not be exceeded more than 10% of the time during the assessment period. EPA's new criteria states that a minimum number of samples is not an approvable part of water quality standards and that any samples within a 30 day period should be used to calculate the mean. This is causing DEQ's monitoring and assessment staff significant concerns. Current monitoring efforts typically sample most inland water bodies once a month at the most. Under EPA recommendations that single sample would have to be considered the equivalent of a geometric mean value. In a normally distributed data set, we expect about one half of the counts will be above the mean, therefore even if the real geometric mean value is at or below the criteria's mean value (i.e., the criterion is met) we nevertheless expect that about one half of the samples will exceed the criterion's mean value. If these individual values are treated as a "true mean", this will result in assessing a single value as though it is a valid mean value and will result in incorrectly classifying the waterbody as impaired, when in fact it is not. Additional resources to increase monitoring to four or more times within a 30 day period are not available in most cases for waterbodies that are not a high use public swimming beach.

DEQ has asked for clarification from EPA that when assessing limited data sets with only one or two data points within a 30 day period, the geometric mean need not be assessed but rather the limited data be compared to the STV. EPA has indicated that although they recognize that more data increases the confidence in the mean value, any and all data (including a single value) within a 30 day period should be used to assess against the criteria's geometric mean and STV values. DEQ is concerned that this will result in significantly higher incorrect assessments of impaired waters due solely to evaluating limited data sets in an inappropriate manner.

To complicate the matter further, EPA has been sued by at least one citizen environmental organization because in their view the new recommended bacteria criteria aren't protective enough.

In light of all the forgoing issues and concerns, staff will recommend that our water quality standards not be amended to include EPA's new bacteria criteria as part of this Triennial Review. It is possible this issue may be addressed as a separate rulemaking in the future if an understanding can be reached on the issues of assessment against the standard and use of the Geometric Mean.

**5. Special Standards - § 9 VAC 25-260-310:**

- a) Chickahominy River: Special Standard "m" provides for effluent limits for dischargers to the Chickahominy River above Walker's Dam. An examination of the record indicates that the intent of this special standard was to protect the Chickahominy River from excessive nutrients inputs and to protect Chickahominy Lake from eutrophication. The effluent limits focus on nutrient related organic pollution and address biochemical oxygen demand, ammonia nitrogen, total phosphorus, as well as settleable and suspended solids. These effluent limits were based on limits achievable with a well managed domestic wastewater treatment plant designed to treat organic waste. DEQ staff believes that for discharges of nonorganic waste, the effluent limits required by the Virginia Industrial Discharge General Permit are more appropriate. Staff recommends modifying special standard "m" by adding the underlined text;
  - m. The following effluent limitations apply to wastewater treatment facilities treating an organic nutrient source in the entire Chickahominy watershed above Walker's Dam (this excludes discharges consisting solely of stormwater).
- b) Winter-only stocked trout waters: The Department of Game and Inland Fisheries (DGIF) stocks trout during the winter in some warm water rivers and streams in order to provide additional fishing opportunities to the public. The stocked trout can survive in these waterbodies during the cold winter season, but are not expected to survive the following summer. Special standard "hh" addresses this

issue by stating that these winter-only stocked waters revert back to the original temperature criterion of the underlying classification of mountainous zone waters with a maximum temperature of 31 degrees centigrade. US Fish and Wildlife Service (USFWS) had raised concerns about the maximum allowable temperature for Tinker Creek and a section of the Roanoke River because of the presence of an endangered species of fish, the Roanoke logperch. Consultations with USFWS and DGIF resulted in a recommended maximum temperature of 26°C for Tinker Creek and 28°C for the Roanoke River. DEQ staff recommends proposing special standards “ee” and “ff” for these two waterbodies respectively.

**6. Other Trout Water Updates § 9 VAC 25-260-390 through 540:**

Triennial Review provides an opportunity to add, modify or delete trout water designations within the river basin sections as appropriate. This is done in collaboration with the Department of Game and Inland Fisheries and several designation boundary clarifications have been identified.

**7. Reclassification of Waters to Class VII (Swamp Waters) § 9 VAC 25-260-390 through 540:**

Approximately 20 waters are proposed to be changed from Class III (non-tidal waters) to Class VII (swampwaters). This is being proposed to recognize the unique aquatic ecosystems that are characterized by low velocity stream flow, abundant swamp vegetation and frequently exhibit low dissolved oxygen concentrations and acidic pH that are attributable to natural conditions.

**8. Public Water Supplies § 9 VAC 25-260-390 through 540:**

James Basin

Delete the reference to an old intake for the American Tobacco Company’s raw water intake in the James River above City Point (Hopewell) The American Tobacco Company's raw water intake has not been in operation for some time. The Virginia Health Department (VDH) reported that there may have been a raw water intake there in early days of the tobacco processing plant. The intake was most likely for industrial (process) water. No known intake has been there for domestic water in the past 35 years. VDH could not find any records about a domestic water intake at that location in years prior to 1978. This issue has been discussed with EPA and it is likely they will agree that the “existing use” as a potable water supply has never really been present at this location, thus allowing for the removal of this designation.

Several other issues were discussed with the advisory committee but staff does not believe revisions to the regulation are warranted at this time. Most notable among these was the issue of water quality criteria and standards for selenium.

Criteria to Protect Aquatic Life; Selenium § 9 VAC 25-260-140

During the ad hoc meetings, DEQ was presented with new scientific information from a group of coal mining interests and their consultant that suggested the existing water quality criteria for selenium are in need of revisions. It was recommended that Virginia propose new selenium criteria similar to recently adopted criteria in Kentucky. The toxicity of selenium and how it adversely affects aquatic life is very complex and proper ways of revising the criteria for selenium is controversial. There is a high level of interest in this issue by several public groups. EPA is currently revising their criteria for selenium and expects to release for peer review new revised criteria for selenium in 2014. Due to the fact that EPA is reviewing these issues on a national level, we recommend not proposing any new, revised criteria for selenium at this time. Technical issues would be best worked out in a separate advisory committee and incorporated as a separate rulemaking at a later date after additional guidance is received from EPA. It is also likely that DEQ will be requested, under a joint resolution now being considered by the General Assembly, to study the issue of selenium toxicity and provide a report by November 2014.

**Approval of Three TMDL Reports and Amendment of the Water Quality Management Planning**

**Regulation to Incorporate the Corresponding TMDL Wasteload Allocations:** Staff will ask the Board to approve portions of three TMDL Reports and adopt amendments to one section of the Water Quality Management Planning (WQMP) regulation: 9 VAC 25-720-60.A (James River Basin). The amendments consist of adding four new WLAs. All TMDL reports containing these WLAs have been approved by EPA.

The Clean Water Act (“CWA”) and the U.S. EPA Water Quality Management and Planning Regulation (40 CFR §130) require states to identify waters that are in violation of water quality standards and to place these

waters on the state's 303(d) List of Impaired Waters. Also, the CWA and EPA's enabling regulation require that a TMDL be developed for those waters identified as impaired. In addition, the Code of Virginia, §62.1-44.19:7.C requires the State Water Control Board ("the Board") to develop TMDLs for impaired waters. A TMDL is a determination of the amount of a specific pollutant that a water body is capable of receiving and still meets water quality standards for that pollutant. TMDLs are required to identify all sources of the pollutant and calculate the pollutant reductions from each source that are necessary for the attainment of water quality standards.

Every TMDL consists of three basic components. They are the point source component called the wasteload allocation ("WLA"), the nonpoint source component called the load allocation ("LA"), and the margin of safety component ("MOS"). The TMDL is equal to the sum of these three components.

The U.S. EPA's Water Quality Management and Planning Regulation 40 CFR §130.7(d) (2) directs the states to incorporate EPA-approved TMDLs in the state's Water Quality Management Plan. Also, U. S. EPA's Water Quality Management and Planning Regulation 40 CFR§122.44(d) (1) (vii) (B) requires that a new or reissued VPDES permits be consistent with the TMDL WLA. This means that the WLA component of the TMDL will be implemented through the requirements specified in the VPDES permits, for example through numeric water quality based effluent limitations or in certain cases best management practices ("BMPs"). Virginia is implementing the LA component using existing voluntary, incentive and regulatory programs such as the Virginia Agricultural Cost-Share Program. Specific management actions addressing the LA component are compiled in a TMDL implementation plan ("TMDL IP").

Staff will propose Approval of three TMDL reports and Amendment of Water Quality Management Planning Regulation to incorporate four new WLAs: Staff will propose Board approval of three EPA-approved TMDL reports containing the following TMDL WLAs:

1. Phelps Branch Sediment TMDL, located in Appomattox County, proposes sediment reductions for the watershed and provides a sediment wasteload allocation of 115.7 tons/year.
2. Long Branch and Buffalo River Sediment TMDLs, located in Amherst County, propose sediment reductions for portions of the watersheds and provide sediment wasteload allocations of 16.2 tons/year for Long Branch and 306.4 tons/year for Buffalo River.
3. The Chickahominy River Sediment TMDL, located in Hanover and Henrico counties, proposes sediment reductions for portions of the watershed and provides a sediment wasteload allocation of 294.03 tons/year.

The specific portions of the TMDL reports to be approved include the TMDL itself and all the TMDL allocation components, the pollutant reduction scenarios, implementation strategies, and reasonable assurance that the TMDL can be implemented and a summary of the public participation process.

The process for amending the WQMP regulation is specified in DEQ's "Public Participation Procedures for Water Quality Management Planning". The amendments consist of adding four new WLAs that are included in TMDL reports previously approved by EPA. Staff will therefore propose that the Board, in accordance with §2.2-4006A.4.c and §2.2-4006B of the Code of Virginia, adopt the amendments to the WQMP Regulation (9 VAC 25-720).

The TMDL reports were developed in accordance with Federal Regulations (40 CFR §130.7). These TMDL reports were subject to the TMDL public participation process contained in DEQ's "Public Participation Procedures for Water Quality Management Planning" that the Board approved in March 2004. Written comments provided by stakeholders as well as the Commonwealth's responses are submitted to EPA together with the TMDL reports. These are made available to the public on DEQ's web site under <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx>.

**Significant Noncompliers Report:** There were no new facilities reported to EPA on the Quarterly Noncompliance Report as being in significant noncompliance for the quarter ending September 30, 2013.

**Home Associates of Virginia, Inc., Virginia Beach, Virginia - Consent Special Order w/Civil Charge:** The Sherwood Lakes Subdivision property ("Property") was developed by Home Associates of Virginia, Inc.

("HAV") and is located west of the intersection of Princess Anne Road and Locksley Arch in Virginia Beach, Virginia. Sherwood Lakes started construction in 2007 and includes 180 single-family units, 53 townhouse units, and two former borrow pits that were developed into two community lakes (131.5 acres total). On December 29, 2010, DEQ was notified by the U.S. Army Corps of Engineers ("USACE") of potential unauthorized wetlands impacts at the Property. A review of DEQ files indicated that a Virginia Water Protection ("VWP") permit had not been issued for impacting wetlands (type unknown, but typical of the area was forested wetlands) nor had the Corps issued a permit authorizing activities within wetlands at the Property. On October 25, 2012 the USACE sent a letter to HAV that included an approved Jurisdictional Determination ("JD") dated October 5, 2012, confirming 3.917 acres of unauthorized wetland impacts on the Property; HAV submitted an exhibit titled "Sherwood Lakes Alleged Wetland Impact Analysis" on December 5, 2012, also confirming the unauthorized wetland impacts. On December 19, 2012, DEQ VWP staff conducted a site visit at the Property and observed that the 3.917 acres unauthorized wetlands impacts noted above consisted of the construction of at least seven single-family homes, roads, community opens spaces and paved walking paths within wetlands located on a narrow strip on the western and northwestern side of the Property. Following the inspection, DEQ VWP staff reviewed the JD submitted by the Corps and gathered additional information regarding the unauthorized impacts to wetlands at the Property. On June 4, 2013, DEQ issued HAV a Notice of Violation ("NOV") for the unauthorized wetland impacts at the Property described in the JD and observed by DEQ staff. The Order requires HAV to pay a civil charge and to purchase 3 to 1 compensatory mitigation for the unpermitted wetland impacts within 30 days of the effective date of the Order. Civil Charge: \$40,625.00 civil charge.

### Changes made since the proposed stage

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 [ <del>poultry waste</del> ] and process wastewater, compost or sludges associated with [ <del>livestock and poultry</del> ] 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 Operations.

### Public comment

Commenter	Comment	Agency response
Katie K. Frazier – Virginia Agribusiness Council	The Council supports extending the permit as amended for 10 years.	<b><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></b>
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	DEQ acknowledges the support. <b><i>No changes are being proposed to address these comments.</i></b>

	<p>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.</p>	
<p>Katie K. Frazier, President – Virginia Agribusiness Council</p>	<p>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 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</p>	<p>DEQ acknowledges the support. <b><i>No changes are being proposed to address these comments.</i></b></p>

	<p>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><b>CBF opposes issuance of this proposed VPA General Permit for AFOs without significant modification.</b> 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) 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><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>Ann F. Jennings, Virginia</p>	<p><b>First, CBF finds that the AFO VPA General Permit must provide greater</b></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><b>consistency with the federal Clean Water Act and the Chesapeake Bay TMDL by specifying a waste load allocation (WLA) for animal feeding operations.</b> 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 (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</p>	<p><b><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></b></p>
---	--	---

	meeting on March 14, 2013.	
Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation	<p><b>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.</b></p> <p>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 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</p>	<p><b><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></b></p>

	<p>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 Executive Director – Chesapeake Bay Foundation</p>	<p><b>CBF maintains its recommendation that the AFO VPA General Permit incorporate requirements for the “stream protection with fencing” BMP to be completed by the end of the permit cycle.</b> 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</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>Permit. The Board must implement its authority to require BMPs to prevent the discharge of pollutants into state waters. <b>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).</b></p>	
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p><b>DEQ and stakeholder reasoning for failing to 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.</b> 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 <b>and implement</b> 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</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>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>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 100-foot buffer, or 35-foot wide vegetated buffer” (9VAC25-192-70).</p>	<p><b><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></b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p>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.</p>	<p>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.</p> <p><b><i>No changes are being proposed to address this comment.</i></b></p>
<p>Ann F. Jennings, Virginia Executive</p>	<p>DEQ points to the Resource Management Plan regulations promulgated by the Soil and Water Conservation Board as</p>	<p>The Resource Management Plan regulations have not been repealed, and will be implemented as a component of the WIP. DEQ agrees</p>

<p>Director – Chesapeake Bay Foundation</p>	<p>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.</p>	<p>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.</p> <p><b><i>No changes are being proposed to address this comments.</i></b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p>TAC members have expressed concerns that 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><b><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></b></p>
<p>Ann F. Jennings, Virginia</p>	<p>Section 9VAC25-192-70 B-8 of the AFO VPA General Permit must more clearly</p>	<p><b><i>In response to these and other comments, DEQ modified the definition in 9VAC25-32-10 of “waste</i></b></p>

<p>Executive Director – Chesapeake Bay Foundation</p>	<p>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 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><b>storage facility” to be more inclusive of the type of wastes managed therein.</b>  <b><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></b></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</p>	<p><b><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></b></p>

	<p>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>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 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><b><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></b></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 &amp; Mary Law School entitled, “Strengthening the VPA General Permit: Managing Animal Feeding Operations in Virginia to Meet</p>	<p>DEQ acknowledges CBF’s concurrence with the named comments. <b><i>For a response, please see the response to comments for the VPA GP Regulation for AFOs.</i></b></p>

	<p>State Law and the Bay TMDL,” Fall 2013 (Cannon, R. and Kane, J.), submitted January 21, 2014.</p>	
<p>Shana Jones, Director - Virginia Coastal Policy Clinic at W&amp;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 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</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><b><i>No changes are being proposed to address this comment.</i></b></p>

	<p>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&amp;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 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</p>	<p><b><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></b></p>

	<p>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 at W&amp;M Law School</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 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</p>	<p><b><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></b></p>

	<p>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 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</p>	
--	--	--

	<p>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&amp;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 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>	<p><b><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></b></p>

**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 [ <del>poultry waste</del> ] and process wastewater, compost or sludges associated with [ <del>livestock and poultry</del> ] 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.	N/A	Definitions	Added definition to read:

(Definitions)			<p>"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"> <li>a. 300 slaughter and feeder cattle;</li> <li>b. 200 mature dairy cattle (whether milked or dry cows);</li> <li>c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);</li> <li>d. 150 horses;</li> <li>e. 3,000 sheep or lambs;</li> <li>f. 16,500 turkeys;</li> <li>g. 30,000 laying hens or broilers.</li> </ul> <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"> <li>1. At least the following number and types of animals are confined: <ul style="list-style-type: none"> <li>a. 300 slaughter and feeder cattle;</li> <li>b. 200 mature dairy cattle (whether milked or dry cows);</li> <li>c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);</li> <li>d. 150 horses;</li> <li>e. 3,000 sheep or lambs;</li> <li>f. 16,500 turkeys;</li> <li>g. 30,000 laying hens or broilers; or</li> <li>h. 300 animal units; and</li> </ul> </li> <li>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.</li> </ol>

			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 <a href="#">9VAC25-32-10</a> , 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 which govern AFOs. Removed the obsolete terms and procedures.
N/A	9VAC25-32-255.	New section	Added new section to read: A. Technical requirements for end-users of animal waste or poultry waste will be established in general

	(Requirements for end-users of animal waste and poultry waste)		<p>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"> <li>1. Proper waste storage;</li> <li>2. Appropriate land application practices; and</li> <li>3. Recordkeeping.</li> </ol> <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)

PARTS OF AGENCY BACKGROUND DOCUMENT ON 9VAC25-192

### 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.*

---

The changes to the regulation changes since the proposed stage are outlined on the following pages.

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 <del>[-poultry waste]</del> and process wastewater, compost or sludges associated with <del>[ livestock and poultry ]</del> 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)	"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 a structure used to store manure or waste</u> ].	Amended the definition by adding " <u>, or a structure used to store manure or waste</u> " in order to clarify the new storage requirements proposed in the regulation.
9VAC25-32-60 A. (Registration Statement)	A list of items which is included on the registration statement that is completed when applying for coverage under the general permit.	Added two items to subsection A and renumbered items 7-10 that were in the original list to make room for the additional items:  <u>7. [ Indicate the types of wastes that will be managed at the facility and how much of each type of waste will be managed;</u>  <u>8. If waste will be transferred off-site, indicate the type of waste and how much will be transferred;</u>	Added the two items to the registration statement in order to facilitate the application process when an owner proposes to manage off-site generated wastes, treated wastes, or to transfer waste.
9VAC25-32-60 B. (Registration Statement)	A list of items which is included on the registration statement that is completed when applying for coverage under the general permit.	Added two items to subsection B and renumbered items 6-8 that were in the original list to make room for the additional items:  <u>6. [ Indicate the types of wastes that will be managed at the facility and how much of each type of waste will be managed;</u>  <u>7. If waste will be transferred off-site, indicate the type of waste and how much will be transferred;</u>	Added the two items to the registration statement in order to facilitate the application process when an owner proposes to manage off-site generated wastes, treated wastes, or to transfer waste.

<p>9VAC25-192-70 Part I B.3 (Contents of the general permit)</p>	<p>3. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer, an employee of the Natural Resources Conservation Service of the United States Department of Agriculture with appropriate engineering approval authority or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.</p>	<p>3. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer [<del>or</del>] an employee of the Natural Resources Conservation Service of the United States Department of Agriculture with appropriate engineering approval authority [<del>or an employee of a soil and water conservation district with appropriate engineering approval authority</del>] shall certify that the siting, design and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.</p>	<p>Added "or" to correct the sentence structure after removing "or an employee of a soil and water conservation district with appropriate engineering approval authority" since this is no longer an option due to the USDA-Natural Resources Conservation Service procedural changes.</p>
<p>9VAC25-192-70 Part I B.6 (Contents of the general permit)</p>	<p>6. <u>For new waste storage or treatment facilities constructed after November 16, 2014, the facilities shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Natural</u></p>	<p>6. <u>For new waste storage or treatment facilities constructed after November 16, 2014, the facilities shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture and approved by the department. A Virginia licensed professional engineer [ or ] an employee of the Natural Resources Conservation Service of the U.S.</u></p>	<p>Added "or" to correct the sentence structure after removing "or an employee of a soil and water conservation district with appropriate engineering approval authority" since this is no longer an option due to the USDA-Natural Resources Conservation Service procedural changes.</p>

	<p><u>Resources Conservation Service of the U.S. Department of Agriculture and approved by the department. A Virginia licensed professional engineer, an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.</u></p>	<p><u>Department of Agriculture with appropriate engineering approval authority [ <del>or an employee of a soil and water conservation district with appropriate engineering approval authority</del> ] shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.</u></p>	
<p>9VAC25-192-70 Part I B.8 (Contents of the general permit)</p>	<p><u>8. For waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.</u></p>	<p><u>8. [ Semi-solid and solid waste shall be stored in a manner that prevents contact with surface water and groundwater. Waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:</u></p> <ul style="list-style-type: none"> <li><u>a. Waste shall be covered to protect it from precipitation and wind;</u></li> <li><u>b. Storm water shall not run onto or under the stored waste;</u></li> <li><u>c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored waste. All waste storage facilities that use an impermeable barrier shall</u></li> </ul>	<p>Amended the language to ensure the regulation provides for adequate controls on semi-solid and solid waste storage. The requirements are consistent with the requirements in the poultry waste regulation (9VAC25-630).</p>

		<p><u>maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10<sup>-6</sup> centimeters per second); and ]</u></p> <p><u>d. ] For waste that is not stored [ in a waste storage facility or ] under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.</u></p>	
<p>9VAC25-192-70 Part III B.3 (Contents of the general permit)</p>	<p>3. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer, an employee of the Natural Resources Conservation Service of the United States Department of Agriculture with appropriate engineering approval authority or an employee of a soil and water conservation district</p>	<p><u>3. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer [ <del>or</del> ] an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority [ <del>or an employee of a soil and water conservation district with appropriate engineering approval authority</del> ] shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.</u></p>	<p>Added "or" to correct the sentence structure after removing "or an employee of a soil and water conservation district with appropriate engineering approval authority" since this is no longer an option due to the USDA-Natural Resources Conservation Service procedural changes.</p>

	<p>with appropriate engineering approval authority shall certify that the siting, design and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.</p>		
<p>9VAC25-192-70 Part III B.6 (Contents of the general permit)</p>	<p>6. For new waste storage or treatment facilities constructed after November 16, 2014, the facilities shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture and approved by the department. A Virginia licensed professional engineer, an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit.</p>	<p>6. For new waste storage or treatment facilities constructed after November 16, 2014, the facilities shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture and approved by the department. A Virginia licensed professional engineer [ ,or ] an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority [ ,or an employee of a soil and water conservation district with appropriate engineering approval authority ] shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.</p>	<p>Added "or" to correct the sentence structure after removing "or an employee of a soil and water conservation district with appropriate engineering approval authority" since this is no longer an option due to the USDA-Natural Resources Conservation Service procedural changes.</p>

	<u>This certification shall be maintained on site.</u>		
9VAC25-192-70 Part III B.8 (Contents of the general permit)	<u>8. For waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.</u>	<p><u>8. [ Semi-solid and solid waste shall be stored in a manner that prevents contact with surface water and groundwater. Waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:</u></p> <p><u>a. Waste shall be covered to protect it from precipitation and wind;</u></p> <p><u>b. Storm water shall not run onto or under the stored waste;</u></p> <p><u>c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10-6 centimeters per second); and ]</u></p> <p><u>d. ] For waste that is not stored [ in a waste storage facility or ] under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.</u></p>	Amended the language to ensure the regulation provides for adequate controls on semi-solid and solid waste storage. The requirements are consistent with the requirements in the poultry waste regulation (9VAC25-630).

<p>NEW 9VAC25-192-90. (Utilization and storage requirements for transferred animal waste)</p>	<p><u>B 1 c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10<sup>-6</sup> centimeters per second); and</u></p>	<p><u>B 1 c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored [ poultry ] waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10<sup>-6</sup> centimeters per second); and</u></p>	<p>Amended language to clarify the requirements for animal waste by removing poultry waste so as not to conflict with the poultry waste regulation (9VAC25-630).</p>
<p>NEW 9VAC25-192-90. (Utilization and storage requirements</p>	<p><u>B 1 d. For animal waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock</u></p>	<p><u>B1 d. For animal waste that is not stored [ in a waste storage facility or ] under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.</u></p>	<p>Amended the language to ensure the regulation provides for adequate controls on semi-solid and solid waste storage. The requirements are consistent with the requirements in the poultry waste regulation (9VAC25-630) and the contents of this permit</p>

for transferred animal waste)	<u>outcrops, and springs.</u>		regulation.
NEW 9VAC25-192-90. (Utilization and storage requirements for transferred animal waste)	<u>B 4. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer, an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this subsection. This certification shall be maintained on site.</u>	<u>B 4. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer [ ; or ] an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority [ or an employee of a soil and water conservation district with appropriate engineering approval authority ] shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this subsection. This certification shall be maintained on site.</u>	Added "or" to correct the sentence structure after removing "or an employee of a soil and water conservation district with appropriate engineering approval authority" since this is no longer an option due to the USDA-Natural Resources Conservation Service procedural changes.

<p>NEW 9VAC25-192-90. (Utilization and storage requirements for transferred animal waste)</p>	<p><u>C 1 b. Animal waste may be applied to any crop once every three years at a rate of no greater than 80 pounds per acre when:</u></p>	<p><u>C 1 b. Animal waste may be applied to any crop once every three years at a rate of no greater than 80 pounds [ of plant available phosphorus ] per acre when:</u></p>	<p>Amended language to add "of plant available phosphorus" to clarify that the limitation applies to phosphorus.</p>
---	---	---	--

## 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
<p>Wilmer Stoneman – Virginia Farm Bureau – Public Hearing Comment</p>	<p>I am here to speak in favor of renewing the general permit. We do have some concerns. We understand that the end-user program is necessary but feel that the requirements may be too stringent and may prohibit some of the manure transfer activities from taking place. The training requirement is also a concern. The trigger amount of materials for transfer is also an issue – the trigger should be based on an acreage figure (similar to the 10 acre poultry manure limit) – you are not going to be able to cover a lot of acreage with a 6,000 gallon limit. Also opposed to any requirements related to BMPs listed in the Chesapeake Bay WIP. CAFOs and AFOs are already covered in the existing WIP.</p>	<p>The end-user provisions in the proposed regulation are intended to increase the options a permitted farm may use to address nutrient loadings on available land application fields, while providing for the implementation of reasonable best management practices by recipients of manure. The ‘trigger’ amount of manure transfer that requires tracking and BMP implementation for poultry was based on the amount of litter transported in a single transport vehicle of average size (10 tons), not land application area. Similarly, the liquid limit of 6000 gallons was based on size of a single transport vehicle of average size. Additionally, land application of liquid manure requires additional BMPs be employed over that of drier material such as poultry litter in order to prevent runoff, so it is reasonable to not assume equivalent land application areas be exempted from the BMP requirements.</p> <p>No additional BMPs are proposed to be added to the VPA AFO General Permit, § <a href="#">62.1-44.17:1</a>.E. of the Code of Virginia limits the criteria for design and operation of an AFO, and the BMPs required in the proposed regulation align with the statutory requirements. Additional BMPs identified in the WIP are identified therein as being implemented voluntarily.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Ann F. Jennings, Virginia</p>	<p>CBF finds that the AFO general permit is not consistent with the Virginia Chesapeake Bay TMDL Phase I Watershed Implementation Plan (WIP) (dated</p>	<p>The AFO GP as proposed is consistent with the Chesapeake Bay TMDL and WIP, as it mandates certain BMPs required in State Water Control Law that reduce</p>

<p>Executive Director – Chesapeake Bay Foundation – Public Hearing Comment</p>	<p>November 29, 2010) and the Final Chesapeake Bay Total Maximum Daily Load for Nitrogen, Phosphorus and Sediment (dated December 29, 2010). The State Water Control Board (Board), during their March, 2013 meeting on this proposal, specifically directed DEQ to address the role of this general permit in implementing the WIP. We are disappointed that no additional changes were made to the general permit following that direction from the Board.</p>	<p>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. The WIP “Gap Analysis” does not identify the need to require additional BMPs in the VPA AFO GP. At the March 14, 2013 Board meeting, the Board accepted the staff recommendation without any additional directives or modification. Some members did suggest that DEQ consider recommending or encouraging additional BMP implementation, either through permit language or implementation guidance. No additional BMPs are proposed to be added to the VPA AFO General Permit as the State Water Control Law limits the criteria for design and operation of an AFO, and the BMPs required in the proposed regulation align with the statutory requirements. DEQ will address promotion of additional voluntary BMPs through implementation guidance.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation – Public Hearing Comment</p>	<p>DEQ has allowed its AFO general permit to serve as compliance with the Clean Water Act, rather than require coverage under a Virginia Pollution Discharge Elimination System (or VPDES) permit. Virginia committed in its WIP (page 71) that while “all AFOs and CAFOs are currently covered by VPA permit,” DEQ would convert “CAFOs that discharge or propose to discharge” to VPDES permit coverage. Yet, three years after issuance of the WIP, no such conversions have been completed. As a “de facto” Clean Water Act permit recognized as a “gray area” by the Water Control Board and Director Paylor during the March, 2013 meeting, the AFO general permit must provide consistency with the federal Clean Water Act and the Chesapeake Bay TMDL.</p>	<p>9VAC25-31-130 of the VPDES Permit Regulation specifies that “[t]he owners or operators of a CAFO shall not discharge unless the discharge is authorized by a VPDES permit.” If a farm discharges, the VPA AFO GP is not a substitute for a VPDES permit. DEQ has been working cooperatively with EPA in development and drafting of VPDES CAFO individual permits, all in light of continuing evaluation (some involving litigation) regarding what constitutes a discharge that would require the owner or operator to hold a VPDES Permit. As the VPA AFO GP is not a substitute for a VPDES CAFO permit, the VPA AFO GP regulation is drafted for consistency with Virginia law, not the federal Clean Water Act. The components proposed in the VPA AFO General Permit are consistent with the regulatory descriptions in the Chesapeake Bay TMDL WIP.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>

<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation – Public Hearing Comment</p>	<p>CBF cannot support the proposed AFO general permit as it fails to require any new implementation of best management practices (bmps) by animal feeding operations as committed in the Commonwealth’s WIP. We believe that the proposed general permit will undermine Virginia’s commitment for aggressive implementation of bmps on agricultural land. Virginia’s commitment, for example, calls for 95 percent coverage of stream protection with fencing by 2025, yet the proposed AFO general permit is silent on this issue.</p>	<p>§ <a href="#">62.1-44.17:1</a>.E outlines the BMPs that will be contained in the VPA AFO GP; additional BMPs referenced in the WIP are not authorized by this statute to be included in the VPA AFO GP. The WIP does not call out the VPA AFO GP as the vehicle to cause additional BMP implementation, but rather voluntary programs such as the Resource Management Plan program.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation – Public Hearing Comment</p>	<p>CBF questions whether Virginia can achieve its agriculture bmp implementation commitments (Table 5.4-1, page 57, of the WIP) or the agriculture sector target loads for nitrogen, phosphorus, and sediment by milestone period (Table 5.4-4, page 61 of the WIP).</p>	<p>The WIP outlines the suite of programs that will be used to meet the pollution reduction goals. The WIP also describes additional measures that may be implemented if goals are not being met.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation – Public Hearing Comment</p>	<p>Over the past two years, the Chesapeake Bay TMDL and Virginia WIP have driven <u>stronger but achievable</u> restrictions in <u>all important sectors</u> on numerous regulated activities, including a new Watershed General Permit for Wastewater Treatment Plants, a new industrial stormwater general permit, a new construction general permit, and multiple pending MS4 permits. The proposed AFO general permit departs from this rule. The Board should seize this opportunity to improve the VPA permit and ensure that AFOs, like all other stakeholders, do their fair share.</p>	<p>The content of the VPA AFO GP is governed by a separate section of State Water Control Law than the other general permits mentioned, and the GP is designed to be used in conjunction with other agricultural programs to achieve the goals outlined in the WIP.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Brad Copenhaver –</p>	<p>We represent 40,000 farmers and agribusinesses – representatives of the Council served on the</p>	<p>DEQ acknowledges the support.</p>

<p>VA Agribusiness Council</p>	<p>Technical Advisory Committee for this General Permit – We support extending the permit – the Council did not support the requirement for additional BMPs as identified in the Chesapeake Bay Watershed Implementation Plan – there are many operators with rented lands which would make it difficult to implement BMPs – also the Code is specific about not allowing additional BMP requirements – also these regulations apply across the state and it would be inappropriate to require Chesapeake Bay WIP BMPs outside of the Bay watershed – the Regulation as proposed provides adequate water quality protection – urge the SWCB to approve the regulation as proposed – we will be submitting written comments before the end of the comment period.</p>	<p><b>No changes are being proposed to address these comments.</b></p>
<p>John Stelzl – Fair View &amp; Springhill Farms, Stephens City</p>	<p>As a current holder of a Virginia Pollution Abatement Permit for my CAFO I would like to go on record as being in support of the proposed changes now being considered for the revised permits. Modeling the transfer requirements for liquid nutrients after poultry is a positive step forward. I would encourage the policy makers to make these changes as user friendly as possible so that they can be effective in putting nutrients where they are needed in a reasonable and timely fashion.</p>	<p>DEQ acknowledges the support. <b>No changes are being proposed to address these comments.</b></p>
<p>John Stelzl – Fair View &amp; Springhill Farms, Stephens City</p>	<p>Under the current permit requirements manure sampling is required once a year while soil sampling is once in three years. The animals are fed a consistent ration with little variance in nutrient content. It would be logical to make both soil and manure sampling required every three years, as that is when the NMP for a CAFO is revised and would reflect any application rate changes.</p>	<p>DEQ cannot reduce the frequency of waste monitoring in this regulatory action, as Subsection E. 4 of <a href="#">§ 62.1-44.17:1</a> of the Code of Virginia states that <i>(i) waste shall be monitored at least once per year.</i> Additionally, monitoring waste is a valuable tool for nutrient management tool and for evaluating the performance of a waste system. <b>No changes are being proposed to address these comments.</b></p>
<p>John Stelzl – Fair View &amp;</p>	<p>I would also like to go on record as saying that all of my business encounters with the personnel of DEQ</p>	<p>DEQ acknowledges the support.</p>

Springhill Farms, Stephens City	and DCR in connection with our CAFO have been positive. I have always been treated with courtesy and respect and have been made to feel that we are a partnership. I truly appreciate this balanced approach by the State.	<b>No changes are being proposed to address these comments.</b>
Roger Jefferson – Mt. View Farms	What is being proposed may make sense but I am concerned over the record keeping requirements that are being proposed. We don't need to be bogged down with more and more record keeping. We don't need more record keeping or more regulations – we do a good job ourselves.	DEQ feels that additional recordkeeping is necessary to ensure compliance with the new proposed options such as transferring animal waste or bringing off-site generated waste to the facility for treatment. The new recordkeeping items are only required when the owner of the facility transfers animal waste or brings off-site generated waste to the facility. The new recordkeeping items are consistent with the poultry waste regulation (9VAC25-630). <b>No changes are being proposed to address these comments.</b>
Don Gardner – Veterinarian and Member of the Bedford Agricultural Development Advisory Board	Highly supportive of the proposal to allow liquid manure to be transferred – very supportive of the proposal to allow transfer of manure and therefore nutrients from a producer to an end-user on another site – have had the opportunity to do just that in the past but have not been able to under the current regulations.	DEQ acknowledges the support. <b>No changes are being proposed to address these comments.</b>
Doug Mayhugh – Mtn Valley Farm	Farm Bureau is supportive of these amendments. The proposed amendments provide a workable solution for a lot of farmers who may be running out of available land area to spread their manure by allowing for the transfer of the manure to another site/neighbor – support the proposed amendments.	DEQ acknowledges the support. <b>No changes are being proposed to address these comments.</b>
Shana Jones, Director - Virginia Coastal Policy Clinic at W&M Law School	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 and	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>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><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Shana Jones, Director - Virginia Coastal Policy Clinic at W&amp;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 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</p>	<p>The VPA AFO GP is one of a suite of programs designed to provide reasonable assurance to EPA that water quality goals are being met. BMPs included in the proposed reissuance of the VPA AFO GP Regulation are those consistent with § <a href="#">62.1-44.17:1</a>. of the Code of Virginia.</p> <p>9VAC25-31-130 of the VPDES Permit Regulation specifies that “[t]he owners or operators of a CAFO shall not discharge unless the discharge is authorized by a VPDES permit.” If a farm discharges, the VPA AFO GP is not a substitute for a VPDES permit. DEQ has been working cooperatively with EPA in development and drafting of VPDES CAFO individual permits, all in light of continuing evaluation (some involving litigation) regarding what constitutes a discharge that would require the owner or operator to hold a VPDES Permit. As the VPA AFO GP is not a substitute for a VPDES CAFO permit, the VPA AFO</p>

	<p>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>GP regulation is drafted for consistency with Virginia law, not the federal Clean Water Act.</p> <p>DEQ acknowledges that additional mandatory measures may have to be implemented in the future if goals are not met. The WIP does not presuppose that additional mandatory measures will be necessary. DEQ may reopen the VPA AFO GP Regulation prior to the end of the ten year term if necessary to mandate additional requirements.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Shana Jones, Director - Virginia Coastal Policy Clinic at W&amp;M Law School</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 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 health. One WIP priority practice and BMP,</p>	<p>The AFO GP as proposed 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.</p> <p>§ <a href="#">62.1-44.17:1</a>.E.3. of the Code of Virginia specifies that “[a]dequate buffer zones, where waste shall not be applied, shall be maintained between areas where waste may be applied and (i) water supply wells or springs, (ii) surface water courses, (iii) rock outcroppings, (iv) sinkholes, and (v) occupied dwellings unless a waiver is signed by the occupants of the dwellings. The statute does not include authorization for a mandatory setback for animal access, only land application of waste.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>

	<p>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&amp;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 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>	<p>The structure and content of nutrient management plans required by the VPA AFO GP are outlined by § <a href="#">62.1-44.17:1.E.3</a>. and the DCR Nutrient Management Regulations 4VAC5-15. The regulatory action to reissue the VPA AFO GP cannot change the requirements specified in the DCR regulations.</p> <p>§ <a href="#">62.1-44.17:1.E</a> of the code of Virginia does constrain the VPA AFO GP to “<i>establish criteria for the design and operation of confined animal feeding operations <b>only as described in subsection E</b></i>” (emphasis added).</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Jason Carter, Virginia Cattlemen’s Association</p>	<p>The Cattlemen supports extending the permit as amended for 10 years.</p>	<p>DEQ acknowledges the support. <b>No changes are being proposed to address these comments.</b></p>

<p>Jason Carter, Virginia Cattlemen's Association</p>	<p>There was disagreement about the 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 Cattlemen supports the threshold requirements as they are proposed.</p>	<p>DEQ acknowledges the support. <b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Jason Carter, Virginia Cattlemen's Association</p>	<p>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 Plan (WIP). However, the Cattlemen, 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 Cattlemen would like to see this remain unchanged.</p>	<p>DEQ acknowledges the support. <b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Katie K. Frazier – Virginia</p>	<p>The Council supports extending the permit as amended for 10 years.</p>	<p>DEQ acknowledges the support. <b><i>No changes are being proposed to address these comments.</i></b></p>

Agribusiness Council		
Katie K. Frazier – Virginia Agribusiness Council	<p>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.</p>	<p>DEQ acknowledges the support. <b><i>No changes are being proposed to address these comments.</i></b></p>
Katie K. Frazier, President – Virginia Agribusiness Council	<p>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 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>DEQ acknowledges the support. <b><i>No changes are being proposed to address these comments.</i></b></p>

<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p><b>CBF opposes issuance of this proposed VPA General Permit for AFOs without significant modification.</b> 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) 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>The AFO GP as proposed 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. The WIP “Gap Analysis” does not identify the need to require additional BMPs in the VPA AFO GP. At the March 14, 2013 Board meeting, the Board accepted the staff recommendation without any additional directives or modification. Some members did suggest that DEQ consider recommending or encouraging additional BMP implementation, either through permit language or implementation guidance. No additional BMPs are proposed to be added to the VPA AFO General Permit as the State Water Control Law limits the criteria for design and operation of an AFO, and the BMPs required in the proposed regulation align with the statutory requirements. DEQ will address promotion of additional voluntary BMPs through implementation guidance.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p><b>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.</b> 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 (or VPDES) permit, Virginia has utilized the AFO VPA program as a</p>	<p>Facilities covered by the VPA AFO GP are those that do not have a point source discharge to surface waters; point sources require assignment of a WLA. In development of the TMDL, Virginia acknowledged that some farms currently permitted under the VPA program may need to be covered under the VPDES program if it was determined that the farm discharged. In order to account for this future shift for some facilities into the need for a WLA under a VPDES permit (essentially an administrative exercise rather than growth in the number of new discharging CAFOs), the AFO load was accounted for in the WLA so that any load attributed to point sources rather than nonpoint sources would not appear to be “new” discharges.</p>

	<p>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>9VAC25-31-130 of the VPDES Permit Regulation specifies that “[t]he owners or operators of a CAFO shall not discharge unless the discharge is authorized by a VPDES permit.” If a farm discharges, the VPA AFO GP is not a substitute for a VPDES permit. DEQ has been working cooperatively with EPA in development and drafting of VPDES CAFO individual permits, all in light of continuing evaluation (some involving litigation) regarding what constitutes a discharge that would require the owner or operator to hold a VPDES Permit. As the VPA AFO GP is not a substitute for a VPDES CAFO permit, the VPA AFO GP regulation is drafted for consistency with Virginia law, not the federal Clean Water Act.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p><b>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.</b> 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 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</p>	<p>The AFO GP as proposed 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>Further, § <a href="#">62.1-44.17:1.E.3</a> of the Code of Virginia specifies that “[a]dequate buffer zones, where waste shall not be applied, shall be maintained between areas where waste may be applied and (i) water supply wells or springs, (ii) surface water courses, (iii) rock outcroppings, (iv) sinkholes, and (v) occupied dwellings unless a waiver is signed by the occupants of the dwellings. The statute does not include authorization for a mandatory setback for animal access, only land application of waste.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>

	<p>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 Executive Director – Chesapeake Bay Foundation</p>	<p><b>CBF maintains its recommendation that the AFO VPA General Permit incorporate requirements for the “stream protection with fencing” BMP to be completed by the end of the permit cycle.</b> 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. <b>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</b></p>	<p>DEQ acknowledges that additional mandatory measures may have to be implemented in the future if goals are not met. The WIP does not presuppose that additional mandatory measures will be necessary. DEQ may reopen the VPA AFO GP Regulation prior to the end of the ten year term if necessary to mandate additional requirements. The existing regulatory review process provides a mechanism for reopening a general permit. An example of this process is the regulatory action taken to amend the VPA General Permit Regulation for Poultry Waste Management when it became necessary to address BMPs employed by end-users of poultry litter. The use of BMPs by end-users was recommended prior to the regulatory amendment but became mandatory following the amendment.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>

	nitrogen, phosphorus, and sediment (Table 5.4-4, page 61 of the WIP).	
Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation	<b>DEQ and stakeholder reasoning for failing to 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.</b> 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.	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.  <b><i>No changes are being proposed to address these comments.</i></b>
Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation	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 100-foot buffer, or 35-foot wide vegetated buffer” (9VAC25-192-70).	The authorization to approve an alternative to the 100 foot setback or 35 foot vegetated buffer is provided solely in the context of providing options for setbacks applied to land applied manure. If the operator of a land application site were to utilize stream fencing in coordination with BMPs that provide pollutant reductions equivalent or better than reductions that would be achieved by the 100-foot buffer, or 35-foot wide vegetated buffer, this practice could be approved under the proposed VPA AFO GP.  <b><i>No changes are being proposed to address these comments.</i></b>
Ann F. Jennings, Virginia Executive Director –	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	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

Chesapeake Bay Foundation	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.	based solely on consistency issues.  <b><i>No changes are being proposed to address these comments.</i></b>
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.  <b><i>No changes are being proposed to address these comments.</i></b>
Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation	TAC members have expressed concerns that 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.	While not always the case, it is more common that the primary location of required waste handling facilities is on property owned by the permit holder, facilitating installation and maintenance of those facilities. Implementation of a nutrient management plan, including adherence to required setbacks for land applied manure, are behavioral practices under the control of the operator at the time he is managing the stored manure. Installation and maintenance of stream fencing is more common on land rented for land application or livestock grazing, and could involve installation and maintenance of hardware not under the direct control of the operator.  <b><i>No changes are being proposed to address these comments.</i></b>
Ann F. Jennings, Virginia Executive Director –	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	9VAC25-192-70.B.8 was added to mirror the requirement in the VPA Poultry Waste General Permit Regulation that addresses short term storage of litter piles outside a waste storage structure designed to prevent runoff to surface waters. Manure storage facilities in the VPA AFO GP are

<p>Chesapeake Bay Foundation</p>	<p>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 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>already required to include design requirements that prevent discharges. The added requirement in the VPA AFO GP for waste storage setbacks was intended to address situations analogous to the uncovered litter pile, such as additional waste brought on to the farm, or storage of waste outside a manure storage facility designed to prevent runoff. DEQ agrees that proper waste storage must include mechanisms to prevent transport of pollutants to state waters, and that buffers alone may not be adequate, thus the requirement for properly designed and operated waste storage facilities that include freeboard management for liquid facilities and runoff diversion.</p> <p>The Fact Sheet and regulation mirror each other, as the fact sheet only includes requirements made mandatory by the regulation.</p> <p><b>In response to these and other comments, DEQ modified the definition of “waste storage facility” to be more inclusive of the type of wastes managed therein, and the requirement for stored waste in 9VAC25-192-70.B.8 was modified to be more clear that the setback is only a measure in lieu of storage in an approved facility, and to limit storage to 14 days when such storage is outside an approved storage facility.</b></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</p>	<p>Subsection E. of <a href="#">§ 62.1-44.17:1</a> of the Code of Virginia outlines the operational requirements for design and operation of a regulated animal feeding operation. DEQ recognized that alternatives to traditional waste treatment and storage in anaerobic lagoons, manure pits, above ground storage tanks are emerging, and did not want eligibility for the general permit to be nullified by implementation of new technology, as long as the requirements mandated by State Water Control Law were met. DEQ will review a waste treatment or storage facility based on whether or not the design and operation will meet</p>

	will be authorized by DEQ.	the requirements of the statute to be protective of state waters, as well as any applicable standard employed by the USDA-NRCS.  <b><i>No changes are being proposed to address these comments.</i></b>
Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation	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 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.	EPA has not yet completed its assessment; therefore, consideration of changes to the VPA AFO GP as a result of EPA’s findings will not occur during this regulatory action.  <b><i>No changes are being proposed to address these comments.</i></b>
Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation	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.	DEQ acknowledges CBF’s concurrence with the named comments, and responses are provided above.
Jeff Kelble – Shenandoah Riverkeeper – Potomac Riverkeeper, Inc.	Shenandoah Riverkeeper is concerned that the proposed GP does not go far enough to protect water quality from AFO pollution, and that the GP will be inadequate to meet Virginia’s Chesapeake Bay total maximum daily load (Bay TMDL) commitments for this sector.	The VPA AFO GP is only one component of the overall plan to address the Chesapeake Bay TMDL. 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>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.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Jeff Kelble – Shenandoah Riverkeeper – Potomac Riverkeeper, Inc.</p>	<p>Virginia’s Phase 1 and Phase 2 Watershed Implementation Plans (WIPs) for the Bay TMDL indicate that AFOs throughout Virginia’s portion of the Bay watershed will need to widely implement several suites of best management practices (BMPs) to meet the state’s Bay goals. Specifically, Virginia established five key sets of BMPs and stated that “[i]mplementation of agricultural BMPs approaching the highest practicable levels is necessary to achieve nutrient and sediment reduction thresholds.”<sup>1</sup> Virginia’s top-priority BMPs include nutrient management, vegetative buffers, and livestock stream exclusion.<sup>2</sup> While the proposed GP requires permitted AFOs to follow nutrient management plans and maintain buffers between waste application and waterways in some circumstances, it falls far short of what the state indicated would be necessary in its WIPs. The proposed GP will be in effect for ten years – until 2024 – and thus the state will need to have these practices fully implemented by the end of this permit term to meet the Bay TMDL’s 2025 goals. If the state has fallen behind on its agricultural loading progress in 2017 due to reliance on voluntary BMP implementation or assumed reductions from other sectors, it will be very difficult to take necessary corrective actions and meet TMDL goals. To achieve this wide BMP implementation the final GP should require livestock stream exclusion fencing at all</p>	<p>The VPA AFO GP is only one component of the overall plan to address the Chesapeake Bay TMDL, and thus does not include the entire suite of practices identified in the WIP.</p> <p>DEQ acknowledges that additional mandatory measures may have to be implemented in the future if goals are not met. The WIP does not presuppose that additional mandatory measures will be necessary. DEQ may reopen the VPA AFO GP Regulation prior to the end of the ten year term if necessary to mandate additional requirements.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>

	permitted AFOs. Virginia’s Phase I WIP states that the state will require 95% stream protection with fencing by 2025 to meet Bay goals; unless the agency amends the proposed GP to require AFOs to install such stream protection fencing, the state will almost certainly fail to meet this goal.	
Jeff Kelble – Shenandoah Riverkeeper – Potomac Riverkeeper, Inc.	The final GP should also require vegetative buffers between waste application and all conduits to surface waters, rather than only between application areas and surface waters themselves. The proposed GP language fails to establish setbacks or buffers between waste application and intermittent streams, ditches or tile lines that drain to surface waters downstream.	The land application setback requirements from surface waters were modeled after language used in the federal regulations pertaining to CAFOs. This language provides adequate flexibility to ensure that discharges to surface waters are avoided, and also provides consistency with other regulations pertaining to CAFOs so that interpretations of land application setbacks can be made clearer and thus more easily enforced.  <b><i>No changes are being proposed to address these comments.</i></b>
Jeff Kelble – Shenandoah Riverkeeper – Potomac Riverkeeper, Inc.	Similarly, the GP should restrict waste application that would cause discharges to surface or groundwater via tile lines, ditches, streams, or other features, rather than only prohibiting discharges to sinkholes. <sup>4</sup> These requirements should also apply to animal waste end users. The majority of stream miles in any given watershed are comprised of its intermittent streams, ditches and drain tiles. Failing to prevent direct application to and runoff from these areas dooms the state to failure in actually reducing pollution as necessary to fix the nutrient and algae problems in the Shenandoah River itself, as well as the Chesapeake Bay.	Through the broad discharge prohibitions found at 9VAC25-192-50.A.2 and 9VAC25-192-70, Part II.X.1. <i>Conditions Applicable to All VPA Permits</i> , the VPA AFO GP prohibits direct discharges to state waters through ditches, streams or other features. The effect of tile lines is addressed in the DCR Nutrient Management Plan Standards and Criteria that limit application rates and address leaching potential.  <b><i>No changes are being proposed to address these comments.</i></b>
Jeff Kelble – Shenandoah Riverkeeper – Potomac Riverkeeper, Inc.	The proposed GP also fails to require adequate nutrient management due to the state’s permissive P-Index. DEQ’s final permit must require AFOs and CAFOs to move away from building up soil phosphorus up to and beyond saturation rates which lead to phosphorus loss to surface waters. This	Subsection C.1. of <a href="#">§ 62.1-44.17:1</a> of the Code of Virginia specifies that nutrient management plans submitted with registration statements for VPA AFO GP coverage be approved the Department of Conservation and Recreation (DCR). DCR uses the requirements of 4VAC5-15-10 et seq. and the DCR Nutrient Management Standards and Criteria

	<p>means phasing out use of the P-Index and then eventually moving soil saturation allowances down to levels which protect water quality. The use of the P-Index and continual reliance on the ability to apply more phosphorous than crops will use in a three year cycle simply cannot be justified. Instead, this permit action should be used to create a gradual ten year period to phase out the un-protective P-Index and Soil Saturation methods permitted in nutrient management planning for those that protect water quality by limiting P applications, and phase in those which are agronomic and meet crop needs without building up phosphorous. Virginia developed the P-Index as an interim step, and should move forward with development of a long-term management tool that will better protect water quality without further delay.</p>	<p>as a benchmark for approving the practices employed in the NMPs. The P-index is currently an approved method in the Standards and Criteria for determining P application rate. If phosphorus (P) application according to the P-index results in elevating soil P levels, then the P-index includes a maximum threshold above which no additional P may be applied, so as to avoid reaching soil P levels that may allow losses detrimental to water quality.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Jeff Kelble – Shenandoah Riverkeeper – Potomac Riverkeeper, Inc.</p>	<p>The proposed GP falls short of even requiring this degree of nutrient management by end users of animal waste. As proposed, animal waste end users who receive more than a threshold volume of waste from a permitted AFO or CAFO can choose from several methods to determine maximum waste application rates: phosphorus crop removal rates, 80 pounds per acre every three years, soil test recommendations, or a certified nutrient management plan.<sup>5</sup> The final permit should require end users to apply all waste in accordance with a certified nutrient management plan, and DEQ should subsequently strengthen these plans such that they will minimize the risk of phosphorus and nitrogen loss to ground and surface waters.</p>	<p>The end-user requirements for the VPA AFO GP regulation were modeled after the end-user requirements of the VPA Poultry Waste Regulation. The end-user requirements provide options to obtaining a NMP that are equally or more protective than the limitations found in a NMP. Thus if an end-user has difficulty in obtaining an NMP in a timely manner, he has options that may be simpler to implement but still protective of water quality. In order to ensure the P rate limitations are clear, it is important to note that the 80 lb per acre <u>limit once every 3 years</u> is intended to be a limitation on the P rate, not on the mass of total manure.</p> <p><b><i><u>Following review of these comments, DEQ modified 9VAC25-192-90.C.1.b. to specify that the limitation is on 80 lbs of phosphorus once every three years.</u></i></b></p>
<p>Jeff Kelble – Shenandoah Riverkeeper – Potomac Riverkeeper,</p>	<p><b>The Proposed General Permit Lacks Specificity:</b> Virginia DEQ should clarify the requirements in the proposed GP. First, the GP should impose clearer soil testing requirements. The proposed GP requires AFO owners and waste end users to conduct soil</p>	<p>9VAC25-192-70.B.12.c. specifies that soil monitoring criteria must be included in the nutrient management plan (NMP), and that the NMP must be written by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia and that the operator implement the NMP.</p>

<p>Inc.</p>	<p>monitoring “at the land application sites” every three years, but does not expressly require testing at every field or further explain how many tests a permittee must conduct or how to conduct them.<sup>6</sup> While a certified nutrient management plan should clarify these details, the final GP should also establish thorough baseline monitoring requirements. Second, the GP should establish clear standards for DEQ approval of digesters and other manure treatment technologies. The proposed GP states that such a technology “shall be approved by the department” but does not set out criteria, a process, or a set of baseline requirements for this approval.<sup>7</sup> Without these clarifications and criteria DEQ cannot demonstrate that permits issued pursuant to this GP will adequately protect local water quality or keep the state on track to meet its Chesapeake Bay TMDL goals.</p>	<p>Implementation of the NMP requires that procedures specified in 4VAC5-15-150.2.f. related to soil sampling be followed. These procedures include specifications for obtaining representative soil samples.</p> <p>Subsection E. of <a href="#">§ 62.1-44.17:1</a> of the Code of Virginia outlines the operational requirements for design and operation of a regulated animal feeding operation. DEQ recognized that alternatives to traditional waste treatment and storage in anaerobic lagoons, manure pits, above ground storage tanks are emerging, and did not want eligibility for the general permit to be nullified by implementation of new technology, as long as the requirements mandated by State Water Control Law were met. DEQ will review a waste treatment or storage facility based on whether or not the design and operation will meet the requirements of the statute to be protective of state waters, as well as any applicable standard employed by the USDA-NRCS.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Jeff Kelble – Shenandoah Riverkeeper – Potomac Riverkeeper, Inc.</p>	<p><b>Waste Stockpiling:</b> DEQ should revise the proposed GP language authorizing uncovered waste stockpiling without a time limit. The proposed GP authorizes such stockpiling and merely requires the permittee to maintain a 100-foot setback between the stockpile and surface waters and other vulnerable features.<sup>8</sup> DEQ should prohibit all uncovered waste stockpiles, or at a minimum should restrict stockpiling to one day. Due to the high risk stockpiling poses to water quality, the U.S. Environmental Protection Agency (EPA) has clarified that waste stockpiles are part of the manure storage area and part of the AFO production area.<sup>9</sup> DEQ should clarify this in its final GP, as it will in some cases trigger the duty to apply for a Virginia</p>	<p>9VAC25-192-70.B.8 was added to mirror the requirement in the VPA Poultry Waste General Permit Regulation that addresses short term storage of litter piles outside a waste storage structure designed to prevent runoff to surface waters. <u>9VAC25-192-90.B.1 requires stockpiles of transferred manure to be kept in a facility or at a site that provides adequate storage if stockpiled for longer than 14 days.</u></p> <p>Manure storage facilities in the VPA AFO GP are already required to include design requirements that prevent discharges. The added requirement in the VPA AFO GP for waste storage setbacks was intended to address situations analogous to the uncovered litter pile, such as additional</p>

	<p>Pollutant Discharge Elimination System (VPDES) permit.</p>	<p>waste brought on to the farm, or storage of waste outside a manure storage facility designed to prevent runoff.</p> <p>DEQ agrees that proper waste storage must include mechanisms to prevent transport of pollutants to state waters, and that buffers alone may not be adequate, thus the requirement for properly designed and operated waste storage facilities that include freeboard management for liquid facilities and runoff diversion.</p> <p><b>In response to these and other comments, DEQ modified the definition of “waste storage facility” to be more inclusive of the type of wastes managed therein, and the requirement for stored waste in 9VAC25-192-70.B.8 was modified to be more clear that the setback is only a measure in lieu of storage in an approved facility, and to limit storage to 14 days when such storage is outside an approved storage facility.</b></p>
<p>Jeff Kelble – Shenandoah Riverkeeper – Potomac Riverkeeper, Inc.</p>	<p><b>Local Nutrient Impairment in the Shenandoah River:</b> Less than a month ago and for the first time we can find on record, EPA issued its final 303D/305B list without deciding whether or not the Shenandoah would be listed for algae problems. Shenandoah Riverkeeper submitted reams of photos, studies and personal testimonies that clearly show that the Shenandoah River itself is receiving such high nutrient loadings that algae growth greatly diminishes swimming, fishing and aesthetic enjoyment of the river for at least half the year. The Shenandoah River is indisputably over-fertilized, and its watershed is also the primary animal production area in the Commonwealth. DEQ is obligated to issue permits that are calculated to result in compliance with existing TMDLs and local water quality standards, as well as the Bay TMDL. We assert that Virginia cannot meet local water quality standards –</p>	<p>The VPA AFO GP is only one component of the overall plan to address water quality concerns. 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 other programs, such as the Resource Management Plan program will address site specific voluntary BMP implementation at other farms that may be impacting water quality.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>

	including Virginia’s General Criteria, a.k.a. “narrative standards” – without making the changes to the AFO General Permit recommended in these comments.	
Jeff Kelble – Shenandoah Riverkeeper – Potomac Riverkeeper, Inc.	The AFO GP must set high standards for nutrient management and require BMPs by all permittees if DEQ expects to meet its Chesapeake Bay TMDL goals for this sector and to protect local water quality throughout the state from nutrients, sediment, and pathogens. Because many of the shortcomings of the GP stem from inadequate nutrient management requirements, we further request that DEQ initiate a separate rulemaking to update and strengthen these requirements.	The nutrient management program and associated regulations are administered by the Virginia Department of Conservation and Recreation, thus DEQ cannot initiate a rulemaking related to DCR regulations.  <b>No changes are being proposed to address these comments.</b>
Denise Mosca - Gloucester	It is important that the general permits being issued are in conformance with the provisions of Virginia’s Watershed Implementation Plan (WIP) agreement in order to meet the objectives of the Chesapeake Bay Agreement. I read that the proposed general permit does not require that any new Best Management Practices (BMPs) that were committed to in the WIP be implemented. The ten year permit term is a long time not to be advancing the Commonwealth towards it’s WIP goals, and I would like to see the GP strengthened in order that these goals be attained.	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 other programs, such as the Resource Management Plan program will address site specific voluntary BMP implementation at other farms that may be impacting water quality.  DEQ acknowledges that additional mandatory measures may have to be implemented in the future if goals are not met. The WIP does not presuppose that additional mandatory measures will be necessary. DEQ may reopen the VPA AFO GP Regulation prior to the end of the ten year term if necessary to mandate additional requirements.
Hobey Bauhan, President – Virginia Poultry Federation	VPF supports extending the permit as amended for 10 years. We urge the Water Control Board’s final approval.	DEQ acknowledges the support. <b>No changes are being proposed to address these comments.</b>
Hobey Bauhan, President –	There were members of the RAC that expressed support for the permit to mandate BMPs listed with in the Virginia Watershed Implementation Plan (WIP) for	DEQ acknowledges the support. <b>No changes are being proposed to address these comments.</b>

Virginia Poultry Federation	the Chesapeake Bay TMDL. VPF, along with other agricultural participants, does 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 VPF would like to see this remain unchanged.	
Lareth May, President – Rockingham Farm Bureau	Rockingham County Farm Bureau Board of Directors, 1938 Deyerle Ave., Harrisonburg, VA 22801, supports the position of VA Farm Bureau in the renewal of the General Permit and the proposed changes.	DEQ acknowledges the support. <b><i>No changes are being proposed to address these comments.</i></b>

**All changes made in this regulatory action**

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
9VAC25-192 (Chapter Title)	N/A	Chapter Title	Amended to read: VIRGINIA POLLUTION ABATEMENT (VPA) REGULATION AND GENERAL PERMIT FOR ANIMAL FEEDING OPERATIONS Amended Title to clarify that this Chapter includes both the general permit and technical requirements outside of the general permit.
9VAC25-192-10. (Definitions)	N/A	Definitions	Amended Agricultural storm water definition to read: "Agricultural storm water discharge " means a precipitation-related discharge of manure, litter, or

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
			<p>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.</p> <p>Clarify the definition and make it consistent with other regulations which govern animal feeding operations.</p>
9VAC25-192-10. (Definitions)	N/A	Definitions	<p>Amended Animal feeding operation definition to read:</p> <p>"Animal feeding operation" means a lot or facility where the following conditions are met:</p> <ol style="list-style-type: none"> <li>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</li> <li>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.</li> </ol> <p>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.</p> <p>Remove "other than aquatic animals" from the definition to eliminate any confusion since we do not cover aquatic animal operation.</p>
9VAC25-32-10. (Definitions)	N/A	Definitions	<p>Added Animal waste definition to read:</p> <p>"Animal waste" means liquid, semi-solid, and solid animal manure<del>[-poultry waste]</del> and process wastewater, compost or sludges associated with [ <del>livestock and poultry</del> ] animal feeding operations including the final treated wastes generated by a digester or other manure treatment technologies.</p> <p>Added the definition to make it consistent with other regulations which govern animal feeding operations.</p> <p>Amended definition to remove poultry waste so as not to conflict with the poultry waste regulation (9VAC25-630).</p>
9VAC25-192-10. (Definitions)	N/A	Definitions	<p>Added Animal waste end-user definition to read:</p> <p>"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.</p> <p>Added the definition to clarify the use of the term as used in this regulation.</p>
9VAC25-192-10. (Definitions)	N/A	Definitions	<p>Added Animal waste fact sheet definition to read:</p> <p>"Animal waste fact sheet" means the document that details the requirements regarding</p>

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
			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.
9VAC25-192-10. (Definitions)	N/A	Definitions	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.
9VAC25-192-10. (Definitions)	N/A	Definitions	Added Nutrient management plan definition to read: "Nutrient management plan" or "NMP" means a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment, and management of animal waste and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters; except that for a animal waste end-user who is not subject to the general permit, the requirements of 9VAC25-192-90 constitute the NMP. Added the definition to make it consistent with other regulations which govern animal feeding operations.
9VAC25-192-10. (Definitions)	N/A	Definitions	Added Organic source definition to read: "Organic source" means any nutrient source including, but not limited to, manures, biosolids, compost, and waste or sludges from animals, humans, or industrial processes, but for the purposes of this regulation it excludes waste from wildlife. Added the definition to clarify other terms used in the regulation. Added the definition to make it consistent with other regulations which govern animal feeding operations.
9VAC25-192-10. (Definitions)	N/A	Definitions	Added Waste nutrient analysis rate definition to read: "Waste nutrient analysis rate" means a land application rate for animal waste approved by the board as specified in this regulation. Added the definition to clarify other terms used in the regulation.
9VAC25-32-10. (Definitions)	N/A	Definitions "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	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 a structure used to store manure or waste</u> ]. Amended the definition by adding " <u>, or a structure used to store manure or waste</u> " in order to clarify the new storage requirements proposed in the regulation.

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
		solids or nutrients.	
9VAC25-192-10. (Definitions)	N/A	Definitions	Deleted Operator definition which reads: "Operator" means any person who owns or operates an animal feeding operation. The definition of owner is in the VPA Permit Regulation and this definition of operator causes confusion to the meaning for this regulation.
9VAC25-192-10. (Definitions)	N/A	Definitions	Deleted Permittee definition which reads: "Permittee" means the owner whose animal feeding operation is covered under this general permit. The definition of permittee is in the VPA Permit Regulation and this definition of permittee causes confusion to the meaning for this regulation.
9VAC25-192-20. (Purpose, delegation of authority)	N/A	Purpose and Delegation of Authority	Amended subsection A to clarify the pollution activities which are governed by the regulation and general permit. Removed language since this is not just a general permit regulation.
9VAC25-192-20. (Purpose, delegation of authority)	N/A	Purpose and Delegation of Authority	Amended subsection C, the effective date of the permit for reissuance.
N/A	NEW 9VAC25-192-25. (Duty to comply)	N/A	Added new section which includes language regarding the duty to comply with the regulation and general permit by the owner of the AFO and the animal waste end-user. Added new section to clarify the duty to comply with the general permit and the regulation, including the technical requirements.
9VAC25-192-50. (Authorization to manage pollutants)	N/A	Authorization to manage pollutants	Added an internal catch line: <u>Owner of an animal feeding operation.</u> Added to clarify which subsection applies to a particular entity.
9VAC25-192-50. (Authorization to manage pollutants)	N/A	Authorization to manage pollutants	Amended subdivision A.1: 1. The <del>owner operator</del> has not been required to obtain a VPDES permit or an individual <u>VPA</u> permit according to <u>subdivision 2 of 9VAC25-32-260 B</u> ; Amended to correct the subsection in accordance with the Code of VA §62.1-44.17:1.

<b>Current Section Number</b>	<b>Proposed new section number, if applicable</b>	<b>Current Requirement</b>	<b>Proposed Change and Rationale</b>
9VAC25-192-50. (Authorization to manage pollutants)	N/A	Authorization to manage pollutants	Amended subdivision A.2 to clarify what is managed under the general permit: 2. The operation of the animal feeding operation shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural stormwater discharges are permitted. Domestic sewage shall not be managed under this general permit. or industrial Industrial waste shall not be managed under this general permit, except for wastes that have been approved by the department and are managed in accordance with 9VAC25-192-70; Added local government ordinance form to the language. Clarify what is allowed to be managed under the general permit.
9VAC25-192-50. (Authorization to manage pollutants)	N/A	Authorization to manage pollutants	Amended subdivision A.3 . Added local government ordinance form to the language. Amended to clarify the proper form to attach for notification from the governing body.
9VAC25-192-50. (Authorization to manage pollutants)	N/A	Authorization to manage pollutants	Amended subdivision A.4.: amended language by replacing operator with owner. The statute speaks to the owner of the AFO. Amended to clarify who is required to comply with the regulation.
9VAC25-192-50. (Authorization to manage pollutants)	N/A	Authorization to manage pollutants	Amended subdivision A.5.: language by replacing operator with owner. The statute speaks to the owner of the AFO. Replaced permit with registration statement since comments are submitted relevant to the registration statement not the permit. Replaced received by with mailed to. Amended to clarify which document submitted comments are relevant. Amended to make regulation consistent with other general permit language.
9VAC25-192-50. (Authorization to manage pollutants)	N/A	Authorization to manage pollutants	Amended subdivision A.6 to clarify the statutory authority for the training program requirement. Removed the Department of Conservation and Recreation. Replaced operator with permitted owners. The statute speaks to the owner of the AFO. Clarifies statutory authority for the training and who is required to complete the training program.
9VAC25-192-50. (Authorization to manage pollutants)	N/A	Authorization to manage pollutants	Added new subsection B to add language concerning the requirement of the end-user to comply with the technical requirements or obtain coverage under the general permit. Added the end-user to the authorization to manage pollutants governed by the general permit and added requirements similar to the growers (from subsection A.) Added language to clarify who is authorized to manage pollutants
9VAC25-192-50. (Authorization to	N/A	Authorization to manage pollutants	Added new subsection C to add language concerning continuation of permit coverage. Added new language to make the regulation consistent with other regulations which govern

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
manage pollutants)			animal feeding operations.
9VAC25-192-50. (Authorization to manage pollutants)	N/A	Authorization to manage pollutants	Added new subsection D (contents are old subsection B) Moved contents of old B. to new D. Replaced operator with permittee. Amended language to clarify responsibility of the permittee.
9VAC25-192-60 (Registration statement)	N/A	Registration Statement	Amended subsection A. Added internal catch line <u>The owner of an animal feeding operation.</u> Replace operator with owner throughout. Added to clarify which subsection applies to a particular entity.
9VAC25-192-60 (Registration statement)	N/A	Registration Statement	Added two items to subsection A and renumbered items 7-10 that were in the original list to make room for the additional items: <u>7. [ Indicate the types of wastes that will be managed at the facility and how much of each type of waste will be managed;</u> <u>8. If waste will be transferred off-site, indicate the type of waste and how much will be transferred;</u> Added the two items to the registration statement in order to facilitate the application process when an owner proposes to manage off-site generated wastes, treated wastes, or to transfer waste.
9VAC25-192-60 (Registration statement)	N/A	Registration Statement	Amended subdivision 8 (split subdivision into 2 subdivisions 8 & 9) Split subdivision 8 - leaving DCR approved NMP attachment here and moved language (the nutrient management plan must be developed by a certified nmp writer) to subdivision 9.  Amended to clarify the requirements of the permit applicant with regards to the attachments.
9VAC25-192-60 (Registration statement)	N/A	Registration Statement	Added subsection B to add language for a registration statement for the end-user. Added to allow for a separate registration statement.
9VAC25-192-60 (Registration statement)	N/A	Registration Statement	Added two items to subsection B and renumbered items 6-8 that were in the original list to make room for the additional items: <u>6. [ Indicate the types of wastes that will be managed at the facility and how much of each type of waste will be managed;</u> <u>7. If waste will be transferred off-site, indicate the type of waste and how much will be transferred;</u> Added the two items to the registration statement in order to facilitate the application process

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
			when an owner proposes to manage off-site generated wastes, treated wastes, or to transfer waste.
9VAC25-192-60 (Registration statement)	N/A	Registration Statement	Moved contents of B to subsection C. Amended subsection C. Moved contents to allow for new subsection B and amended to correct the citation.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Revised effective and expiration dates in general permit dates. Removed modification dates. Amended dates for reissuance of the general permit.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended language in opening paragraph by replacing operator with owner. Added the animal waste end-user. Added to allow for coverage under the general permit if required.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended permit title by adding "and animal waste management". Amended to broaden permit for the animal waste end-user.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended language in second paragraph: Added the animal waste end-users. Deleted "or policies". Added to allow for coverage under the general permit if required. Amended language to make regulation consistent with other regulations that govern AFOs.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended language in third paragraph. Added the titles of the permit parts. Amended language to clarify the subject matter of the parts of the general permit.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part I.B.3. to add "Virginia" to licensed professional engineer. Added "Virginia" to licensed professional engineer to ensure clarity of the requirements.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part I B 3. 3. <u>Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer [ ,or ] an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority [ ,or an employee of a soil and water conservation district with appropriate engineering approval authority ] shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.</u> Added "or" to correct the sentence structure after removing "or an employee of a soil and water conservation district with appropriate engineering approval authority" since this is no longer an

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
			option due to the USDA-Natural Resources Conservation Service procedural changes.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part I.B.5.general permit condition. Amended language to clarify condition based on the Code of VA §62.1-44.17:1.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part I B 6. <u>6. For new waste storage or treatment facilities constructed after November 16, 2014, the facilities shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture and approved by the department. A Virginia licensed professional engineer [ ,or ] an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority [ ,or an employee of a soil and water conservation district with appropriate engineering approval authority ] shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.</u> Added "or" to correct the sentence structure after removing "or an employee of a soil and water conservation district with appropriate engineering approval authority" since this is no longer an option due to the USDA-Natural Resources Conservation Service procedural changes.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Added Part I.B.6. added new general permit condition. Added language to allow for new waste storage other than earthen waste storage or liquid waste storage.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Moved Part I.B.7. was Part I.B.10. Moved notification condition.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Added Part I.B.8. added condition related to storage. Added condition to make regulation consistent with other regulations which govern AFOs.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part III B 8. <u>[ Semi-solid and solid waste shall be stored in a manner that prevents contact with surface water and groundwater. Waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:</u>  <u>a. Waste shall be covered to protect it from precipitation and wind;</u>  <u>b. Storm water shall not run onto or under the stored waste;</u>

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
			<p><u>c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10-6 centimeters per second); and ]</u></p> <p><u>d. ] For waste that is not stored [ in a waste storage facility or ] under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.</u></p> <p>Amended the language to ensure the regulation provides for adequate controls on semi-solid and solid waste storage. The requirements are consistent with the requirements in the poultry waste regulation (9VAC25-630).</p>
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part I.B.9. to replace operator with permittee. Amended to make the general permit language consistent.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Added Part I.B.10. Added conditions related to wastes treated by a digester or other manure treatment technologies. Includes options to import waste materials to feed the treatment facilities such as a digester. Also includes recordkeeping requirements. Added condition to allow flexibility for managing a digester or other manure treatment technologies and imported waste materials.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part I.B.11. Added condition related to land application of wastes generated on the farm under the nutrient management plan. Added condition to make regulation consistent with other regulations which govern AFOs.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part I.B.12. Amended language regarding the nutrient management plan requirements. Removed plan for waste utilization (g.), added a new condition in Part I.B.17. Clarify the language.

<b>Current Section Number</b>	<b>Proposed new section number, if applicable</b>	<b>Current Requirement</b>	<b>Proposed Change and Rationale</b>
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part I.B.13. Added " <u>Waste shall not be land applied within buffer zones</u> " to clarify restriction. Clarify the prohibition.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part I.B.14. Amended the recordkeeping requirements. Amended the recordkeeping requirements for clarity.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Added Part I.B.15. Added condition to allow for animal waste to be transferred under specific conditions. Added condition to allow for animal waste to be transferred. Added condition to make regulation consistent with other regulations which govern AFOs.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Added Part I.B.16. Added condition to allow for animal waste to be transferred if recordkeeping requirements are met. Added recordkeeping conditions to allow for animal waste to be transferred. Added condition to make regulation consistent with other regulations which govern AFOs.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Added Part I.B.17. Added a condition to include specific closure plan requirements. Added a condition to include specific closure plan requirements.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part I.B.18. Amended to clarify the statutory authority for the training program requirement. Removed the Department of Conservation and Recreation. Replaced operator with permitted owners. The statute speaks to the owner of the AFO. Clarifies statutory authority for the training and who is required to complete the training program.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Added Title of Part II of general permit: "Conditions Applicable to all VPA Permits" Amended language to clarify the subject matter of the parts of the general permit.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part II.A.2. Removed date because it is obsolete.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part II by adding the contents of Part III to the end of the Part II. Renumbered the subsections. Removed language which was irrelevant to general permits. Amended to allow for the two parts which contained the conditions applicable to all VPA permits to be contained in Part II of the general permit contents. Amended the Parts of the general permit to make regulation consistent with other regulations which govern AFOs.

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	<p>Amended Part III (animal waste end-user general permit conditions) with new language related to animal waste end-users. The new language contains specific general permit conditions for animal waste end-users who are required to obtain coverage under a general permit. The conditions included in this Part are for the animal waste end-users and is similar to Part I for the owner of the AFO. Requirements include: soils and waste monitoring, nutrient management plan, storage conditions, animal waste transfer recordkeeping, land application recordkeeping and land application buffer zones.</p> <p>Amended to allow for the two parts which contained the conditions applicable to all VPA permits to be contained in Part II of the general permit contents. Amended the Parts of the general permit to make regulation consistent with other regulations which govern AFOs.</p>
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	<p>Amended Part III B 3:</p> <p><u>3. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer [ ,or ] an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority [ ,or an employee of a soil and water conservation district with appropriate engineering approval authority ] shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.</u></p> <p>Added "or" to correct the sentence structure after removing "or an employee of a soil and water conservation district with appropriate engineering approval authority" since this is no longer an option due to the USDA-Natural Resources Conservation Service procedural changes.</p>
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	<p>Amended Part III B 6:</p> <p><u>6. For new waste storage or treatment facilities constructed after November 16, 2014, the facilities shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture and approved by the department. A Virginia licensed professional engineer [ ,or ] an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority [ ,or an employee of a soil and water conservation district with appropriate engineering approval authority ] shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.</u></p> <p>Added "or" to correct the sentence structure after removing "or an employee of a soil and water</p>

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
			conservation district with appropriate engineering approval authority" since this is no longer an option due to the USDA-Natural Resources Conservation Service procedural changes.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	<p>Amended Part III <u>B 8</u>:</p> <p><u>8. [ Semi-solid and solid waste shall be stored in a manner that prevents contact with surface water and groundwater. Waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:</u></p> <p><u>a. Waste shall be covered to protect it from precipitation and wind;</u></p> <p><u>b. Storm water shall not run onto or under the stored waste;</u></p> <p><u>c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10<sup>-6</sup> centimeters per second); and ]</u></p> <p><u>d. ] For waste that is not stored [ in a waste storage facility or ] under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.</u></p> <p>Amended the language to ensure the regulation provides for adequate controls on semi-solid and solid waste storage. The requirements are consistent with the requirements in the poultry waste regulation (9VAC25-630).</p>
N/A	NEW 9VAC25-192-80 (Tracking	N/A	<p>Added new section:</p> <p>The new section was added to outline the technical requirements for end-users of transferred animal waste. The technical requirements address recordkeeping. The technical requirements</p>

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
	and accounting requirements for animal waste end-users)		specify items that must be recorded and maintained by the animal waste end-user. Added clarification of DEQ authority to inspect. Added technical requirements for recordkeeping by animal waste end-users.
N/A	NEW 9VAC25-192-90. (Utilization and storage requirements for transferred animal waste)	N/A	<p>Added new section: The new section was added to outline the technical requirements for end-users of transferred animal waste. The technical requirements address proper storage and appropriate land application practices. The technical requirements specify storage requirements, methods to determine land application rates, buffer requirements, and land application timing. Added clarification of DEQ authority to inspect. Added technical requirements for utilization and storage of animal waste by the end-users.</p> <p>Amended storage requirements: <u>B 1 c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored [ poultry ] waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10-6 centimeters per second); and</u> Amended language to clarify the requirements for animal waste by removing poultry waste so as not to conflict with the poultry waste regulation (9VAC25-630).</p> <p><u>B1 d. ] For animal waste that is not stored [ in a waste storage facility or ] under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.</u> Amended the language to ensure the regulation provides for adequate controls on semi-solid and solid waste storage. The requirements are consistent with the requirements in the poultry waste regulation (9VAC25-630) and the contents of this permit regulation.</p> <p><u>B 4. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20</u></p>

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
			<p><u>mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer [ <del>or</del> ] an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority [ <del>or an employee of a soil and water conservation district with appropriate engineering approval authority</del> ] shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this subsection. This certification shall be maintained on site.</u></p> <p>Added "or" to correct the sentence structure after removing "or an employee of a soil and water conservation district with appropriate engineering approval authority" since this is no longer an option due to the USDA-Natural Resources Conservation Service procedural changes.</p> <p>Amended utilization requirements:  <u>C 1 b. Animal waste may be applied to any crop once every three years at a rate of no greater than 80 pounds [ of plant available phosphorus ] per acre when:</u>  Amended language to add "of plant available phosphorus" which was mistakenly omitted at the proposed stage.</p>
FORMS (9VAC25-192)	N/A	Forms related to the regulation	<p>Amended section to reflect the changes made in 9VAC25-192-60</p> <p>Added and amended forms:  Virginia DEQ Registration Statement for VPA General Permit for Animal Feeding Operations for Owners of Animal Feeding Operations, RS VPG1 (rev. [ <del>2/13</del> <u>2/14</u> ] )</p> <p>Added: Virginia DEQ Registration Statement for VPA General Permit for Animal Feeding Operations for Animal Waste End-Users, RS End-Users VPG1 ( [ rev. <del>2/13</del> <u>2/14</u> ] )</p> <p>Added: Virginia DEQ Fact Sheet for Animal Waste Use and Storage (rev. [ <del>2/13</del> <u>2/14</u> ] )  Amended to reflect the changes made in 9VAC25-192-60.</p> <p>Created Animal Waste Fact Sheet to convey the requirements for animal waste end-users.</p> <p>Updated forms: Registration Statements and Animal Waste Fact Sheet to reflect changes since proposed stage.</p>