



Exempt Action Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-193
Regulation title	General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Concrete Products Facilities
Action title	Amend and Reissue the Existing Regulation
Final agency action date	March 14, 2013
Document preparation date	February 7, 2013

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

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

Summary

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

This rulemaking is proposed in order to reissue the existing VPDES general permit which expires on September 30, 2013. The general permit contains limitations and monitoring requirements for point source discharge of treated wastewaters from concrete products facilities to surface waters. The general permit regulation is being reissued in order to continue making it available for these facilities to continue to discharge.

Substantive changes proposed are: added two reasons authorization to discharge cannot be granted (if the antidegradation policy is not met or if the discharge is not consistent with a total maximum daily load (TMDL)), added language to allow for 'administrative continuances' of coverage, added approval of closure plans (for portable plants) and approvals of representative outfalls as part of the registration, reduced monitoring requirements from monthly to quarterly, clarified that total petroleum hydrocarbon monitoring was only necessary when vehicle degreasing was occurring on site, added benchmark monitoring concentrations for storm water and removed total petroleum hydrocarbon and iron monitoring from the storm water monitoring requirements. In the special conditions, added that no oil sheen shall be present, waste water should be reused or recycled when feasible, clarified what information is required for temporary and long-term facility closure plans, added that unlined settling basins must be lined if they are

expanded or dewatered for major structural repairs, added quantification levels for total suspended solids and total petroleum hydrocarbons, added that dischargers to TMDL waters must implement measures and controls consistent with the TMDL, added an allowance for deleting or adding outfalls, added procedures for termination of coverage, added instructions for allowing temporary closures for inactive and unstaffed sites, added that discharges must meet water quality standards and that coverage under the permit does not relieve an owner of responsibility to comply with any other federal, state or local statute, ordinance or regulation. All the language in Part II (Storm Water Management) was revised to be more consistent with the 2009 Industrial Storm Water General Permit (9VAC25-151) conditions. Changes were made to make this regulation and general permit similar to other general permits reissued recently, and in response to staff and technical advisory committee members' requests to clarify and update permit limits and conditions.

Since publication of the proposal, a new section 15 was added and clarification changes were made in sections 50 C, 60 C 9 b and Part I B 8 d, and 70 Part III Y.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On March 14, 2013 the State Water Control Board (state agency action) the amended General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Concrete Products Facilities.

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 following changes are all minor changes. Typographical corrections are not listed.

Section number	Requirement at proposed stage	What has changed	Rationale for change
15	Except as noted, when a regulation of the EPA set forth in Title 40 of the Code of Federal Regulations is referenced or adopted herein and incorporated by reference, that regulation shall be as it exists and has been published as a final regulation in the Federal Register prior to July 1, 2013, with the effective date as published in the Federal Register notice or October 1, 2013, whichever is later.	Changed to: Except as noted, when a regulation of the EPA set forth in Title 40 of the Code of Federal Regulations is referenced or adopted herein and incorporated by reference, that regulation shall be as it exists and has been published as of July 1, 2012.	Proposed language was confusing.
50 C	Compliance with the general permit constitutes compliance with the Clean Water Act and State Water Control Law, and applicable regulations under either.....	'and applicable regulations under either' was deleted.	Enforcement advice was this is too broad a statement and we can't say this unless we have verified that every regulation that exists now or in the future will be satisfied with compliance with this general permit.
60 C 9 b and	For geothermal or other noncontact cooling water systems, requests for approval of chemical usage required submittal of a	Material Safety Data Sheet (MSDS) changed to (Material) Safety Data Sheet (SDS)	Change in name MSDSs are now being called SDSs all over the world due to the global adoption of a new

Part I B 8 d	Material Safety Data Sheet (MSDS).		hazard communication system developed by the United Nations.
70 Part III Y	Permits may be transferred to a new owner only if the permit has been modified or revoked and reissued to identify new owner to identify new owner and incorporate any new requirements. Otherwise, only automatic transfers may be made if within 30 days of transfer, with a written agreement between the old and new permittee about responsibility of permit and the Board does not notify the existing and new permittee of its intent to modify or revoke and reissue the permit.	Removed references for transfers to new owners using modifications or revoke and reissue and kept original 30 days advance notice (instead of within 30 days of transfer) timing for automatic transfers but added 'unless permission for a later date has been granted by the board.'	General permits are not modified or revoked and reissued. General permits may only be automatically transferred. The timing of when the board should be notified of a transfer can be very site specific depending on the parties involved, contracts for closing, etc... so we decided to keep the original language but add flexibility that the board can change the deadline depending on the situation.

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
Titan America Clifford Bocchicchio Environmental Manager	The proposal represents the hard work and cooperative efforts of all those that volunteered and participated on the Technical Advisory Committee.	Noted.
Blue Stone Block Supermarket, Inc. William A. Corbitt, Jr. Chairman	The permittee had concerns that their permit could be denied because of storm water that does not originate on their property from higher elevations.	Their permit could only be denied if their permit requirements did not meet antidegradation, any TMDL requirements or the discharge was prohibited to their receiving waters due to other regulations. This is not the case for this permittee who does not discharge process water and adheres to proper storm water management.
Same	The permittee had concerns that quarterly monitoring will be required.	Quarterly monitoring is not required for storm water. This permittee does not have a process water discharge.
Same	The permittee had concerns that total petroleum hydrocarbon monitoring would be required.	Total petroleum hydrocarbon monitoring is not required for storm water. The permittee does not have a process water discharge.

All changes made in this regulatory action

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

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
40 and 70	N/A	Permit became effective October 1, 2008 and expires September 30, 2013	Revised permit effective date to October 1, 2013 and expiration date to September 30, 2018, which are the dates for this reissuance.
10	N/A	None	Definitions added for "best management practices," "department," "municipal separate storm sewer system," "runoff coefficient," "significant spills," "total maximum daily load," and "vehicle or equipment degreasing." These were added because they are used in the regulation and needed clarification.
N/A	15	EPA regulations in Title 40 of the Code of Federal Regulations are referenced within the document sections individually.	New Section 15 allows dates for Environmental Protection Agency references to be as described in this new section one time without being updated at each 40 CFR reference throughout the regulation. All dates refer to the most recent Federal Register publication. In this case it is July 2012. Language is being inserted in all DEQ regulations as they are amended. Language provided by DEQ Policy staff
20	N/A	Lists the purpose of the regulation which is to govern the discharge of process waste water and storm water.	Added cooling water to the discharge list since cooling water is governed under the permit and was inadvertently left out in previous reissuances of this permit regulation.
50 A and B	N/A	Contains what conditions require authorization to discharge and will not allow authorization. The owner is required to submit a registration statement, a fee and comply with the permit limits. The owner must not be required to obtain an individual permit or must not discharge to a receiving stream that prohibits the discharge.	The section was reformatted to match the structure of other general permits being issued at this time. Added two additional reasons authorization to discharge cannot be granted per EPA comments on other general permits issued recently. Therefore, an owner will be denied authorization when the discharge would violate the antidegradation policy, or if additional requirements are needed to meet a TMDL.
N/A	50 C	States that receipt of the permit does not relieve the owner to comply with other applicable laws or regulations.	The statement " <i>Compliance with this general permit constitutes compliance with the Clean Water Act, the State Water Control Law, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation</i> " was added. This was added in response to Attorney General Office comments on other general permits recently to recognize there are some exceptions to compliance with the Clean Water Act as stated in the permit regulation.
N/A	50 D	None	Added language to allow for administrative continuances of coverage under the old expired general permit until the new permit is issued and coverage is granted or coverage is denied; if the permittee has submitted a timely registration and is in compliance. This language is being added to all recently reissued general permits so permittees can discharge legally and safely if the permit reissuance process is delayed.
60 A		The deadline for existing facilities currently holding an individual or a general concrete VPDES permit is 180 days.	Reformatted to match structure of other recent general permits. The deadline for existing facilities currently holding an individual VPDES permit is revised to say they must notify us 210 days prior to their expiration date rather than 180 days. This gives DEQ 30 days to determine whether coverage can be granted and the individual permit holder then still has the required 180

			days to submit an individual permit application if their request for coverage under the general permit is denied. Revised the requirement for existing facilities covered under the permit to submit a new registration to "prior to July 1, 2013" (which is 90 days prior to expiration).
N/A	60 B	None	Added statement "Late registration statements will be accepted, but authorization to discharge will not be retroactive." for clarification. Also, that existing permittees may get administrative continuance of their existing permit if a complete registration statement is submitted before the October 1, 2013 (the expiration date).
60 B	60 C	Registration requirements	<p>Several minor editions were made for clarification. Combined 2 questions about non contact cooling water into one question. Added questions about representative outfalls and information needed to determine if representative outfalls are appropriate. This moves the review and approval of representative outfalls to part of the registration process rather than requiring the information with each discharge monitoring report. Added the question "Whether the facility will discharge to a Municipal Separate Storm Sewer System (MS4). If so, provide the name of the MS4 owner. The owner of the facility shall notify the MS4 owner in writing of the existence of the discharge within 30 days of coverage under the general permit, and shall copy the DEQ regional office with the notification. The notification shall include the following information: the name of the facility, a contact person and phone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number" This notification is a permit requirement and the TAC thought it should be repeated as a reminder in the registration process.</p> <p>Added the requirement that "...portable concrete products operations submit a closure plan and include the requirements specified by the operation and maintenance manual..." The TAC felt that because of their temporary nature, that closure plans for portable plants should be submitted up front during the registration process.</p> <p>Added email address, and allowance for computer generated maps to be submitted with the registration statement and a few other minor clarifications.</p>
70 Part I A 1 and 2	N/A	Permit limits pages for process water and non-contact cooling water discharges.	Monitoring requirements are reduced from monthly to quarterly based on public and staff comment. The agency agrees with the public comment received that "no discharge" situations should be awarded a chance at reduced monitoring. The agency also determined that monitoring data associated with the existing general permit showed that monthly reporting from any facility is not necessary. Therefore, all facilities are afforded the old permit 'reduced monitoring' allowance of 1/3 months (quarterly). Also, footnote #2 states that total petroleum hydrocarbon monitoring is only necessary when vehicle degreasing occurs on site. Vehicle degreasing or equipment degreasing has been clearly defined to mean the washing or steam cleaning of engines or other drive components of a vehicle or equipment in which the purpose is to degrease and clean petroleum products. It does not mean washing sediment or concrete off trucks. This has always been unclear to the staff. Also the TPH methods in this footnote have been updated.
70 Part I A 3	N/A	Permit limits page for storm water.	Benchmark monitoring concentrations for storm water has been added. If benchmark monitoring for TSS exceeds 100 mg/l maximum or the pH falls outside of the range of 6.0-9.0 standard units, then the permittee is supposed to evaluate the effectiveness of the storm

			water pollution prevention plan in controlling the discharge of pollutants to receiving waters. Previously monitoring was required for these parameters but no further action was required. Total iron and total petroleum hydrocarbon analysis has been eliminated from storm water monitoring with TAC consensus. Total petroleum hydrocarbons are not suggested for monitoring in this type of industrial storm water by the EPA. Also, levels consistently have remained undetectable or very low over the years. Iron was eliminated in storm water primarily because iron is naturally high in soils in Virginia and expected to be high in storm water. Also, there is no feasible alternative to remove iron in storm water when it is naturally occurring (except to the amount the existing technology removes solids and solids are limited under the permit). Also, the storm water sampling instructions present in the footnotes have been moved to the storm water management section, Part II A.
70 Part I B 1	N/A	No discharge of solids or foam narrative condition.	Added <i>"or oil sheen from petroleum products"</i> as another prohibited discharge. This was in response to staff concerns that petroleum products are on the site but should not appear in the stream. The industry indicated that any accidental spills of petroleum products are cleaned up immediately so as not to enter surface waters. If vehicle degreasing is occurring on the site then those discharges have total petroleum hydrocarbon limits. This addition is just an added measure of protection and something the inspector can look for to ensure proper best management practices, clean up measures or treatment is occurring.
N/A	70 Part I B 6	None	Added <i>"Wastewater should be reused or recycled whenever feasible."</i> This general requirement appears in other general permits.
70 Part I B 8	70 Part I B 9	Operation and maintenance manual requirements.	Clarified several of the requirements of the operations and maintenance manual. Most significant change was to itemize what should be included in a temporary or long-term facility closure plan. These items were drafted with TAC consensus. Also, all review and modification dates were eliminated and replaced with one annual requirement.
70 Part I B 13	70 Part I B 14	Settling basins constructed on or after February 2, 1998 shall be lined with concrete or other impermeable materials.	§ 62.1-44.15:5.2 of the Code of Virginia states that settling basins for ready-mix concrete operations constructed after February 2, 1998 <u>must</u> be lined and that settling basins build before February 2, 1998 <u>may</u> be lined. The TAC thought that regardless of the date of construction that all settling basins that are expanded or dewatered for major structural repairs must be lined. So this requirement was added to the existing special condition.
70 Part I B 14	70 Part I B 15	Best management practices for dust suppression spraying which includes 'no ponding.'	Wastewater that is used for dust suppression or for preparing the stockpiles for manufacturing of the concrete should be adsorbed, evaporated or treated but not directly discharged to surface water. This special condition was not clear and the TAC rewrote it to their specifications. The 'no ponding' requirement was not needed given the clarifications here.
70 Part I B 15	70 Part I B 16	Quantification levels for chlorine and ammonia.	Added quantification levels for total suspended solids and total petroleum hydrocarbons.
N/A	70 Part I B 17	None	Added a new special condition that <i>"Owners of facilities that are a source of the specified pollutant of concern to waters where an approved TMDL has been established shall implement measures and controls that are consistent with the assumptions and requirements of the TMDL."</i> This is a special condition added to all general permits. It reinforces the way general permits are currently handled in TMDLs. The assumption of the TMDL is that general permits are insignificant to the total load until such time that the TMDL program determines

			that the load is significant and the TMDL needs to be modified to include the load.
N/A	70 Part I B 18	None	Added a new special condition that allows for adding or deleting outfalls. The permittee must update the operations and maintenance manual and the SWPPP. This happens occasionally and the industrial storm water general permit has similar language.
N/A	70 Part I B 19	None	Added a new special condition that describes how terminations of a general permit will be implemented. This is being added to all general permits as they are reissued.
N/A	70 Part I B 20	None	Added a new special condition that describes how temporary facility closures at inactive and unstaffed sites will be implemented. This was done with the consensus of the TAC.
N/A	70 Part I B 21	None	Added <i>"The discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards."</i> This is a general requirement to meet water quality standards and matches similar language going into other recent general permits.
N/A	70 Part I B 22	None	Added <i>"Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other federal, state or local statute, ordinance or regulation."</i> This requirement is part of the regulation at section 50 C and staff thought it should be repeated in the permit to remind the permittee of the responsibility.
70 Part II	N/A	Storm water management requirements.	This entire section was revised to match (for the most part) language in the 2009 Industrial Storm Water General Permit. Some differences can be found but these were done with TAC consensus. However, the requirements for storm water management have not changed significantly.
70 Part III A	N/A	Monitoring requirements	Added <i>"Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45: Certification for Noncommercial Environmental Laboratories, or 1VAC30-46: Accreditation for Commercial Environmental Laboratories."</i> This is a new regulatory requirement effective January 1, 2012.
70 Part III Y	N/A	Transfer of permit requirements can occur through a modification or revocation and reissuance. Certain transfers of ownership can occur automatically with the correct agreements in place if the board is notified 30 days in advance.	General permits are not modified or revoked and reissued. General permits may only be automatically transferred. The timing of when the board should be notified of a transfer can be very site specific depending on the parties involved, contracts for closing, etc... flexibility as added that the board can changes the deadline depending on the situation.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The reissuance of the general VPDES permit accomplishes the objectives of applicable law and minimizes the costs to a small business owner and simplifies the application process. Without the general permit, a small business owner would be required to obtain an individual permit which would increase the complexity of a permit application and permit costs.

The proposal establishes less stringent reporting requirements from monthly to quarterly. The agency has followed the monitoring from the industry and it remains consistent such that the agency does not see the need for monthly reporting. In addition, total iron and total petroleum hydrocarbon analysis has been eliminated from storm water monitoring. Total petroleum hydrocarbons are not suggested for monitoring in this type of industrial storm water by the EPA. Also, levels consistently have remained undetectable or very low over the years. Iron was eliminated in storm water primarily because iron is naturally high in soils in Virginia and expected to be high in storm water. There is no feasible alternative to remove iron in storm water when it is naturally occurring (except to the amount the existing technology removes solids, and solids are limited under the permit).

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

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

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

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

- CFR - Code of Federal Regulations
- DEQ - Department of Environmental Quality
- EPA - Environmental Protection Agency
- MSDS - Material Safety Data Sheet contains information about the manufacturer, chemical properties and potential hazards of a substance. It also includes storage, handling, clean up and disposal information. MSDS sheets are mandated by the United States Occupational Safety and Health Administration (OSHA).
- SDS - Safety Data Sheet means Material Safety Data Sheet
- TMDL - means a total maximum daily load and is defined in the regulation.
- TPH - Total petroleum hydrocarbons - are organic compounds typically found in fuels, greases and oils.
- TSS - means total suspended solids and is measured as the portion of solids left on a 2 µm pore size filter (or smaller) as opposed to those solids that pass through the filter (which are dissolved solids).
- VPDES - Virginia Pollutant Discharge Elimination System
- MS4 - Municipal Separate Storm Sewer System and is defined in the regulation
- TAC - Technical Advisory Committee