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Exempt Action Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9VAC25-196
Regulation title(s)	General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day Or Less
Action title	Amend and Reissue the Existing Noncontact Cooling Water General Permit
Final agency action date	December 6-7, 2017
Date this document prepared	October 24, 2017

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) or an agency's basic statute, the agency is not required, however, 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, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The General Virginia Pollutant Discharge Elimination System (VPDES) Permit For Non-contact Cooling Water Discharges of 50,000 Gallons Per Day or Less has existed since 1998. This regulation amendment will reissue the existing general permit which expires on March 1, 2018. This general permit establishes effluent limitations and monitoring requirements for point source discharges of 50,000 gallons per day or less of non-contact cooling water and cooling equipment blow down to surface waters. The effluent limits in the general permit are set to protect the quality of the waters receiving the discharges. The general permit regulation is being reissued in order to continue making it available as a permitting option for this type of discharger. The proposed changes to the regulation were made to make this general permit similar to other general permits.

Substantive changes to the existing regulation include:

- Requiring the permittees to notify a Municipal Separate Storm Sewer System (MS4) owner of the existence of the discharge at the time of registration under the general permit and include a copy of that notification with the registration statement;
- Removed the Effluent Limitations and Monitoring Requirements for the first four years of the previous permit term as these requirements are not applicable for this reissuance;
- Clarification that the “1/3 Months” monitoring frequency equals the following three-month periods each year of permit coverage: January through March, April through June, July through September, and October through December; and
- Requiring the permittee to develop an operations and maintenance manual for equipment or systems used to meet effluent limitations within 90 days of permit coverage.

Changes since the proposed stage can be found in Sections 50 (F and G), 60 (A and B), and 70 (Part II I, Part II J, and Part II W).

Acronyms and definitions

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

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

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.

At its meeting on December 6-7, 2017, the State Water Control Board adopted amendments to the General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day Or Less.

Family impact

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

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

Periodic review/small business impact review report of findings

Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by §2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

There were no comments received following the publication of the Notice of Periodic Review. The proposed regulatory action is needed in order to establish appropriate and necessary permitting requirements for discharges of wastewater to surface waters from noncontact cooling water dischargers covered under the general permit. Protecting water quality in the Commonwealth's surface waters is necessary to protect the health, safety and welfare of citizens. These discharges are considered to be point sources of pollutants and thus are subject to regulation under the VPDES permit program. The primary issue that needs to be addressed is that the existing general permit expires on March 1, 2018 and must be reissued in order to continue making it available after that date. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation as the State Water Control Board is the delegated authority to regulate point source discharges to surface water. The regulation was evaluated in 2013 when the permit was reissued last permit term.

Changes made since the proposed stage

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

Section number	Requirement at proposed stage	What has changed	Rationale for change
9VAC25-196-50 F. Authorization to Discharge	Statement that compliance with the general permit constitutes compliance with the federal Clean Water Act and State Water Control Law.	Clarified the paragraph by explaining compliance is for purposes of enforcement and added the specific sections of the Clean Water Act on which compliance is measured.	Clarifications to match 9VAC25-31-60 (Effect of a Permit) of the permit regulation.
9VAC25-196-50 G. Authorization to Discharge	Provided requirements, with dates, when continuation of permit coverage is allowed.	Revised so that this subsection is generic and not dependent on the dates. Dates were removed but allowances for continuance of permit coverage are the same or can be implemented the same.	The language better follows the permit regulation and the 2014 permit manual. The section allows permit coverage continuance if the registration is

			complete and turned in on time unless the board authorizes a later submittal date (but not before expiration). Registration statements can come in after expiration but coverage is not retroactive. This new language should transition well from term to term without needing date changes
9VAC25-196-60 A. Registration Statements	Provided due dates for submittal of registration statements.	Revised so that due match the "Duty to reapply" language in Part II "Conditions applicable to all permits," which says exiting owners must submit registration statements at least 30 days prior to the expiration date of the existing permit or a later submittal established by the board.	Clarification and to make more generic. This new language should transition well from term to term without needing date changes.
9VAC25-196-60 B. Registration Statements	Allowance for existing owners that submit registration statements after February 1, 2018, that the facility is authorized to discharge under the continuance of permit coverage provisions of 9VAC25-120-60 D if a complete registration statement is submitted on or before March 1, 2018.	Removed the sentence. However, in the revised language in 60 A allows for later registration statement submittals if a later date is established by the board.	Language with all the dates was confusing and the more generic format will still allow the board to accept registration statements after the due date but not after the expiration date. This new language should transition well from term to term without needing date changes.
9VAC25-196-70. General permit. Part II I.	Condition that describes when reports of noncompliance must be provided.	Added a new paragraph 3 that states "Where the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement, or submitted incorrect information in a permit registration statement or in any report to the department, it shall promptly submit such facts or information."	EPA commented that this paragraph was missing in this section. This language is present in the NPDES permit regulation.
9VAC25-196-70. General permit. Part II J.	Requirement to notify the department when pollutants discharged change. Does not apply to pollutants already limited or pollutants specified elsewhere in the permit.	Same requirement except the section where pollutants are specified elsewhere in the permit is cited (Part I B 6).	EPA commented on this and it is a clarification.
9VAC25-196-70. General permit. Part II W.	The permittee shall allow the director, or an authorized representative to enter the facility.	Added that an authorized contractor acting as a representative of the administrator also has authority to enter the facility.	EPA commented that this paragraph was missing in this section. This language is present in the NPDES permit regulation.

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
EPA, Region 3, Joel Blanco-Gonzales	The language for inspection and entry was not as stringent as the standard condition contained at 40 CFR § 122.41(i). The standard condition lacked, "(including an authorized contractor acting as a representative of the Administrator)."	We will add this language in Part II W of the permit, when it is submitted for final approval to the State Water Control Board, as follows: (including an authorized contractor acting as a representative of the administrator).
EPA, Region 3, Joel Blanco-Gonzales	The bypass condition lacked the definition of "severe property damage" contained in 40 CFR § 122.41(m)(1)(ii) and the upset standard condition lacked the definition of	These definitions are in the individual VPDES Permit Regulation at 9VAC25-31-10 and are included by reference in the proposed general permits in section 10. Virginia has always only included definitions in the general permits that

	“upset” contained in 40 CFR § 122.41(n)(1).	are not in the individual permit regulation. No change made.
EPA, Region 3, Joel Blanco-Gonzales	The notice of planned changes standard condition lacked the phrase “nor to notification requirements under § 122.42(a)(1)” contained in 40 CFR § 122.41(l)(1)(ii).	We will add similar language in Part II J (which is equivalent to 122.41(l)(1)(ii)) as follows: “nor to notification requirements under Part I B 6.” Part I B 6 are equivalent to 122.42(a)(1).
EPA, Region 3, Joel Blanco-Gonzales	The reports of noncompliance condition lacked the phrase “Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours” contained in 40 CFR § 122.41(l)(6)(ii)(C).	The Director has determined that no pollutants need to be listed for 24-hour reporting as per 40 CFR 122.44(g). The addition of this language will be confusing to our permittees without specific toxic pollutants listed. No change.
EPA, Region 3, Joel Blanco-Gonzales	The other information standard condition language contained in 40 CFR § 122.41(l)(8) was missing from the reporting requirements.	We will add this language in Part II I as follows: “Where the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement, or submitted incorrect information in a permit registration statement or in any report to the department, it shall promptly submit such facts or information.” This is equivalent to 40 CFR § 122.41(l)(8).
EPA, Region 3, Joel Blanco-Gonzales	The civil and administrative penalty language contained in 40 CFR § 122.41(a), Duty to comply, was not included.	<p>The conditions in 40 CFR § 122.41(a) (2) is not included in the general permit regulations because this administrative penalty language is in state statute at § 62.1-44.32. Permittees are reminded on the back of the DMR (instructions) that failure to report or failure to report truthfully can result in civil penalties of \$32,500 per violation, per day and felony prosecutions which can carry a 15 year term.</p> <p>As for the requirements in 40 CFR § 122.41(a) (3) §62.1-44.15 of the state statute does allow the agency to unilaterally assess administrative penalties of up to \$100,000 per case, under certain conditions. The statue also allows the agency to assess, with the consent of the regulated party, administrative penalties of up to \$32,500 per day per violation.</p> <p>This covers all the administrative penalty language EPA is referring to. No change.</p>

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
		The title of the regulation is “General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation For Noncontact Cooling Water Discharges Of 50,000 Gallons Per Day Or Less”	Changed the title to “Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation For Noncontact Cooling Water Discharges Of 50,000 Gallons Per Day Or Less” to be consistent with other VPDES General Permits titles.
9VAC25-196-10. Definitions.			An added definition for “Board” to clarify this means State Water Control Board. Clarified “Cooling Water” definition. Made a grammatical change to “Total Maximum Daily Load” definition.

9VAC25-196-15. Applicability of incorporated references based on the dates that they became effective.		This section updates all Title 40 Code of Federal Regulations (CFR) within the document to be those published as of July 1, 2012. This is a recommendation from the DEQ Office of Policy so dates do not need to be added for each CFR reference.	Simplified this paragraph to match other general permits and changed the date to July 1, 2017.
9VAC25-196-40. Effective date of the permit.		Effective dates of the permit are for the expiring permit term (2013 – 2018).	Effective dates updated throughout regulation (2018-2023).
9VAC25-196-50. Authorization to discharge. Subsection A.		Requirement is the same as the 2013 regulation.	Made grammatical correction
9VAC25-196-50. Authorization to discharge. Subsection B.		Requirement is the same as the 2013 regulation.	Made grammatical correction
9VAC25-196-50. Authorization to discharge. Subsection D.		Statement that the owner shall not use any hexavalent chromium based water treatment chemicals.	Changed hexavalent based water treatment chemicals to read water treatment chemicals containing hexavalent chromium.
9VAC25-196-50. Authorization to discharge. Subsection F		Statement that compliance with the general permit constitutes compliance with the federal Clean Water Act and State Water Control Law.	Clarified the paragraph by explaining compliance is for purposes of enforcement and added the specific sections of the Clean Water Act on which compliance is measured. Clarifications to match 9VAC25-31-60 (Effect of a Permit) of the permit regulation.
9VAC25-196-50. Authorization to discharge. Subsection G		Provided requirements, with dates, when continuation of permit coverage is allowed.	Revised so that this subsection is generic and not dependent on the dates. Dates were removed but allowances for continuance of permit coverage are the same or can be implemented the same. The language better follows the permit regulation and the 2014 permit manual. The section allows permit coverage continuance if the registration is complete and turned in on time unless the board authorizes a later submittal date (but not before expiration). Registration statements can come in after expiration but coverage is not retroactive. This new language should transition well from term to term without needing date changes.
9VAC25-196-60. Registration statement. Subdivision A.		Provided due dates for submittal of registration statements.	Revised so that due match the “Duty to reapply” language in Part II “Conditions applicable to all permits,” which says exiting owners must submit registration statements at least 30 days prior to the expiration date of the existing permit or a later submittal established by the board. Clarification and to make more generic. This new language should transition well from term to term without needing date changes.
9VAC25-196-60. Registration statement. Subdivision B.		Allowance for existing owners that submit registration statements after February 1, 2018, that the facility is authorized to discharge under the continuance of permit coverage provisions of 9VAC25-120-60 D if a complete registration statement is submitted on or before March 1, 2018.	Removed the sentence. However, in the revised language in 60 A allows for later registration statement submittals if a later date is established by the board. Language with all the dates was confusing and the more generic format will still allow the board to accept registration statements after the due date but not after the expiration date. This new language should transition well from term to term without needing date changes.
9VAC25-196-60.		Registration statement information includes the requirement to notify	Made effective date changes and minor clarifications to language.

Registration statement. Subdivision C.		the owner of an MS4 within 30 days of coverage under the general permit.	<p>New requirement that Safety Data Sheet s will be submitted for each proposed cooling water additive.</p> <p>New requirement that each discharge will be identified by longitude and latitude.</p> <p>Requirement changed so that the notification to the MS4 owner occurs at the time of registration under the permit and that notification must be included with the registration.</p>
9VAC25-196-70. General permit.		Effective dates of the permit are for the expiring permit term (2013 – 2018).	Updated the permit dates to 2018- 2023
9VAC25-196-70. General permit.		Stated that “[d]ischarge shall be in accordance with this cover page, Part I - Effluent Limitations and Monitoring Requirements and Part II - Conditions Applicable to All VPDES Permits, as set forth herein.”	Updated language to be consistent with other general permits to: “[d]ischarge shall be in accordance with <u>the information submitted with the registration statement</u> , this cover page, Part I - Effluent Limitations and Monitoring Requirements and Part II - Conditions Applicable to All VPDES Permits, as set forth <u>herein</u> <u>this general permit.</u> ”
9VAC25-196-70. General permit. Part I A1.		Requires Effluent Limitations and Monitoring Requirements for the first four years of the permit term.	As these requirements were for the first four years of the previous permit term, these requirements were removed.
9VAC25-196-70. General permit. Part I A2.		Requirement is fundamentally the same as the 2013 regulation	<p>Changed subsection to Part 1 A 1 as the Part 1 A 1 from the previous reissuance was removed.</p> <p>Replaced the word “streams “with “waterbodies” for clarification.</p> <p>Removed wording that stated these requirements were for the last year of the permit term as these requirements will be in effect for the entire new reissuance permit term.</p> <p>Clarified that the monitoring frequency of “1/3 Months” equals the following three-month periods of each year of permit coverage: January through March, April through June, July through September, and October through December.</p> <p>Removed the word “directly “to clarify that chlorine monitoring applied to outfalls discharging to surface waters.</p>
9VAC25-196-70. General permit. Part I A3.		Requirement is fundamentally the same as the 2013 regulation	<p>Changed subsection to Part 1 A 2 as the Part 1 A 2 from the previous reissuance was changed to Part 1 A 1.</p> <p>Replaced the word “streams” with “waterbodies” for clarification.</p> <p>Removed wording that stated these requirements were for the last year of the permit term as these requirements will be in effect for the entire new reissuance permit term.</p> <p>Clarified that the monitoring frequency of “1/3 Months” equals the following three-month periods of each year of permit coverage: January through March, April through June, July through September, and October through December.</p> <p>Removed the word “directly “to clarify that chlorine monitoring applied to outfalls discharging to surface waters.</p>
9VAC25-196-70. General permit. Part I B 3.		Special Conditions	Added a requirement that a Safety Data Sheet will be submitted with any request to change chemical additives used in contact cooling water systems at the permitted facility.
9VAC25-196-70. General		Requirement for permittees that discharge into a MS4 must notify the MS4 owner of the existence of	Requirement changed so that the notification to the MS4 owner will occur at the time of registration under the permit. The notification will be submitted with the

permit. Part I B 4.		the discharge within 30 days of coverage.	registration statement to DEQ.
9VAC25-196-70. General permit. Part I B 5.		Required permittees to properly operate and maintain cooling water systems and inspect each cooling water unit at least once per year.	Changed requirement to: Development of an operations and maintenance manual covering equipment or systems used to meet effluent limitations within 90 days of receiving permit coverage. The manual must detail the practices and procedures that will be followed to ensure compliance with the requirements of the permit and be available to the department within 30 days of a request to review.
9VAC25-196-70. General permit. Part I B 6 a 3.		Requirement is fundamentally the same as the 2013 regulation	Changed wording from "application" to "registration statement" for clarification.
9VAC25-196-70. General permit. Part I B 7.		Requirement is fundamentally the same as the 2013 regulation	Made clarifications to language
9VAC25-196-70. General permit. Part I B 10.		Requirement is fundamentally the same as the 2013 regulation	Made clarifications to language
9VAC25-196-70. General permit. Part II D.		Requirement is fundamentally the same as the 2013 regulation	Made clarifications to language
9VAC25-196-70. General permit. Part II I.		Condition that describes when reports of noncompliance must be provided.	Added a new paragraph 3 that states "Where the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement, or submitted incorrect information in a permit registration statement or in any report to the department, it shall promptly submit such facts or information." EPA commented that this paragraph was missing in this section. This language is present in the NPDES permit regulation.
9VAC25-196-70. General permit. Part II J.		Requirement to notify the department when pollutants discharged change. Does not apply to pollutants already limited or pollutants specified elsewhere in the permit.	Same requirement except the section where pollutants are specified elsewhere in the permit is cited (Part I B 6). EPA commented on this and it is a clarification.
9VAC25-196-70. General permit. Part II K.		Requirement is fundamentally the same as the 2013 regulation	Changed wording from "application" to "registration" for clarification.
9VAC25-196-70. General permit. Part II L.		Requirement is fundamentally the same as the 2013 regulation	Made clarification of language as requested by enforcement staff
9VAC25-196-70. General permit. Part II M.		Requirement is fundamentally the same as the 2013 regulation	Made clarifications to language
9VAC25-196-70. General permit. Part II W.		Inspection and entry. Regulation stated that "[t]he time for inspection shall be deemed reasonable during regular business hours, and whenever the	Changed wording from "and" to "or". "[t]he time for inspection shall be deemed reasonable during regular business hours, and or whenever the facility is discharging." Added that an authorized contractor acting as a

		facility is discharging.” The permittee shall allow the director, or an authorized representative to enter the facility.	representative of the administrator also has authority to enter the facility. EPA commented that this paragraph was missing in this section. This language is present in the NPDES permit regulation.
9VAC25-196-70. General permit. Part II X.		Requirement is fundamentally the same as the 2013 regulation	Made clarification of language as requested by enforcement staff
9VAC25-196-70. General permit. Part II Y.		Requirement is fundamentally the same as the 2013 regulation	Made clarification of language as requested by enforcement staff

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The reissuance of the general 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 amended regulation includes an allowance for continuation of permit coverage in instances where an owner has submitted a timely registration and is in compliance with their existing permit. This will allow the permittee to legally and safely discharge if permit coverage is not granted by the Board prior to the existing permit's expiration date.