



[townhall.virginia.gov](http://townhall.virginia.gov)

## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation(s)</b>	9VAC25-800
<b>Regulation title(s)</b>	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters
<b>Action title</b>	Amend and Reissue the Pesticide General Permit
<b>Final agency action date</b>	December 13, 2018
<b>Date this document prepared</b>	October 30, 2018

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

This rulemaking was proposed and final adoption is sought in order to reissue the existing VPDES pesticide general permit, which expires on December 31, 2018. This general permit contains effluent limitations, monitoring requirements and special conditions for discharges of pesticides in five use categories to surface waters. This general permit regulation is being reissued in order to continue making it available to in-scope facilities so that such facilities can obtain coverage and continue to discharge.

The only change since the proposed is the revision of the effective and expiration date of the permit to March 1, 2019 and February 29, 2024, respectively.

No substantive changes are being made to the existing regulation. The changes being made affect effective dates, two definitions, two points of clarification and minor changes to certain standard conditions. These changes, which are fully characterized in the tables below, include:

- Changing the effective and expiration dates because permit coverage will be administratively continued past the current expiration date;
- Clarified that where a use category has both acres and linear miles annual treatment area thresholds, an operator need only meet one threshold to be subject to pesticide discharge management plan requirements.
- Clarified that compliance with this general permit does not negate the requirement to comply with applicable state wetland program requirements administered by DEQ and the Virginia Marine Resources Commission.
- Deleted the DEQ address for the Blue Ridge Regional Office in Lynchburg since that office has been closed.
- Made minor edits to certain standard conditions to better suit VPDES general permits.
- Revised the *Duty to reapply* standard condition to indicate that an operator that wishes to continue coverage after this permit expires must have coverage under a new permit.
- Revised the *Transfer of permit coverage* standards condition to indicate that permits are not transferable except after notice to DEQ and that transfer is not anticipated since coverage under this permit is automatic where an operator meets all eligibility requirements.

### 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.*

---

- BMP: Best Management Process
- CFR: Code of Federal Regulations
- DEQ: Department of Environmental Quality
- EPA (U.S. EPA): United States Environmental Protection Agency
- NPDES: National Pollutant Discharge Elimination System
- SIC: Standard Industrial Classification
- TAC: Technical Advisory Committee
- 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.*

---

On December 13, the State Water Control Board adopted 9VAC25-800 Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters.

### 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 Public Comment and the associated comment period. Protecting water quality in the Commonwealth’s surface waters is necessary to protect the health, safety and welfare of citizens. The proposed regulatory action is needed in order to establish appropriate and necessary permitting requirements for discharges of biological pesticides and chemical pesticides that leave a residue in five use categories to surface waters. 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 December 31, 2018 and must be reissued in order to continue making it available after that date.

The scope of the regulation and ideas to make it clearer were discussed in the technical advisory committee. 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 prior to being 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
----------------	-------------------------------	------------------	----------------------

9VAC25-800-20	<p>Had revised the effective and expiration date of the permit to be January 1, 2019 and December 31, 2023, respectively, to reflect reissuance of the permit regulation and the five-year term specified for VPDES permits.</p> <p>These revised dates were also proposed in 9VAC25-800-30 and 60.</p>	The effective and expiration date of the permit have been revised to be March 1, 2019 and February 29, 2024, respectively	The schedule for regulatory development, Board meetings and the administrative process did not allow for a reissued general permit to become effective prior to expiration.
---------------	---	---	---

### 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
NA	<p>No comments were received during the comment period or public hearing.</p> <p>On 11/14/2018 U.S. EPA Region 3 indicated that they had no comments on the proposed Pesticide General Permit.</p>	NA

### 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, intent, rationale
Title		The title of the regulation is "Virginia Pollutant Discharge Elimination System (VPDES) General Permit For Discharges Resulting From The Application Of Pesticides To Surface Waters"	Changed the title to "Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation For Discharges Resulting From The Application Of Pesticides To Surface Waters" to be consistent with other VPDES General Permits titles.
9VAC25-800-10. Definitions		The definition of "active ingredient" include reference to terms as defined in FIFRA and the general U.S. Code citation.	Removed the U.S. code cite to FIFRA and replaced it with the CFR cite to the relevant definitions. EPA made this change in the federal 2016 NPDES pesticide general permit.
9VAC25-800-10. Definitions		The definition of "adverse incident" describes "toxic or adverse effects" as including effects within surface waters upon "wildlife."	Deleted "wildlife" in the description of "toxic or adverse effects." EPA made this change in the federal 2016 NPDES pesticide general permit.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale
9VAC25-800-10. Definitions		Definition of "point source."	Removed "but not limited to." Replaced "pesticide residuals" with "chemical pesticides that leave a residue." Made "storm water" one word.
9VAC25-800-15. 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.	Changed the date to July 1, 2018, which will be the latest EPA update prior to issuance of the final permit.
9VAC25-800-20. Purpose; delegation of authority; effective date of permit.		Indicates the permit was last effective on January 1, 2014 and expires on December 31, 2018.	Revised the effective and expiration date of the permit to be March 1, 2019 and February 29, 2024, respectively, to reflect reissuance of the permit regulation and the five-year term specified for VPDES permits.  These revised dates are also included in 9VAC25-800-30 and 60.
9VAC25-800-30. Authorization to discharge.		Under C, Table 1 includes Annual Treatment Area Thresholds. Three use categories offer two choices (acres of treatment area; linear miles).	Where two treatment threshold choices are offered, added "or" between them to clarify that a permittee need only meet one of the applicable thresholds to be subject to pesticide discharge management plan requirements. EPA does this in its 2016 pesticide general permit (note that EPA applies these thresholds for different purposes than the state).
9VAC25-800-30. Authorization to discharge.		Under F, the permit indicates that coverage does not relieve the permittee's responsibility to comply with other applicable federal, state or local statute, ordinance or regulation.	Kept this provision and added language indicating that permit coverage also does not negate any applicable requirements to comply with state wetland program regulations administered by DEQ or the Virginia Marine Resources Commission. The TAC identified instances where there appears to be a lack of understanding that various requirements external to this permit apply to activities that could affect wetlands.
9VAC25-800-60. General Permit.		Under I.D.5, where DEQ contact information is provided the information for the Blue Ridge office includes a branch in Lynchburg, Virginia.	Deleted the DEQ Lynchburg office information. That office is closed.
9VAC25-800-60. General Permit.		Under II, Conditions Applicable to All VPDES Permits are included in the permit.	Made minor edits to these conditions to better reflect the nature of general permits and for consistency with other VPDES general permits.
9VAC25-800-60. General Permit.		Under II.I, the "Duty to reapply" conditions provide that operators not subject to automatic permit coverage renewal must submit a registration statement at least 30 days before the expiration date of the existing permit.	Removed the requirement to submit a registration statement. Require an operator wishing to continue coverage under their current pesticide general permit to have coverage under a new permit.  Note that coverage under this reissued permit is automatic for eligible operators (no registration statement has been developed or is required) and, thus, no need to reapply is anticipated.
9VAC25-800-60. General Permit.		Under S, "Transfer of permit coverage" requires notice to DEQ, an agreement including the date of transfer, and no objection by the board.	Revised this provision to state that permits are not transferable except upon notice to DEQ, and to indicate that coverage under this general permit is automatic where an operator meets eligibility requirements so permit transfer is not anticipated.

### 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 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.