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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-800
VAC Chapter title(s)	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters
Action title	2024 Amendment and Reissuance of the Existing General Permit Regulation
Date this document prepared	July 6, 2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

This action is to reissue and amend as necessary the existing VPDES general permit regulation that addresses discharges resulting from the application of pesticides to surface waters for one or more of five specified use patterns (9VAC25-800). The existing general permit will expire February 29, 2024 and this action will reissue the general permit for another five-year term. In addition, any updates or necessary changes will be made to the general permit.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

APA: Administrative Process Act

Board: State Water Control Board
 DEQ: "Department" and "Agency": Department of Environmental Quality
 EPA (U.S. EPA): United States Environmental Protection Agency
 NOIRA: Notice of Intended Regulatory Action
 NPDES: National Pollutant Discharge Elimination System
 TMDL: Total Maximum Daily Load
 USC: United States Code
 VAC: Virginia Administrative Code
 VPDES: Virginia Pollutant Discharge Elimination System

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The impetus of the regulatory change is Virginia Code § 62.1-44.15 (5a) which states, "All certificates issued by the Board under this chapter shall have fixed terms. The term of a Virginia Pollution Discharge Elimination System permit shall not exceed five years." This general permit expires on February 29, 2024 and must be reissued in order to make coverage available for operators that discharge pesticides to surface waters after March 1, 2024.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The basis for this regulation is § 62.1 44.2 et seq. of the Code of Virginia. Specifically, § 62.1 44.15(5) authorizes the Board to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters and § 62.1 44.15(7) authorizes the Board to adopt rules governing the procedures of the Board with respect to the issuance of permits. Further, § 62.1 44.15(10) authorizes the Board to adopt such regulations as it deems necessary to enforce the general water quality management program, §62.1 44.15(14) authorizes the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes, § 62.1-44.16 specifies the Board's authority to regulate discharges of industrial wastes, § 62.1 44.20 provides that agents of the Board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations, and § 62.1 44.21 authorizes the Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991 to authorize the Commonwealth to administer a VPDES General Permit Program.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

This proposed regulatory action is needed in order to establish permitting requirements for discharges from pesticide operators for certain specific uses in order to protect the health, safety and welfare of citizens. The existing general permit expires on February 29, 2024 and must be reissued to cover existing and new discharges. Some issues that may need to be addressed include:

- Reviewing effluent limitations and monitoring requirements;
- Examining electronic reporting (when this is made available by DEQ for this industry);
- Reviewing TMDL requirements;
- Reviewing special conditions to ensure they are updated and protective of water quality; and
- Making any appropriate conforming changes based on U.S. EPA's most recent Pesticide General Permit.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The general permit will establish limitations and monitoring requirements for point source discharges from specified pesticide applications. The effluent limits and special conditions in the general permit will be reviewed to ensure that the permit is still protective of water quality. The primary issue that needs to be addressed is that the existing general permit expires on February 29, 2024 and must be reissued in order to continue making it available after that date. No specific substantive changes to the existing general permit have been identified at this time. Amendments may be identified following the submittal of public comments on this notice and by the technical advisory committee during deliberations on this general permit regulation.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There are two alternatives for compliance with federal and state requirements applicable to permit discharges from specified pesticide discharges. One is to issue individual VPDES permits to each operator and have each submit an application for a VPDES permit with the corresponding fees. The other is to reissue this VPDES general permit regulation to cover this category of dischargers and allow operators to obtain coverage under the general permit (unlike individual permits, coverage under this general permit has no corresponding fee). Therefore, the general permit is the less intrusive and less costly alternative for small businesses. General permits also require fewer DEQ staff resources to issue.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

This NOIRA is not being used to announce a periodic review or a small business impact review. A separate action addressed these reviews and provided a comment period from April 25, 2021 to May 17, 2021.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The State Water Control Board is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. The Board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

This NOIRA is not being used to announce a periodic review or a small business impact review.

Anyone wishing to submit written comments may do so by mail, email or fax to **Peter Sherman, P.O. Box 1105, Richmond, Virginia 23218, phone: 804-698-4044 (for questions) peter.sherman@deq.virginia.gov or Fax: 804-698-4178 (please ensure recipient [Peter Sherman] is on fax or cover page of fax)**. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>). Written comments must include the name and address of the commenter. In order to be considered, comments must be received before midnight on the last day of the public comment period.

Public Hearing at Proposed Stage

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar <https://commonwealthcalendar.virginia.gov/>.

Technical Advisory Committee

A technical advisory committee will be involved in the development of the proposed regulation.

The Board is using a technical advisory committee to develop a proposal. Persons interested in assisting in the development of a proposal should notify the Department's contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). Any persons who want to be on the advisory committee are encouraged to attend

the public meeting mentioned above. The primary function of the advisory committee is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the advisory committee will be sent to all applicants.