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Exempt Action: Proposed Regulation 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	Amend and Reissue the Existing General Permit Regulation
Date this document prepared	August 17, 2022

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters has existed since 2011. This general permit contains effluent limitations, monitoring requirements and special conditions for discharges of pesticides to surface waters. The proposed changes to the regulation are being made to reissue this general permit and in response to Technical Advisory Committee input, and staff suggestions to clarify the permit conditions.

One substantive change to the existing general permit is being proposed. For animal pest control, we have added "cultural methods" as a method that must be evaluated when selecting pest management measures. Other proposed changes affect effective dates, two definitions, making some language more consistent with other state general permits, and updating certain web address-links.

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, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "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."

VPDES permits are limited to a term of five years. The existing VPDES Pesticide General Permit regulation expires on February 29, 2024, and it must be reissued for another five year term to remain available to pesticide operators that conduct in-scope activities. If this permit is not re-issued in a timely manner, no new coverage is available to any additional operators and such operators would be required to obtain individual VPDES permits. The in-scope pesticide applications have been determined to be point source discharges and if the general permit is not available such pesticide applications will need to apply for and obtain individual VPDES permits, which impose significantly greater burden and costs on permittees and increased administrative burden on DEQ.

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
- NPDES: National Pollutant Discharge Elimination System
- TAC: Technical Advisory Committee
- USC: United States Code
- VAC: Virginia Administrative Code
- VPDES: Virginia Pollutant Discharge Elimination System

Legal Basis

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

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

This proposed regulatory action is needed in order to amend and reissue the existing VPDES general permit for point source discharges of pesticides to surface waters, which expires on February 29, 2024. The goal of the proposed regulation is to continue to make the general permit available, which establishes standard language for control of these point source discharges through effluent limitations, monitoring requirements and special conditions to ensure protection of the environment and public health, safety and welfare.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

One substantive change to the existing general permit is being proposed. For animal pest control, we have added "cultural methods" as a method that must be evaluated when selecting pest management measures. Other proposed changes affect effective dates (the new term is March 1, 2024 – February 28, 2029), two definitions have been revised based on U.S. EPA 2021 reissuance of the federal NPDES Pesticide General Permit, we are making some language more generic consistent with other state general permits, and we are updating certain web address-links and regional office addresses.

Issues

Please identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The advantages to the public and the agency of reissuing this permit are that a VPDES general permit will continue to be available to facilities with eligible discharges enabling them to discharge to surface waters in a manner that is protective of those waters without the increased cost and more complicated application process associated with issuing an individual permit. There are no known disadvantages.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change that is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected:

There are no state agencies particularly affected by the proposed regulation.

Localities Particularly Affected:

There are no localities particularly affected by the proposed regulation as the regulation applies statewide.

Other Entities Particularly Affected:

In-scope operations that apply aquatic pesticides must do so in a manner consistent with this general permit. No other entities are particularly affected by the proposed regulation.

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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

Specified pesticide discharges are point source discharges of pollutants that must under federal and state law be authorized by a permit. This general permit provides small businesses (and other permittees) a less burdensome permitting option for this type of discharge when compared to an individual permit. In addition, the requirements in this general permit have been coordinated with existing relevant pesticide regulations administered by VDACS to minimize duplicative requirements. This general permit uses performance standards where possible, and monitoring and reporting requirements are the minimum necessary. Finally, the pesticide discharge management plan (PDMP) requirement is only applicable to larger aquatic pesticide applications.

Public Comment Received

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

No comments were received in response to the NOIRA.

Public Participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts of this regulatory proposal and any impacts of the regulation on farm and forest land preservation. The agency/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) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Peter Sherman, P.O. Box 1105, Richmond, Virginia 23218, peter.sherman@deq.virginia.gov, phone (804) 659-2666, fax (804) 698-4178. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at (<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 by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. If the regulatory change will be a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory change. Please include citations to the specific section(s) of the regulation that are changing.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-800-10. Definitions		NA	<p>Added: "Pesticide discharges to surface waters from pesticide application - means the discharges that result from the application of biological pesticides, and the application of chemical pesticides that leave a residue, from point sources to surface waters. In the context of this definition of pesticide discharges to surface waters from pesticide application, this does not include agricultural storm water discharges and return flows from irrigated agriculture, which are excluded by law (33 U.S.C. 1342(l); 33 U.S.C. 1362(14))."</p> <p><i>EPA added this definition to the 2021 federal NPDES pesticide general permit. We have changed "waters of the United States" to "surface waters" to make it consistent with VPDES program terminology.</i></p>
9VAC25-800-10. Definitions		"Pesticide residue" means that portion of a pesticide application that has been discharged from a point source to surface waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.	<p>"Pesticide residue" for the purpose of determining whether an NPDES permit is needed for discharges to surface waters from pesticide application, means that portion of a pesticide application that has been discharged from a point source to surface waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.</p> <p><i>EPA clarified this definition in the 2021 federal PGP. We have changed "waters of the United States" to "surface waters" to make it consistent with VPDES program terminology.</i></p>
9VAC25-800-10. Definitions		NA	<p>Added the following definition: "Board" means the State Water Control Board. However, when used outside the context of the promulgation of regulations, including regulations to establish general permits, "Board" means the "Department of Environmental Quality". This change is based on SB 657.</p> <p>In the balance of the general permit/ regulation, changed "board" to</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			"department" where the reference was to a permit action.
9VAC25-800-15. Applicability of incorporated references based on the dates that they became effective		Code of Federal Regulations (CFR) publication date referenced is July 1, 2018.	Code of Federal Regulations (CFR) publication date referenced is July 1, 2022. This will be adjusted at final approval to the most recent publication date.
9VAC25-800-20. Purpose; delegation of authority; effective date of permit		C. This VPDES general permit will become effective on March 1, 2019, and expire on February 29, 2024.	C. This VPDES general permit will become effective on March 1, 2024, and expire on February 28, 2029. <i>This general permit is being reissued for another five-year term.</i>
9VAC25-800-20. Purpose; delegation of authority; effective date of permit		B. The Director of the Department of Environmental Quality, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.	Title revised to delete "delegation of authority." Item B deleted. Both changes in response to SB 657 (2022).
9VAC25-800-30. Authorization to discharge		F. Compliance with this general permit constitutes compliance with the federal Clean Water Act (33 USC § 1251 et seq.) and the State Water Control Law with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation.	F. Compliance with this general permit constitutes compliance, for purposes of enforcement with §§ 301, 302, 306, 307, 318, 403, and 405(a) through (b) of the federal Clean Water Act and the State Water Control Law with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. <i>Revised the language to specifically reference sections for consistency with federal regulatory language and other VPDES general permits.</i>
9VAC25-800-30. Authorization to discharge		G. Continuation of permit coverage. 1. This general permit shall expire on February 29, 2024, except that the conditions of the expired pesticides general permit will continue in force for an operator until coverage	G. Continuation of permit coverage. 1. Permit coverage shall expire at the end of the applicable permit term, except that the conditions of the expired pesticides general permit will continue in force for an operator until coverage is granted under a reissued pesticides general permit if the board,

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		is granted under a reissued pesticides general permit if the board, through no fault of the operator, does not reissue a pesticides general permit on or before the expiration date of the expiring general permit.	through no fault of the operator, does not reissue a pesticides general permit on or before the expiration date of the expiring general permit. <i>Made this language more generic so that dates do not have to be revised for each reissuance. Similar revisions are being made to all VPDES general permits.</i>
9VAC25-800-60. General permit		Effective Date: March 1, 2019 Expiration Date: February 29, 2024	Effective Date: March 1, 2024 Expiration Date: February 28, 2029 <i>Reissued for new term.</i>
9VAC25-800-60. General permit		A.1.b.(3) Animal pest control. [In selecting pest management measures that will minimize discharges resulting from the application of pesticides, the operator must evaluate the following options] (i) No action; (ii) Prevention; (iii) Mechanical or physical methods; (iv) Biological control; and (v) Pesticides.	A.1.b.(3) Animal pest control. [In selecting pest management measures that will minimize discharges resulting from the application of pesticides, the operator must evaluate the following options] (i) No action; (ii) Prevention; (iii) Mechanical or physical methods; (iv) Cultural methods; (v) Biological control; and (vi) Pesticides. Added "cultural methods." This change reflects the same change made to EPA's 2021 reissuance of the federal pesticide general permit.
9VAC25-800-60. General permit		D.2.d.(2)(d) Tier I (critical conservation need) or Tier II (very high conservation need) species of greatest conservation need (SGCN) as defined in Virginia's Wildlife Action Plan (www.bewildvirginia.org).	D.2.d.(2)(d) Tier I (critical conservation need) or Tier II (very high conservation need) species of greatest conservation need (SGCN) as defined in Virginia's Wildlife Action Plan (http://bewildvirginia.org/wildlife-action-plan/) <i>Updated the link to Virginia's Wildlife Action Plan.</i>
9VAC25-800-60. General permit		D.2.d.(3)(h) Date and time of application. Additional information on federally listed threatened or endangered species and federally designated critical habitat is available from NMFS (www.nmfs.noaa.gov) for anadromous or marine	D.2.d.(3)(h) Date and time of application. Additional information on federally listed threatened or endangered species and federally designated critical habitat is available from NMFS (https://www.fisheries.noaa.gov/species-directory/threatened-endangered) for anadromous or marine species or FWS

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		species or FWS (www.fws.gov) for terrestrial or freshwater species. Additional information on state-listed threatened or endangered wildlife species is available through the Virginia Fish and Wildlife Information Service (www.dgif.virginia.gov).	(https://www.fws.gov/species/search) for terrestrial or freshwater species. Additional information on state-listed threatened or endangered wildlife species is available through the Virginia Fish and Wildlife Information Service (https://dwr.virginia.gov/wildlife/wildlife-information/). <i>Updated the links to endangered and threatened species.</i>
9VAC25-800-60. General permit		D.5. NOTE: The immediate (within 24 hours) reports required in Part I D 2 may be made to the department's regional office. Reports may be made by telephone, fax, or online (http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx). For reports outside normal working hours, leave a message, and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency maintains a 24-hour telephone service at 1-800-468-8892.	D.5.c. The immediate (within 24 hours) reports required in Part I D 2 shall be made to the department's regional office. Reports may be made by telephone, fax, or online (https://www.deq.virginia.gov/get-involved/pollution-response) (online reporting preferred). For reports outside normal working hours, the online portal shall be used. For emergencies, call the Virginia Department of Emergency Management's Emergency Operations Center (24-hours) at 1-800-468-8892. <i>Revised language consistent with current online reporting capability. Making consistent across all general permits.</i>
9VAC25-800-60. General permit		D.5.d. DEQ six regional office addresses.	D.5.d. <i>Updated the DEQ regional office address for the Blue Ridge Regional Office. Added a single new fax number for all regions.</i>

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed 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.