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**Exempt Action: Final Regulation
Agency Background Document**

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	<p>9VAC25-31</p> <p>Secondary Chapters:</p> <p>9VAC25-32 9VAC25-210 9VAC25-610 9VAC25-660 9VAC25-670 9VAC25-680 9VAC25-690 9VAC25-790</p>
VAC Chapter title(s)	<ul style="list-style-type: none"> ○ Virginia Pollutant Discharge Elimination System Permit (VPDES) Regulation (9VAC25-31) ○ Virginia Pollution Abatement Permit (VPA) Regulation (9VAC25-32) ○ Virginia Water Protection Permit Program (VWP) Regulation (9VAC25-210) ○ Groundwater Withdrawal Regulations (9VAC25-610) ○ Virginia Water Protection (VWP) General Permit for Impacts Less Than One-Half Acre (9VAC25-660) ○ Virginia Water Protection (VWP) General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities (9VAC25-670)

	<ul style="list-style-type: none"> ○ Virginia Water Protection (VWP) General Permit for Linear Transportation Projects (9VAC25-680) ○ Virginia Water Protection (VWP) General Permit for Impacts from Development and Certain Mining Activities (9VAC25-690) ○ Sewage Collection and Treatment (SCAT) Regulations (9VAC25-790)
Action title	2023 40 CFR Reference Update/Methods Update Rule
Final agency action date	November 30, 2023
Date this document prepared	October 31, 2023

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.

Various regulations of the State Water Control Board include references to U.S. Environmental Protection Agency’s (EPA) regulations under Title 40 of the Code of Federal Regulations (CFR). These regulatory amendments will bring these references up to date with the 40 CFR 136 requirements published in the July 1, 2023, update. The following regulations are being amended as part of this regulatory action: 9VAC25-31 Virginia Pollutant Discharge Elimination System Permit (VPDES) Regulation; 9VAC25-32 Virginia Pollution Abatement (VPA) Permit Regulation; 9VAC25-210 Virginia Water Protection Permit Program Regulation; 9VAC25-610 Groundwater Withdrawal Regulations; and 9VAC25-790 Sewage Collection and Treatment Regulations. This regulatory action also amends the Virginia Water Protection General Permit for Impacts Less Than One-Half Acre (9VAC25-660); the Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities (9VAC25-670); the Virginia Water Protection General Permit for Linear Transportation Projects (9VAC25-680); the Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (9VAC25-690); to incorporate EPA’s Methods Update Rule (MUR) amendments.

The EPA finalized changes to its test procedures required by industries and municipalities when analyzing the chemical, physical, and biological properties of wastewater and other environmental samples for reporting under EPA’s National Pollutant Discharge Elimination System (NPDES) permit program. The Clean Water Act (CWA) requires the EPA to promulgate these test procedures (analytical methods) for analysis of pollutants. The EPA anticipates that these changes will provide increased flexibility for the regulated community in meeting monitoring requirements while improving data quality. In addition, this update to the CWA methods is incorporating technological advances in analytical technology.

Section 402 of the Clean Water Act (33 USC § 1251 et seq.) authorizes states to administer the National Pollutant Discharge Elimination System (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 and operates the Virginia Pollutant Discharge Elimination System (VPDES) program and Virginia 's regulations need to maintain consistency with the federal regulations. Section 2.2-4006. A.4(c) of the Code of Virginia allows the Board to adopt these amendments to existing regulations as a final exempt action as the changes are necessary to conform to changes in the federal regulations.

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."

On July 19, 2021, the Environmental Protection Agency (EPA) finalized specific changes to analytical test procedures used by industries and municipalities to analyze the chemical, physical, and biological components of wastewater and other environmental samples required by regulations under the Clean Water Act. This amendment updates the State Water Control Board's regulations to be consistent with EPA's Methods Update Rule (MUR) amendments to 40 CFR Part 136. Section 2.2-4006.A.4(c) of the Code of Virginia allows the Board to adopt this regulatory amendment as a final exempt action as the changes are necessary to conform to changes in the federal regulations.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

- APA: Administrative Process Act
- ASTM: ASTM International
- ATP: Alternate Test Procedure
- CFR: Code of Federal Regulations
- CWA: Clean Water Act
- EPA: U.S. Environmental Protection Agency
- IPR: Initial Precision and Recovery
- MS/MSD: Matrix Spike/Matrix Spike Duplicate (MS/MSD),
- MUR: Methods Update Rule promulgated by the EPA and published in the Federal Register on May 19, 2021 (86 FR 27226)
- NPDES: National Pollutant Discharge Elimination System
- OPR: Ongoing Precision and Recovery (OPR),
- USGS: United States Geological Survey (USGS)
- VCSB: Voluntary Consensus Standards Bodies (VCSB)

Statement of Final Agency Action

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.

The State Water Control Board approved amendments to: Virginia Pollutant Discharge Elimination System Permit Regulation (9VAC25-31); Virginia Pollution Abatement Permit Regulation (9VAC25-32); Virginia Water Protection Permit Program Regulation (9VAC25-210); Groundwater Withdrawal Regulations (9VAC25-610); Virginia Water Protection General Permit for Impacts Less Than One-Half Acre (9VAC25-660); Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities (9VAC25-670); Virginia Water Protection

General Permit for Linear Transportation Projects (9VAC25-680); Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (9VAC25-690) and the Sewage Collection and treatment Regulations (9VAC25-790) on November 30, 2023, as a final regulation, and affirmed that the Board will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision.

Legal Basis

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.

Section 2.2-4006.A.4(c) and as a final exempt action as the changes are necessary to conform to changes in the federal regulations. Section 62.1-44.15(10) of the Code of Virginia allows the Board to adopt this regulatory amendment.

Purpose

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’s intended to solve.

The regulatory updates are necessary to align state regulations with those of the EPA, ensuring DEQ maintains the authority to implement the national program. The National Pollutant Discharge Elimination System permits must include conditions to ensure compliance with the Clean Water Act’s technology-based and water quality-based requirements, including restrictions on the quantity of specific pollutants that can be discharged and requirements for pollutant monitoring, measurement, and reporting to DEQ. The changes incorporate the EPA’s Methods Update Rule amendments to 40 CFR Part 136 that became effective on July 19, 2021, which introduce new and revised test procedures for industries and municipalities to analyze the chemical, physical, and biological properties of wastewater and other environmental samples for reporting under the NPDES permit program and updates the regulations to incorporate the 40 CFR requirements published in the July 1, 2023, update.

The new test procedures should provide increased flexibility for the regulated community to meet monitoring requirements while improving data quality. By allowing the use of newly approved and revised test procedures, the regulatory changes should indirectly benefit the health, safety, and welfare of citizens by improving the accuracy of pollutant measurements and reducing the risk of harmful substances released into the environment. The goals of the regulatory change are to ensure compliance with federal regulations and promote the use of advanced analytical technology to better protect the environment and public health.

Substance

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.

The proposed methods update allows for all state regulations to remain consistent with the standards in 40 CFR Part 136. National Pollutant Discharge Elimination System (NPDES) permits must include conditions designed to ensure compliance with the technology-based and water quality-based requirements of the Clean Water Act (CWA), including in many cases, restrictions on the quantity of specific pollutants that can be discharged as well as requirements for pollutant monitoring, measurement and reporting to NPDES authorities. Often, entities have a choice in deciding which approved test procedure they will use for a specific pollutant because EPA has approved the use of more than one method.

The procedures for the analysis of pollutants required by CWA section 304(h) are a central element of the NPDES permit program. Examples of where these EPA-approved analytical methods must be used include the following: (1) Applications for NPDES permits, (2) sampling or other reports required under NPDES permits, (3) other requests for quantitative or qualitative effluent data under the NPDES regulations, (4) State CWA 401 certifications and (5) sampling and analysis required under EPA's General Pretreatment Regulations for Existing and New Sources of Pollution, 40 CFR 136.1 and 40 CFR 403.12(b)(5)(v).

Periodically, EPA updates the approved methods in 40 CFR part 136. In general, the changes in this final action fall into the following categories. The first is new or revised methods published by the VCSBs or the USGS that are like methods previously adopted as EPA-approved methods in 40 CFR part 136. The second category is methods EPA have reviewed under the Agency's national ATP program and preliminarily concluded are appropriate for nationwide use. Lastly, EPA finalized certain corrections or amendments to the text and tables of 40 CFR part 136. EPA adopted these revisions to improve data quality, update methods to keep current with technology advances, and provide the regulated community with greater flexibility. The changes include:

1. Revised EPA methods that include updated acceptance criteria for Initial Precision and Recovery (IPR), Ongoing Precision and Recovery (OPR), and Matrix Spike/Matrix Spike Duplicate (MS/MSD), and clarifications and revisions based on user questions and feedback about Method 1623 over the past 19 years.
2. New or revised methods published by Voluntary Consensus Standards Bodies (VCSB) such as ASTM International (ASTM) *formerly known as the American Society for Testing and Materials* and the Standards Methods Committee.
3. New and updated methods developed by the U.S. Geological Survey which includes an ion chromatography method that lists several target analytes: Bromide, chloride, fluoride, nitrate, nitrite, orthophosphate, and sulfate.
4. New methods reviewed under the Alternate Test Procedure (ATP) program as now appropriate for nationwide use.
5. Minor changes to quality assurance and quality control within individual methods concerning commercially prepared standards and filter paper.

Issues

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.

Identifying the issues associated with this amendment to the existing regulations involves evaluating the direct and indirect costs and benefits to various stakeholders. This amendment involves updating the Voluntary Consensus Standards Body (VCSB) methods currently incorporated by reference in 40 CFR part 136, including revisions to the Standard Methods and ASTM International methods. The cost of obtaining these updated methods ranges from \$40 to \$80, which is not a significant financial burden for permittees or environmental laboratories. Both organizations offer memberships or subscriptions that allow unlimited access to their methods. Additionally, this amendment will incorporate United States Geological Survey (USGS) methods and vendor Alternative Test Procedures (ATP), which are available free of charge on their respective websites.

Indirect costs associated with this amendment may include costs associated with training personnel on the new test procedures, costs associated with recalibrating equipment to comply with the new procedures, and costs associated with updating standard operating procedures to reflect the changes. While DEQ has concluded that the direct costs associated with obtaining the new and revised test procedures would not be a significant financial burden, it is important to note that the permittee or environmental laboratory may still incur some indirect costs because of these additional factors. However, DEQ projects these indirect costs would be minimal, as they are one-time expenses and should not significantly impact the overall cost of compliance.

This amendment should offer several direct benefits to permittees and environmental laboratories. First, by incorporating the revisions to the VCSB methods and ATPs, the proposed change will provide more options and increased flexibility to permittees in selecting suitable methods for monitoring pollutant levels. This, in turn, will improve compliance and reduce regulatory burden on regulated stakeholders. Secondly, the proposed update will enhance the quality of monitoring data by adopting the latest technological advances in analytical technology. This will enable more accurate and reliable measurement of pollutants, leading to better-informed decisions and more effective management of environmental risks. Overall, this amendment should offer direct benefits to permittees and environmental laboratories by providing more flexibility and improved data quality, while reducing regulatory burden and enhancing environmental protection.

The updates associated with the methods update rule were developed by national voluntary consensus standards and should have a ripple effect on the regulated communities beyond just meeting regulatory requirements. As an indirect benefit, these updates should encourage the use of more standardized and widely accepted methods, leading to greater precision and consistency in data collection and analysis. This in turn may then improve comparability of data across different facilities and districts, enable better tracking of trends and identification of potential issues. Additionally, the use of newer, more advanced methods and technologies can lead to more accurate and precise data, which can inform better decision-making by regulators, permittees, and other stakeholders. The adoption of these updated methods may contribute to improved environmental outcomes and protections of public health.

There are no disadvantages to the public or the Commonwealth from these amendments.

Requirements More Restrictive than Federal

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.

These amendments to existing regulations revise State regulations to be consistent with the minimum Federal requirements. Therefore, the amendments are no more restrictive than the current federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

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:

No other state agencies will be particularly affected by the regulatory change.

Localities Particularly Affected:

No other localities will be particularly affected by the regulatory change.

Other Entities Particularly Affected:
 There is no locality particularly affected by the regulatory change.

Details of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Please note, all the changes made, unless otherwise noted, are necessary to conform to changes in the federal regulations and are exempt from the APA in accordance with § 2.2-4006.A.4(c) of the Code of Virginia.

Current section number	New section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
9VAC25-31-25		Applicability of incorporated references based on the dates that they became effective	Revised date from July 1, 2019, to July 1, 2023: Updates 40 CFR references in Chapter 25 to the most current CFR published in the July 1, 2023, update, to maintain consistency between state and federal regulations.
9VAC25-31-100 Q 7 d		Application for a permit. Sewage sludge management	Deleted specific dates referencing 40 CFR Parts: Updates 40 CFR references in Chapter 100 to the most current CFR published in the July 1, 2023, update, to maintain consistency between state and federal regulations.
9VAC25-32-25		Applicability of incorporated references based on the dates that they became effective	Revised date from July 1, 2019, to July 1, 2023, and deleted duplicative language referring to the CFR: Updates 40 CFR references in Chapter 25 to the most current CFR published in the July 1, 2023, update, to maintain consistency between state and federal regulations.
9VAC25-210-90		Conditions applicable to all VWP permits.	Version of 40 CFR Part 136 updated to the most current CFR published on July 1, 2023, to maintain consistency between state and federal regulations.
9VAC25-610-130 F 1		Conditions applicable to all groundwater permits.	Version of 40 CFR Part 136 updated to the most current CFR published on July 1, 2023, to maintain consistency between state and federal regulations.
9VAC25-660-100 Part III Q 1		VWP general permit. Part III. Conditions applicable to all VWP General Permits	Version of 40 CFR Part 136 updated to the most current CFR published on July 1, 2023, to maintain consistency between state and federal regulations.

Current section number	New section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
9VAC25-670-100 Part III Q 1		VWP general permit. Part III. Conditions applicable to all VWP General Permits	Version of 40 CFR Part 136 updated to the most current CFR published on July 1, 2023, to maintain consistency between state and federal regulations.
9VAC25-680-100 Part III Q 1		VWP general permit. Part III. Conditions applicable to all VWP General Permits.	Version of 40 CFR Part 136 updated to the most current CFR published on July 1, 2023, to maintain consistency between state and federal regulations.
9VAC25-690-100 Part III Q 1		VWP general permit. Part III. Conditions applicable to all VWP General Permits.	Version of 40 CFR Part 136 updated to the most current CFR published on July 1, 2023, to maintain consistency between state and federal regulations.
9VAC25-790-210		Nonconventional methods, processes or equipment	Version of 40 CFR Part 136 updated to the most current CFR published on July 1, 2023, to maintain consistency between state and federal regulations.

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.

The regulations apply to all facilities, including small businesses. Any (1) establishment of less stringent compliance or reporting standards; (2) establishment of less stringent schedules or deadlines for compliance and reporting requirements; (3) consolidation or simplification of compliance or reporting requirements; (4) establishment of performance standards for small businesses to replace design or operational standards required in the regulation; or (5) exemption of small businesses from all or any part of the requirements contained in this regulation for all small businesses would directly, significantly and adversely affect the benefits that would be achieved through the implementation of the regulations.

Conforming state regulations to those of the EPA is necessary to maintain authority to implement the national program. Facilities benefit from state implementation of the program as they have easier access to decision makers who have a clearer understanding of state-specific issues and needs.

The Regulatory Flexibility Act statement contained in 86 FR 27226 (05/19/2021) states that this action would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. This action will not impose any requirements on small entities. This action would approve new and revised versions of CWA testing procedures. Generally, these changes have a positive impact on small entities by increasing method flexibility, thereby allowing entities to reduce costs by choosing more cost-effective methods. In general, EPA expects the final revisions will lead to few, if

any, increased costs. Most of the changes clarify or improve the instructions in the method, update the technology used in the method, improve the QC instructions, make editorial corrections, or reflect the most recent approval year of an already approved method. In some cases, they would add alternatives to currently approved methods for a particular analyte (e.g., Method N07–0003 for Nitrate Reductase Nitrate-Nitrogen Analysis). Because these methods would be alternatives rather than requirements, there are no direct costs associated with this proposal. EPA finalized methods that would be incorporated by reference. If a permittee elected to use these methods, they could incur a small cost associated with obtaining these methods from the listed sources.

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.

There is no impact on the instruction of the family or family stability.