



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9 VAC25-192-10 et seq.
<b>Regulation title</b>	Virginia Pollution Abatement (VPA) General Permit Regulation for Animal Feeding Operations (AFOs)
<b>Action title</b>	Amend and reissue the Virginia Pollution Abatement (VPA) General Permit Regulation for Animal Feeding Operations (AFOs)
<b>Final agency action date</b>	March 28, 2014
<b>Document preparation date</b>	February 18, 2014

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), the agency 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 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The State Water Control Board is amending the Virginia Pollution Abatement (VPA) General Permit Regulation for Animal Feeding Operations (AFOs) in order to reissue the permit regulation. The VPA general permit has a ten year permit term which expires on November 15, 2014. The VPA General Permit Regulation for AFOs governs the pollutant management activities of animal wastes at AFOs not covered by a Virginia Pollutant Discharge Elimination System (VPDES) permit, and having 300 or more animal units utilizing a liquid manure collection and storage system. These AFOs may operate and maintain treatment works for waste storage, treatment or recycle and may perform land application of manure, wastewater, compost, or sludges.

Emerging manure handling and treatment technology is making the transfer and possible marketing of manure based products off the farm more common as well as prompting the consideration of importing other wastes to supplement treatment processes. The current regulation does not address waste (manure) transfer, the construction and operation of alternative manure treatment and storage facilities or

the management of off-site generated waste materials to be used to feed an on-farm digester or other manure treatment technology. The proposed amendments include options to transfer animal waste off the farm as long as specific requirements are followed by the permittee and the end-users of the animal waste. The proposed amendments include options to manage imported waste materials as long as specific requirements by the permittee.

Changes have been made to the proposal in Sections 10, 60, 70 and 90. The significant changes include modification of the requirements for waste storage not under roof and removal of the option of having "an employee of a soil and water conservation district with appropriate engineering approval authority" certify compliance with the siting, design and construction requirements of the permit.

**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.*

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The State Water Control Board during their regular meeting on March 28, 2014, voted to adopt the final amendments to the Virginia Pollution Abatement General Permit for Animal Feeding Operations as presented and recommended by Department of Environmental Quality staff.

**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.*

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The changes to the regulation changes since the proposed stage are outlined on the following pages.

Section number	Requirement at proposed stage	What has changed	Rationale for change
9VAC25-32-10 (Definitions)	"Animal waste" means liquid, semi-solid, and solid animal manure, poultry waste and process wastewater, compost or sludges associated with livestock and poultry animal feeding operations including the final treated wastes generated by a digester or other manure treatment technologies.	Removed "poultry waste" from the definition. "Animal waste" means liquid, semi-solid, and solid animal manure <del>[, poultry waste]</del> and process wastewater, compost or sludges associated with <del>[ livestock and poultry ]</del> animal feeding operations including the final treated wastes generated by a digester or other manure treatment technologies.	Amended definition so as not to conflict with the poultry waste regulation (9VAC25-630)
9VAC25-32-10 (Definitions)	"Waste storage facility" means a waste holding pond or tank used to store manure prior to land application, or a lagoon or treatment facility used to digest or reduce the solids or nutrients.	Amended Waste storage facility definition to read: "Waste storage facility" means a waste holding pond or tank used to store manure prior to land application, or a lagoon or treatment facility used to digest or reduce the solids or nutrients [ , or a structure used to store manure or waste ].	Amended the definition by adding " <u>, or a structure used to store manure or waste</u> " in order to clarify the new storage requirements proposed in the regulation.
9VAC25-32-60 A. (Registration Statement)	A list of items which is included on the registration statement that is completed when applying for coverage under the general permit.	Added two items to subsection A and renumbered items 7-10 that were in the original list to make room for the additional items:  <u>7. [ Indicate the types of wastes that will be managed at the facility and how much of each type of waste will be managed;</u>  <u>8. If waste will be transferred off-site, indicate the type of waste and how much will be transferred;</u>	Added the two items to the registration statement in order to facilitate the application process when an owner proposes to manage off-site generated wastes, treated wastes, or to transfer waste.
9VAC25-32-60 B. (Registration Statement)	A list of items which is included on the registration statement that is completed when applying for coverage under the general permit.	Added two items to subsection B and renumbered items 6-8 that were in the original list to make room for the additional items:  <u>6. [ Indicate the types of wastes that will be managed at the facility and how much of each type of waste will be managed;</u>  <u>7. If waste will be transferred off-site, indicate the type of waste and how much will be transferred;</u>	Added the two items to the registration statement in order to facilitate the application process when an owner proposes to manage off-site generated wastes, treated wastes, or to transfer waste.
9VAC25-192-70 Part I B.3 (Contents of	3. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed	3. Earthen waste storage facilities constructed after December 1, 1998, shall	Added "or" to correct the sentence structure after removing "or an employee of a soil and water conservation district with appropriate engineering approval

<p>the general permit)</p>	<p>and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer, an employee of the Natural Resources Conservation Service of the United States Department of Agriculture with appropriate engineering approval authority or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.</p>	<p>include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer [ ,or ] an employee of the Natural Resources Conservation Service of the United States Department of Agriculture with appropriate engineering approval authority [ ,or an employee of a soil and water conservation district with appropriate engineering approval authority ] shall certify that the siting, design and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.</p>	<p>authority" since this is no longer an option due to the USDA-Natural Resources Conservation Service procedural changes.</p> <p>Amended the permeability rating text to correct a technical error.</p>
<p>9VAC25-192-70 Part I B.6 (Contents of the general permit)</p>	<p><u>6. For new waste storage or treatment facilities constructed after November 16, 2014, the facilities shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture and approved by the department. A Virginia licensed professional engineer, an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design, and construction of the waste storage facility</u></p>	<p><u>6. For new waste storage or treatment facilities constructed after November 16, 2014, the facilities shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture and approved by the department. A Virginia licensed professional engineer [ ,or ] an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority [ ,or an employee of a soil and water conservation district with appropriate engineering approval authority ] shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.</u></p>	<p>Added "or" to correct the sentence structure after removing "or an employee of a soil and water conservation district with appropriate engineering approval authority" since this is no longer an option due to the USDA-Natural Resources Conservation Service procedural changes.</p>

	<p><u>comply with the requirements of this permit. This certification shall be maintained on site.</u></p>		
<p>9VAC25-192-70 Part I B.8 (Contents of the general permit)</p>	<p><u>8. For waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.</u></p>	<p><u>8. [ Semi-solid and solid waste shall be stored in a manner that prevents contact with surface water and groundwater. Waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:</u></p> <p><u>a. Waste shall be covered to protect it from precipitation and wind;</u></p> <p><u>b. Storm water shall not run onto or under the stored waste;</u></p> <p><u>c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X [ <del>40-6</del> 10<sup>-6</sup> ] centimeters per second); and ]</u></p>	<p>Amended the language to ensure the regulation provides for adequate controls on semi-solid and solid waste storage. The requirements are consistent with the requirements in the poultry waste regulation (9VAC25-630).</p> <p>Amended the permeability rating text to correct a technical error.</p>

		<p>d. ] For waste that is not stored [ in a waste storage facility or ] under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.</p>	
<p>9VAC25-192-70 Part III B.3 (Contents of the general permit)</p>	<p>3. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer, an employee of the Natural Resources Conservation Service of the United States Department of Agriculture with appropriate engineering approval authority or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.</p>	<p><u>3. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer [ ,or ] an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority [ ,or an employee of a soil and water conservation district with appropriate engineering approval authority ] shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.</u></p>	<p>Added "or" to correct the sentence structure after removing "or an employee of a soil and water conservation district with appropriate engineering approval authority" since this is no longer an option due to the USDA-Natural Resources Conservation Service procedural changes.</p>
<p>9VAC25-192-70 Part III B.6 (Contents of the general permit)</p>	<p>6. For new waste storage or treatment facilities constructed after November 16, 2014, the facilities shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture and approved by the department. A Virginia licensed professional engineer, an employee of the Natural Resources Conservation Service of the</p>	<p><u>6. For new waste storage or treatment facilities constructed after November 16, 2014, the facilities shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture and approved by the department. A Virginia licensed professional engineer [ ,or ] an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority</u></p>	<p>Added "or" to correct the sentence structure after removing "or an employee of a soil and water conservation district with appropriate engineering approval authority" since this is no longer an option due to the USDA-Natural Resources Conservation Service procedural changes.</p>

	<p><u>U.S. Department of Agriculture with appropriate engineering approval authority or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.</u></p>	<p><u>[ , or an employee of a soil and water conservation district with appropriate engineering approval authority ] shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.</u></p>	
<p>9VAC25-192-70 Part III B.8 (Contents of the general permit)</p>	<p><u>8. For waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.</u></p>	<p><u>8. [ Semi-solid and solid waste shall be stored in a manner that prevents contact with surface water and groundwater. Waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:</u></p> <p><u>a. Waste shall be covered to protect it from precipitation and wind;</u></p> <p><u>b. Storm water shall not run onto or under the stored waste;</u></p> <p><u>c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high</u></p>	<p>Amended the language to ensure the regulation provides for adequate controls on semi-solid and solid waste storage. The requirements are consistent with the requirements in the poultry waste regulation (9VAC25-630).</p>

		<p><u>water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X [ <del>10-6</del> 10<sup>-6</sup> ] centimeters per second); and ]</u></p> <p><u>d. ] For waste that is not stored [ in a waste storage facility or ] under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.</u></p>	<p>Amended the permeability rating text to correct a technical error.</p>
<p>NEW 9VAC25-192-90. (Utilization and storage requirements for transferred animal waste)</p>	<p><u>B 1 c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10-6 centimeters per second); and</u></p>	<p><u>B 1 c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored [ poultry ] waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X [ <del>10-6</del> 10<sup>-6</sup> ] centimeters per second); and</u></p>	<p>Amended language to clarify the requirements for animal waste by removing poultry waste so as not to conflict with the poultry waste regulation (9VAC25-630).</p> <p>Amended the permeability rating text to correct a technical error.</p>
<p>NEW 9VAC25-192-90. (Utilization</p>	<p><u>B 1 d. For animal waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage,</u></p>	<p><u>B1 d. For animal waste that is not stored [ in a waste storage facility or ] under roof, the storage site must be at least</u></p>	<p>Amended the language to ensure the regulation provides for adequate controls on semi-solid and solid waste storage. The requirements are consistent with the</p>



<p>and storage requirements for transferred animal waste)</p>	<p><u>wells, sinkholes, rock outcrops, and springs.</u></p>	<p><u>100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.</u></p>	<p>requirements in the poultry waste regulation (9VAC25-630) and the contents of this permit regulation.</p>
<p>NEW 9VAC25-192-90. (Utilization and storage requirements for transferred animal waste)</p>	<p><u>B 4. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer, an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this subsection. This certification shall be maintained on site.</u></p>	<p><u>B 4. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer [ ; or ] an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority [ or an employee of a soil and water conservation district with appropriate engineering approval authority ] shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this subsection. This certification shall be maintained on site.</u></p>	<p>Added "or" to correct the sentence structure after removing "or an employee of a soil and water conservation district with appropriate engineering approval authority" since this is no longer an option due to the USDA-Natural Resources Conservation Service procedural changes.</p>
<p>NEW 9VAC25-192-90. (Utilization and storage requirements for transferred animal waste)</p>	<p><u>C 1 b. Animal waste may be applied to any crop once every three years at a rate of no greater than 80 pounds per acre when:</u></p>	<p><u>C 1 b. Animal waste may be applied to any crop once every three years at a rate of no greater than 80 pounds [ of plant available phosphorus ] per acre when:</u></p>	<p>Amended language to add "of plant available phosphorus" to clarify that the limitation applies to phosphorus.</p>
<p>NEW 9VAC25-192-90. (Utilization and storage requirements for transferred animal waste)</p>	<p><u>(2) The analytical results are from procedures in accordance with 4VAC5-15-150 A 2 f; and</u></p>	<p><u>(2) The analytical results are from procedures in accordance with [ 4VAC5-15-150 A 2 f 4VAC50-85-140 A 2 f ] ; and</u></p>	<p>Due to the transfer of the authority for the Nutrient Management Training and Certification Regulations from the Department of Conservation and Recreation to the Virginia Soil and Water Conservation Board, the Nutrient Management regulations were amended. This amendment included renumbering the regulation (Virginia Register Volume 30, Issue 11, eff. February 26, 2014).</p>

<p>NEW 9VAC25-192-90. (Utilization and storage requirements for transferred animal waste)</p>	<p><u>(3) Nutrients from the waste application do not exceed the nitrogen or phosphorus recommendations for the proposed crop or double crops. The recommendations shall be in accordance with 4VAC5-15-150 A 2 a.</u></p>	<p><u>(3) Nutrients from the waste application do not exceed the nitrogen or phosphorus recommendations for the proposed crop or double crops. The recommendations shall be in accordance with [ <del>4VAC5-15-150 A 2 a</del> 4VAC50-85-140 A 2 a ] .</u></p>	<p>Due to the transfer of the authority for the Nutrient Management Training and Certification Regulations from the Department of Conservation and Recreation to the Virginia Soil and Water Conservation Board, the Nutrient Management regulations were amended. This amendment included renumbering the regulation (Virginia Register Volume 30, Issue 11, eff. February 26, 2014).</p>
<p>NEW 9VAC25-192-90. (Utilization and storage requirements for transferred animal waste)</p>	<p><u>2. The timing of land application of animal waste shall be appropriate for the crop, and in accordance with 4VAC5-15-150 A 4, except that no waste may be applied to ice covered or snow covered ground or to soils that are saturated.</u></p>	<p><u>2. The timing of land application of animal waste shall be appropriate for the crop, and in accordance with [ <del>4VAC5-15-150 A 4</del> 4VAC50-85-140 A 4 ] , except that no waste may be applied to ice covered or snow covered ground or to soils that are saturated.</u></p>	<p>Due to the transfer of the authority for the Nutrient Management Training and Certification Regulations from the Department of Conservation and Recreation to the Virginia Soil and Water Conservation Board, the Nutrient Management regulations were amended. This amendment included renumbering the regulation (Virginia Register Volume 30, Issue 11, eff. February 26, 2014).</p>
<p>FORMS (9VAC25-192)</p>		<p>Amended section to reflect the changes made in 9VAC25-192-60 and 9VAC25-192-90 since the proposed stage</p>	<p>Updated forms: Registration Statements and Animal Waste Fact Sheet to reflect changes since proposed stage.</p>

**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
<p>Wilmer Stoneman – Virginia Farm Bureau – Public Hearing Comment</p>	<p>I am here to speak in favor of renewing the general permit. We do have some concerns. We understand that the end-user program is necessary but feel that the requirements may be too stringent and may prohibit some of the manure transfer activities from taking place. The training requirement is also a concern. The trigger amount of materials for transfer is also an issue – the trigger should be based on an acreage figure (similar to the 10 acre poultry manure limit) – you are not going to be able to cover a lot of acreage with a 6,000 gallon limit. Also opposed to any requirements related to BMPs listed in the Chesapeake Bay WIP. CAFOs and AFOs are already covered in the existing WIP.</p>	<p>The end-user provisions in the proposed regulation are intended to increase the options a permitted farm may use to address nutrient loadings on available land application fields, while providing for the implementation of reasonable best management practices by recipients of manure. The ‘trigger’ amount of manure transfer that requires tracking and BMP implementation for poultry was based on the amount of litter transported in a single transport vehicle of average size (10 tons), not land application area. Similarly, the liquid limit of 6000 gallons was based on size of a single transport vehicle of average size. Additionally, land application of liquid manure requires additional BMPs be employed over that of drier material such as poultry litter in order to prevent runoff, so it is reasonable to not assume equivalent land application areas be exempted from the BMP requirements. No additional BMPs are proposed to be added to the VPA AFO General Permit, § <a href="#">62.1-44.17:1.E</a> of the Code</p>

		<p>of Virginia limits the criteria for design and operation of an AFO, and the BMPs required in the proposed regulation align with the statutory requirements. Additional BMPs identified in the WIP are identified therein as being implemented voluntarily.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation – Public Hearing Comment</p>	<p>CBF finds that the AFO general permit is not consistent with the Virginia Chesapeake Bay TMDL Phase I Watershed Implementation Plan (WIP) (dated November 29, 2010) and the Final Chesapeake Bay Total Maximum Daily Load for Nitrogen, Phosphorus and Sediment (dated December 29, 2010). The State Water Control Board (Board), during their March, 2013 meeting on this proposal, specifically directed DEQ to address the role of this general permit in implementing the WIP. We are disappointed that no additional changes were made to the general permit following that direction from the Board.</p>	<p>The AFO GP as proposed is consistent with the Chesapeake Bay TMDL and WIP, as it mandates certain BMPs required in State Water Control Law that reduce nonpoint source pollution, while the Resource Management Plan program will address site specific voluntary BMP implementation, rather than implement a “one-size-fits-all” approach through the VPA AFO GP. The WIP “Gap Analysis” does not identify the need to require additional BMPs in the VPA AFO GP. At the March 14, 2013 Board meeting, the Board accepted the staff recommendation without any additional directives or modification. Some members did suggest that DEQ consider recommending or encouraging additional BMP implementation, either through permit language or implementation guidance. No additional BMPs are proposed to be added to the</p>

		<p>VPA AFO General Permit as the State Water Control Law limits the criteria for design and operation of an AFO, and the BMPs required in the proposed regulation align with the statutory requirements. DEQ will address promotion of additional voluntary BMPs through implementation guidance.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation – Public Hearing Comment</p>	<p>DEQ has allowed its AFO general permit to serve as compliance with the Clean Water Act, rather than require coverage under a Virginia Pollution Discharge Elimination System (or VPDES) permit. Virginia committed in its WIP (page 71) that while “all AFOs and CAFOs are currently covered by VPA permit,” DEQ would convert “CAFOs that discharge or propose to discharge” to VPDES permit coverage. Yet, three years after issuance of the WIP, no such conversions have been completed. As a “de facto” Clean Water Act permit recognized as a “gray area” by the Water Control Board and Director Paylor during the March, 2013 meeting, the AFO general permit must provide consistency with the federal Clean Water Act and the Chesapeake Bay TMDL.</p>	<p>9VAC25-31-130 of the VPDES Permit Regulation specifies that “[t]he owners or operators of a CAFO shall not discharge unless the discharge is authorized by a VPDES permit.” If a farm discharges, the VPA AFO GP is not a substitute for a VPDES permit. DEQ has been working cooperatively with EPA in development and drafting of VPDES CAFO individual permits, all in light of continuing evaluation (some involving litigation) regarding what constitutes a discharge that would require the owner or operator to hold a VPDES Permit. As the VPA AFO GP is not a substitute for a VPDES CAFO permit, the VPA AFO GP regulation is drafted for consistency with Virginia law, not the federal Clean Water Act. The components proposed in the VPA AFO General Permit are</p>

		<p>consistent with the regulatory descriptions in the Chesapeake Bay TMDL WIP.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation – Public Hearing Comment</p>	<p>CBF cannot support the proposed AFO general permit as it fails to require any new implementation of best management practices (bmps) by animal feeding operations as committed in the Commonwealth’s WIP. We believe that the proposed general permit will undermine Virginia’s commitment for aggressive implementation of bmps on agricultural land. Virginia’s commitment, for example, calls for 95 percent coverage of stream protection with fencing by 2025, yet the proposed AFO general permit is silent on this issue.</p>	<p>§ <a href="#">62.1-44.17:1</a>.E outlines the BMPs that will be contained in the VPA AFO GP; additional BMPs referenced in the WIP are not authorized by this statute to be included in the VPA AFO GP. The WIP does not call out the VPA AFO GP as the vehicle to cause additional BMP implementation, but rather voluntary programs such as the Resource Management Plan program.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation – Public Hearing Comment</p>	<p>CBF questions whether Virginia can achieve its agriculture bmp implementation commitments (Table 5.4-1, page 57, of the WIP) or the agriculture sector target loads for nitrogen, phosphorus, and sediment by milestone period (Table 5.4-4, page 61 of the WIP).</p>	<p>The WIP outlines the suite of programs that will be used to meet the pollution reduction goals. The WIP also describes additional measures that may be implemented if goals are not being met.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation – Public Hearing</p>	<p>Over the past two years, the Chesapeake Bay TMDL and Virginia WIP have driven <u>stronger but achievable</u> restrictions in <u>all important sectors</u> on numerous regulated activities, including a new Watershed General Permit for Wastewater Treatment Plants, a new industrial stormwater general permit, a new</p>	<p>The content of the VPA AFO GP is governed by a separate section of State Water Control Law than the other general permits mentioned, and the GP is designed to be used in conjunction with other agricultural programs to</p>

<p>Comment</p>	<p>construction general permit, and multiple pending MS4 permits. The proposed AFO general permit departs from this rule. The Board should seize this opportunity to improve the VPA permit and ensure that AFOs, like all other stakeholders, do their fair share.</p>	<p>achieve the goals outlined in the WIP.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Brad Copenhaver – VA Agribusiness Council</p>	<p>We represent 40,000 farmers and agribusinesses – representatives of the Council served on the Technical Advisory Committee for this General Permit – We support extending the permit – the Council did not support the requirement for additional BMPs as identified in the Chesapeake Bay Watershed Implementation Plan – there are many operators with rented lands which would make it difficult to implement BMPs – also the Code is specific about not allowing additional BMP requirements – also these regulations apply across the state and it would be inappropriate to require Chesapeake Bay WIP BMPs outside of the Bay watershed – the Regulation as proposed provides adequate water quality protection – urge the SWCB to approve the regulation as proposed – we will be submitting written comments before the end of the comment period.</p>	<p>DEQ acknowledges the support.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>John Stelzl – Fair View &amp; Springhill Farms, Stephens City</p>	<p>As a current holder of a Virginia Pollution Abatement Permit for my CAFO I would like to go on record as being in support of the proposed changes now being considered for the revised permits. Modeling the transfer requirements for liquid nutrients after poultry is a positive step forward. I would encourage the policy makers to make these changes as user friendly as possible so that they can be effective in putting nutrients where they are needed in a reasonable and timely fashion.</p>	<p>DEQ acknowledges the support.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>John Stelzl – Fair View &amp; Springhill</p>	<p>Under the current permit requirements manure sampling is required once a year while soil sampling is once in three</p>	<p>DEQ cannot reduce the frequency of waste monitoring in this regulatory action, as</p>

<p>Farms, Stephens City</p>	<p>years. The animals are fed a consistent ration with little variance in nutrient content. It would be logical to make both soil and manure sampling required every three years, as that is when the NMP for a CAFO is revised and would reflect any application rate changes.</p>	<p>Subsection E. 4 of <a href="#">§ 62.1-44.17:1</a> of the Code of Virginia states that <i>(i) waste shall be monitored at least once per year.</i> Additionally, monitoring waste is a valuable tool for nutrient management tool and for evaluating the performance of a waste system. <b><i>No changes are being proposed to address these comments.</i></b></p>
<p>John Stelzl – Fair View &amp; Springhill Farms, Stephens City</p>	<p>I would also like to go on record as saying that all of my business encounters with the personnel of DEQ and DCR in connection with our CAFO have been positive. I have always been treated with courtesy and respect and have been made to feel that we are a partnership. I truly appreciate this balanced approach by the State.</p>	<p>DEQ acknowledges the support.  <b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Roger Jefferson – Mt. View Farms</p>	<p>What is being proposed may make sense but I am concerned over the record keeping requirements that are being proposed. We don't need to be bogged down with more and more record keeping. We don't need more record keeping or more regulations – we do a good job ourselves.</p>	<p>DEQ feels that additional recordkeeping is necessary to ensure compliance with the new proposed options such as transferring animal waste or bringing off-site generated waste to the facility for treatment. The new recordkeeping items are only required when the owner of the facility transfers animal waste or brings off-site generated waste to the facility. The new recordkeeping items are consistent with the poultry waste regulation (9VAC25-630). <b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Don Gardner – Veterinarian and Member of the Bedford Agricultural Development Advisory Board</p>	<p>Highly supportive of the proposal to allow liquid manure to be transferred – very supportive of the proposal to allow transfer of manure and therefore nutrients from a producer to an end-user on another site – have had the opportunity to do just that in the past but have not been able to under the</p>	<p>DEQ acknowledges the support. <b><i>No changes are being proposed to address these comments.</i></b></p>



	current regulations.	
Doug Mayhugh – Mtn Valley Farm	Farm Bureau is supportive of these amendments. The proposed amendments provide a workable solution for a lot of farmers who may be running out of available land area to spread their manure by allowing for the transfer of the manure to another site/neighbor – support the proposed amendments.	DEQ acknowledges the support. <b>No changes are being proposed to address these comments.</b>
Shana Jones, Director - Virginia Coastal Policy Clinic at W&M Law School	Virginia Law Requires Implementation of the Bay TMDL and WIPs, Legally Requiring the State to Enact the Provisions and Practices Found within the Plan: Prior to the Bay TMDL process, Virginia enacted a law affirmatively requiring the state to implement TMDLs and the Bay TMDL and Phase I WIP within the law’s requirements. Virginia’s Water Quality Monitoring, Information and Restoration Act requires the State Water Control Board to: “develop and implement [a plan] pursuant to a schedule total maximum daily loads of pollutants that may enter the water for each impaired water body as required by the Clean Water Act.” The plan must be developed and implemented “to achieve fully supporting status for impaired waters,” and must include elements including target achievement dates, measurable goals, necessary corrective actions, and associated costs, benefits, and environmental impact of addressing water impairment. In other words, the statute requires Virginia’s SWCB to develop and implement a plan that matches the description of the Phase I WIP, which acts as a roadmap to implement the Bay TMDL. In enacting this statute, Virginia provided a foundation independent of the CWA that compels the Commonwealth, to implement the	The plan developed and implemented includes the VPA AFO GP as one component of that plan. The VPA AFO GP is consistent with the Chesapeake Bay TMDL and WIP, as it mandates certain BMPs required in State Water Control Law that reduce nonpoint source pollution, while the Resource Management Plan program will address site specific voluntary BMP implementation, rather than implement a “one-size-fits-all” approach through the VPA AFO GP.  <b>No changes are being proposed to address these comments.</b>

	<p>standards and practices identified in the Bay TMDL and WIPs in order to meet its milestones in 2017 and 2025.</p>	
<p>Shana Jones, Director - Virginia Coastal Policy Clinic at W&amp;M Law School</p>	<p>Virginia can provide reasonable assurances to the EPA that its AFO regulatory program is sufficient by including certain BMPs in the VPA general permit. The 2014 revision presents an opportunity to strengthen the general permit to meet Virginia’s milestone commitments under the Virginia WIP, and responsibilities under the Bay TMDL. In presenting an opportunity, the 2014 revisions also presents a risk. If the EPA determines that Virginia is not effectively implementing the Bay WIPs or meeting their milestones, EPA has the authority to withhold funding or take additional backstop measures, such as expanding the coverage of the federal permits (in Virginia, VPDES permits), increasing oversight of any VPDES permits, requiring additional pollution reductions from point sources or revising water quality standards, or increasing federal enforcement in the watershed. Because the VPA general permit program is the primary means to implement an effective AFO waste management scheme, and because the 2014 permit will remain in effect until 2024, it must be strengthened to reasonably assure to the EPA that Virginia will meet its obligations and commitments under the Bay TMDL and WIP.</p>	<p>The VPA AFO GP is one of a suite of programs designed to provide reasonable assurance to EPA that water quality goals are being met. BMPs included in the proposed reissuance of the VPA AFO GP Regulation are those consistent with § <a href="#">62.1-44.17:1</a> of the Code of Virginia.</p> <p>9VAC25-31-130 of the VPDES Permit Regulation specifies that “[t]he owners or operators of a CAFO shall not discharge unless the discharge is authorized by a VPDES permit.” If a farm discharges, the VPA AFO GP is not a substitute for a VPDES permit. DEQ has been working cooperatively with EPA in development and drafting of VPDES CAFO individual permits, all in light of continuing evaluation (some involving litigation) regarding what constitutes a discharge that would require the owner or operator to hold a VPDES Permit. As the VPA AFO GP is not a substitute for a VPDES CAFO permit, the VPA AFO GP regulation is drafted for consistency with Virginia law, not the federal Clean Water Act.</p> <p>DEQ acknowledges that additional mandatory measures may have to be</p>

		<p>implemented in the future if goals are not met. The WIP does not presuppose that additional mandatory measures will be necessary. DEQ may reopen the VPA AFO GP Regulation prior to the end of the ten year term if necessary to mandate additional requirements.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Shana Jones, Director - Virginia Coastal Policy Clinic at W&amp;M Law School</p>	<p>Although the VPA Provisions in Virginia’s State Water Control Law Prescribe the Contents of the General Permit, They Still Allow for the Inclusion of Important Phase I WIP BMPs. While the contents of the general permit are prescribed by state statute, many BMPs identified in the Phase I WIP can be added or strengthened within that framework. As the State Water Control Law provides the statutory basis for the VPA permit program, the VPA regulations accordingly must conform to the priorities and standards set out by the legislature in that statute. Some of these criteria are specific in what the general permit shall require. However, some criteria rely on the SWCB’s discretion, enabling it to introduce additional requirements beyond the minimum standards identified, or define the practices that are adequate or necessary. The latter provisions provide an opportunity to include some of the BMPs and priority practices identified in the Phase I WIP into the general permit. For example, one provision in the State Water Control Law states that the VPA general permit shall require “adequate buffer zones” between where operators are allowed to apply waste and features that are</p>	<p>The AFO GP as proposed is consistent with the Chesapeake Bay TMDL and WIP, as it mandates certain BMPs required in State Water Control Law that reduce nonpoint source pollution.</p> <p>§ <a href="#">62.1-44.17:1</a>.E.3. of the Code of Virginia specifies that “[a]dequate buffer zones, where waste shall not be applied, shall be maintained between areas where waste may be applied and (i) water supply wells or springs, (ii) surface water courses, (iii) rock outcroppings, (iv) sinkholes, and (v) occupied dwellings unless a waiver is signed by the occupants of the dwellings. The statute does not include authorization for a mandatory setback for animal access, only land application of waste.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>

	<p>likely to lead to harm to water quality or human health. One WIP priority practice and BMP, stream fencing, supports farmers in ensuring that these buffer zones are “adequate”. The Phase I WIP commits Virginia to have 45% of streams on agricultural land in Virginia streams fenced by 2017, and 95% fenced by 2025. AS of 2009, 15% of streams on agricultural lands were adequately fenced. By 2013, the milestone target requires only 18.6% of these streams to be adequately fenced. This means stream fencing needs to increase nearly 2.5 times to meet the 2017 milestone expectation, and over 5 times to meet the 2025 expectation. Strengthening the general permit by adding stronger stream fencing provisions is the easiest – and perhaps only – way to satisfy Virginia’s commitment under the WIP.</p>	
<p>Shana Jones, Director - Virginia Coastal Policy Clinic at W&amp;M Law School</p>	<p>Another provision in the statute gives significant discretion given to the Board to determine the structure and content of on-site nutrient management plans, specifying certain minimum criteria, such as that the plans include “storage and land area requirements” and “nutrient management sampling including soil and waste monitoring.” It does not however limit or specifically define what those requirements must be. Several BMPs relating to AFOs could be introduced or strengthened through this authority. By including requirements in the VPA general permit that require implementation of these BMPs on permitted AFOs, Virginia can move closer to achieving these milestones, providing reasonable assurance that it is on target to meet its WIP commitments.</p>	<p>The structure and content of nutrient management plans required by the VPA AFO GP are outlined by § <a href="#">62.1-44.17:1</a>.E.3. and the DCR Nutrient Management Regulations 4VAC5-15. The regulatory action to reissue the VPA AFO GP cannot change the requirements specified in the DCR regulations.</p> <p>§ <a href="#">62.1-44.17:1</a>.E of the code of Virginia does constrain the VPA AFO GP to “<i>establish criteria for the design and operation of confined animal feeding operations <b>only as described in subsection E</b></i>” (emphasis added).</p> <p><b><i>No changes are being proposed to address these</i></b></p>

		<i>comments.</i>
Jason Carter, Virginia Cattlemen's Association	The Cattlemen supports extending the permit as amended for 10 years.	DEQ acknowledges the support. <b>No changes are being proposed to address these comments.</b>
Jason Carter, Virginia Cattlemen's Association	There was disagreement about the thresholds that would trigger recordkeeping and utilization requirements for animal waste transferred offsite. One concern that was raised was that thresholds that are too low would actually contradict the purpose of establishing a transfer program. Furthermore, any notions of basing this threshold on the number of acres the waste is applied to by an end-user would complicate this process significantly and effect both compliance and enforceability. The Cattlemen supports the threshold requirements as they are proposed.	DEQ acknowledges the support. <b>No changes are being proposed to address these comments.</b>
Jason Carter, Virginia Cattlemen's Association	There were members of the TAC that advocated for the permit to include the mandate of Best Management Practices (BMPs) as listed within the Chesapeake Bay Watershed Implementation Plan (WIP). However, the Cattlemen, along with many other members of the TAC did not support this proposal, as many operators of AFO's are utilizing rented land over which they have no control of many practices, such as stream exclusion and vegetated buffers. Furthermore, the Code is explicit in what requirements can be included in a general permit regulation and does not allow for the addition of BMP requirements. This permit also covers operations across the state, not just those that lie within the Bay watershed, making it inappropriate to apply these standards to this regulation. Finally, the BMPs contained in the WIP are meant to be voluntarily implemented, and	DEQ acknowledges the support. <b>No changes are being proposed to address these comments.</b>

	mandating them would be counter to this specification. This proposal was not included in the final amended regulations, and the Cattlemen would like to see this remain unchanged.	
Katie K. Frazier – Virginia Agribusiness Council	The Council supports extending the permit as amended for 10 years.	DEQ acknowledges the support. <b>No changes are being proposed to address these comments.</b>
Katie K. Frazier – Virginia Agribusiness Council	There was disagreement about thresholds that would trigger recordkeeping and utilization requirements for animal waste transferred offsite. One concern that was raised was that thresholds that are too low would actually contradict the purpose of establishing a transfer program. Furthermore, any notions of basing this threshold on the number of acres the waste is applied to by an end-user would complicate this process significantly and effect both compliance and enforceability. The Council supports the threshold requirements as they are proposed.	DEQ acknowledges the support. <b>No changes are being proposed to address these comments.</b>
Katie K. Frazier, President – Virginia Agribusiness Council	There were members of the TAC that advocated for the permit to include the mandate of Best Management Practices (BMPs) as listed within the Chesapeake Bay Watershed Implementation Plan (WIP). However, the Council, along with many other members of the TAC did not support this proposal, as many operators of AFO’s are utilizing rented land over which they have no control of many practices, such as stream exclusion and vegetated buffers. Furthermore, the Code is explicit in what requirements can be included in a general permit regulation and does not allow for the addition of BMP requirements. This permit also covers operations across the state, not just those that lie within the Bay watershed,	DEQ acknowledges the support. <b>No changes are being proposed to address these comments.</b>

	<p>making it inappropriate to apply these standards to this regulation. Finally, the BMPs contained in the WIP are meant to be voluntarily implemented, and mandating them would be counter to this specification. This proposal was not included in the final amended regulations, and the Council would like to see this remain unchanged.</p>	
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p><b>CBF opposes issuance of this proposed VPA General Permit for AFOs without significant modification.</b> CBF finds that the AFO VPA General Permit is not consistent with the Virginia Chesapeake Bay Total Maximum Daily Load Phase I Watershed Implementation Plan (WIP) (dated November 29, 2010) and the Final Chesapeake Bay Total Maximum Daily Load (TMDL) for Nitrogen, Phosphorus and Sediment (dated December 29, 2010). The Board, at its March 14, 2013 meeting during which this proposal was discussed, specifically directed DEQ staff to address the role of this general permit in implementing the WIP. We are disappointed that no modifications were made to the proposed AFO VPA General Permit following that direction from the Board. CBF, therefore, maintains its longstanding position that the proposed AFO VPA General Permit is not consistent with the WIP and, thus, not consistent with the State Water Control Law and the federal Clean Water Act.</p>	<p>The AFO GP as proposed is consistent with the Chesapeake Bay TMDL and WIP, as it mandates certain BMPs required in State Water Control Law that reduce nonpoint source pollution, while the Resource Management Plan program will address site specific voluntary BMP implementation, rather than implement a “one-size-fits-all” approach through the VPA AFO GP. The WIP “Gap Analysis” does not identify the need to require additional BMPs in the VPA AFO GP. At the March 14, 2013 Board meeting, the Board accepted the staff recommendation without any additional directives or modification. Some members did suggest that DEQ consider recommending or encouraging additional BMP implementation, either through permit language or implementation guidance. No additional BMPs are proposed to be added to the VPA AFO General Permit as the State Water Control Law limits the criteria for design and operation of an AFO, and the BMPs required in the</p>

		<p>proposed regulation align with the statutory requirements. DEQ will address promotion of additional voluntary BMPs through implementation guidance.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p><b>First, CBF finds that the AFO VPA General Permit must provide greater consistency with the federal Clean Water Act and the Chesapeake Bay TMDL by specifying a waste load allocation (WLA) for animal feeding operations.</b> The TMDL, on pages 8-28, clearly states that “Virginia shifted the entire AFO load into the WLA ...” during negotiations with the Environmental Protection Agency regarding Virginia’s final WIP, and it also allocated annual aggregate WLAs in Virginia for “regulated agriculture” (TMDL, Appendix Q). While a WLA is typically reserved for activities regulated pursuant to a Virginia Pollution Discharge Elimination System (or VPDES) permit, Virginia has utilized the AFO VPA program as a surrogate for the VPDES program for Confined Animal Feeding Operations (CAFOs). In fact, Virginia’s WIP indicates on page 71 that “all AFOs and CAFOs are currently covered by VPA permits....” While the WIP also states that DEQ will convert “CAFOs that discharge or propose to discharge” to VPDES permit coverage, to date no such conversions have been completed. As a “de facto” VPDES permit, the AFO VPA General Permit must provide consistency with the federal Clean Water Act and the Chesapeake Bay TMDL. The Board and DEQ Director publicly recognized</p>	<p>Facilities covered by the VPA AFO GP are those that do not have a point source discharge to surface waters; point sources require assignment of a WLA. In development of the TMDL, Virginia acknowledged that some farms currently permitted under the VPA program may need to be covered under the VPDES program if it was determined that the farm discharged. In order to account for this future shift for some facilities into the need for a WLA under a VPDES permit (essentially an administrative exercise rather than growth in the number of new discharging CAFOs), the AFO load was accounted for in the WLA so that any load attributed to point sources rather than nonpoint sources would not appear to be “new” discharges.</p> <p>9VAC25-31-130 of the VPDES Permit Regulation specifies that “[t]he owners or operators of a CAFO shall not discharge unless the discharge is authorized by a</p>



	<p>this as a “gray area” during the Board’s meeting on March 14, 2013.</p>	<p><i>VPDES permit.”</i> If a farm discharges, the VPA AFO GP is not a substitute for a VPDES permit. DEQ has been working cooperatively with EPA in development and drafting of VPDES CAFO individual permits, all in light of continuing evaluation (some involving litigation) regarding what constitutes a discharge that would require the owner or operator to hold a VPDES Permit. As the VPA AFO GP is not a substitute for a VPDES CAFO permit, the VPA AFO GP regulation is drafted for consistency with Virginia law, not the federal Clean Water Act.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p><b>Secondly, the pollutant management requirements imposed on AFOs covered under the AFO VPA General Permit must be expanded to include best management practices (BMPs) required in the WIP and Chesapeake Bay TMDL.</b> CBF finds that the proposed AFO VPA General Permit will undermine Virginia’s commitment for aggressive implementation of BMPs on agriculture land. For instance, according to Virginia’s WIP (page 57), only 15 percent of the streams located on Virginia’s agricultural land are currently fenced. In order to comply with the TMDL and WIP, 45 percent of the streams on agricultural land must be fenced by 2017 and 95 percent of the streams must be fenced by 2025. Virginia’s commitment requires that</p>	<p>The AFO GP as proposed is consistent with the Chesapeake Bay TMDL and WIP, as it mandates certain BMPs required in State Water Control Law that reduce nonpoint source pollution, while the Resource Management Plan program will address site specific voluntary BMP implementation, rather than implement a “one-size-fits-all” approach through the VPA AFO GP.</p> <p>Further, § <a href="#">62.1-44.17:1.E.3</a>. of the Code of Virginia specifies that “[a]dequate buffer zones, where waste</p>

	<p>farms managing more than 20 cows (or 58 percent of all farms that manage cattle) exclude access to riparian waterways (WIP, page 63). Without such a requirement for those operations that are currently regulated by state and federal law, it is doubtful that, and in fact calls into question whether, DEQ will be able to secure stream fencing on small AFOs, as called for in Virginia’s <i>Small AFO Evaluation and Assessment Strategy</i>. Without such a requirement in the AFO VPA General Permit, it is also doubtful that Virginia will meet its 2017 or 2025 agriculture BMP implementation commitments (WIP, Table 5.4-1, page 57) or the agriculture sector target loads for nitrogen, phosphorus, and sediment by milestone periods (WIP, Table 5.4-4, page 61). If the WIP target loads are not reached, Virginia has indicated that “authorization to develop and implement mandatory actions or programs will be requested from the legislature” (WIP, page 59).</p>	<p><i>shall not be applied, shall be maintained between areas where waste may be applied and (i) water supply wells or springs, (ii) surface water courses, (iii) rock outcroppings, (iv) sinkholes, and (v) occupied dwellings unless a waiver is signed by the occupants of the dwellings.</i> The statute does not include authorization for a mandatory setback for animal access, only land application of waste.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p><b>CBF maintains its recommendation that the AFO VPA General Permit incorporate requirements for the “stream protection with fencing” BMP to be completed by the end of the permit cycle.</b> Stream fencing is a critical step in protecting local waterways and the Chesapeake Bay from fecal contamination, erosion of stream banks, and phosphorus and nitrogen pollutants contained in animal waste. Further, recognizing the statutory responsibility of the State Water Control Board, assisted by DEQ, to “implement a plan to achieve fully supporting status for impaired waters,” (§ 62.1-44.19:7) we continue to call upon the Board and DEQ to fully evaluate the applicability of the other agriculture BMPs called for in Virginia’s</p>	<p>DEQ acknowledges that additional mandatory measures may have to be implemented in the future if goals are not met. The WIP does not presuppose that additional mandatory measures will be necessary. DEQ may reopen the VPA AFO GP Regulation prior to the end of the ten year term if necessary to mandate additional requirements. The existing regulatory review process provides a mechanism for reopening a general permit. An example of this process is the regulatory action taken to amend the VPA General</p>

	<p>WIP to the current AFO VPA General Permit. The Board must implement its authority to require BMPs to prevent the discharge of pollutants into state waters. <b>Alternatively, DEQ and the Board must commit in the body of the permit to re-open the AFO VPA General Permit if Virginia fails to achieve its 2017 agriculture BMP implementation commitments (Table 5.4-1, page 57, of the WIP) or its 2017 agriculture sector target loads for nitrogen, phosphorus, and sediment (Table 5.4-4, page 61 of the WIP).</b></p>	<p>Permit Regulation for Poultry Waste Management when it became necessary to address BMPs employed by end-users of poultry litter. The use of BMPs by end-users was recommended prior to the regulatory amendment but became mandatory following the amendment.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p><b>DEQ and stakeholder reasoning for failing to include additional BMPs from the WIP in the proposed AFO VPA General Permit as noted in public meetings and the “Tentative Agenda and Minibook, State Water Control Board Meeting, Thursday, March 14, 2013,” page 13, are simply inadequate.</b> While the Virginia Code § 62.1-44.17:1 specifies requirements that are to be included in the AFO VPA General Permit, Virginia Code §62.1-44.19:7A mandates that “the Board shall develop <b>and implement</b> a plan to achieve fully supporting status for impaired waters” [emphasis added]. The Commonwealth’s current rate of implementation of the “stream protection with fencing” BMP remains far behind the 2017 and 2025 implementation goals. Therefore, failing to require AFOs to implement stream fencing will ensure that the Commonwealth fails to fully implement the WIP.</p>	<p>The plan developed and implemented includes the VPA AFO GP as one component of that plan. The VPA AFO GP is consistent with the Chesapeake Bay TMDL and WIP, as it mandates certain BMPs required in State Water Control Law that reduce nonpoint source pollution, while the Resource Management Plan program will address site specific voluntary BMP implementation, rather than implement a “one-size-fits-all” approach through the VPA AFO GP.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake</p>	<p>Stream fencing is critical to ensuring an adequate buffer: ensuring that cattle do not compromise riparian vegetation or apply waste within the buffer zone. The AFO VPA General Permit clearly authorizes DEQ to approve “other site-</p>	<p>The authorization to approve an alternative to the 100 foot setback or 35 foot vegetated buffer is provided solely in the context of providing options for setbacks applied</p>

<p>Bay Foundation</p>	<p>specific conservation practices ... that will provide pollutant reductions equivalent or better than reductions that would be achieved by the 100-foot buffer, or 35-foot wide vegetated buffer” (9VAC25-192-70).</p>	<p>to land applied manure. If the operator of a land application site were to utilize stream fencing in coordination with BMPs that provide pollutant reductions equivalent or better than reductions that would be achieved by the 100-foot buffer, or 35-foot wide vegetated buffer, this practice could be approved under the proposed VPA AFO GP.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p>DEQ can establish different standards for AFOs located within the Chesapeake Bay watershed from AFOs located within the Southern Rivers watershed; therefore, the reasoning for excluding additional WIP BMPs that this proposed AFO VPA General Permit covers operations across the state, is simply not justified. DEQ operates other regulatory permits, such as the Construction General Permit, that impose specific requirements for discharges to impaired waters that are not applicable to other waters.</p>	<p>DEQ acknowledges that separate requirements could be developed; however, there is inherent value in consistency of regulatory requirements when similar goals for water quality protection exist. The basis for not including additional measures for AFOs in the Chesapeake Bay watershed is not based solely on consistency issues.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p>DEQ points to the Resource Management Plan regulations promulgated by the Soil and Water Conservation Board as the tool for promoting additional voluntary implementation of the agricultural BMPs called for in the WIP. However, the Soil and Water Conservation Board at their November 21, 2013 meeting indefinitely suspended the Resource Management Plan regulations. Therefore, the Commonwealth cannot</p>	<p>The Resource Management Plan regulations have not been repealed, and will be implemented as a component of the WIP. DEQ agrees that neither the VPA AFO GP nor the Resource Management Plan program independently suffice to meet WIP goals. The programs are part of a suite of mandatory and voluntary</p>

	<p>rely solely on the Resource Management Plan regulations as the tool for reaching the WIP’s aggressive implementation goals for agricultural BMPs, particularly stream fencing.</p>	<p>programs.  <b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p>TAC members have expressed concerns that mandating additional BMPs would bring undue burden to owners of AFOs since much of the land they operate to manage their livestock and raise their crops is rented or leased. It was suggested that by not owning the properties, the owners of the AFOs would be unable to guarantee implementation of the additional BMPs. Yet, the AFO VPA General Permit already mandates very specific requirements for other infrastructure requiring an investment on rented or leased land, such as adequate buffers, liquid manure collection facilities, and implementation of a nutrient management plan.</p>	<p>While not always the case, it is more common that the primary location of required waste handling facilities is on property owned by the permit holder, facilitating installation and maintenance of those facilities. Implementation of a nutrient management plan, including adherence to required setbacks for land applied manure, are behavioral practices under the control of the operator at the time he is managing the stored manure. Installation and maintenance of stream fencing is more common on land rented for land application or livestock grazing, and could involve installation and maintenance of hardware not under the direct control of the operator.  <b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p>Section 9VAC25-192-70 B-8 of the AFO VPA General Permit must more clearly prohibit waste storage unless adequately covered. Unlimited amounts of waste should not be authorized to be stored outdoors for a significant, undetermined period without adequate coverage to prevent polluted runoff regardless of the requirement for a 100-foot buffer. Inadequately covered wastes will allow transport of nutrient and bacterial pollutants from the storage site during rain events,</p>	<p>9VAC25-192-70.B.8 was added to mirror the requirement in the VPA Poultry Waste General Permit Regulation that addresses short term storage of litter piles outside a waste storage structure designed to prevent runoff to surface waters. Manure storage facilities in the VPA AFO GP are already required to include design</p>

	<p>potentially polluting state waters. Several studies have shown that vegetative buffers are not always capable of fully capturing and containing pollutants and that they may need to be greater than 100 feet wide to provide significant nutrient removal. See, e.g., Department of Soil Science, North Carolina State University, "Riparian Buffers: What Are They And How Do They Work?" Section 9VAC25-192-70 B-8 should incorporate more specifically language that is found under "Storage Requirements" in the proposed "Fact Sheet Requirements for Animal Waste Use and Storage."</p>	<p>requirements that prevent discharges. The added requirement in the VPA AFO GP for waste storage setbacks was intended to address situations analogous to the uncovered litter pile, such as additional waste brought on to the farm, or storage of waste outside a manure storage facility designed to prevent runoff. DEQ agrees that proper waste storage must include mechanisms to prevent transport of pollutants to state waters, and that buffers alone may not be adequate, thus the requirement for properly designed and operated waste storage facilities that include freeboard management for liquid facilities and runoff diversion.</p> <p>The Fact Sheet and regulation mirror each other, as the fact sheet only includes requirements made mandatory by the regulation.</p> <p><b>In response to these and other comments, DEQ modified the definition of "waste storage facility" to be more inclusive of the type of wastes managed therein, and the requirement for stored waste in 9VAC25-192-70.B.8 was modified to be more clear that the setback is only a measure in lieu of storage in an approved facility, and to limit storage</b></p>
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		<p><b>to 14 days when such storage is outside an approved storage facility.</b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p>In section 9VAC25-192-70 B-10, the AFO VPA General Permit fails to provide any indication as to how DEQ will determine approval of a waste treatment process. There is no clarity in the regulations as to how and under what standards or circumstances a waste treatment process on an AFO will be considered appropriate. Without clarity in the AFO VPA General Permit, neither farmers nor the general public will have any guidance on whether or not a waste treatment process is appropriate and under what circumstances a waste treatment process will be authorized by DEQ.</p>	<p>Subsection E. of <a href="#">§ 62.1-44.17:1</a> of the Code of Virginia outlines the operational requirements for design and operation of a regulated animal feeding operation. DEQ recognized that alternatives to traditional waste treatment and storage in anaerobic lagoons, manure pits, above ground storage tanks are emerging, and did not want eligibility for the general permit to be nullified by implementation of new technology, as long as the requirements mandated by State Water Control Law were met. DEQ will review a waste treatment or storage facility based on whether or not the design and operation will meet the requirements of the statute to be protective of state waters, as well as any applicable standard employed by the USDA-NRCS.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p>CBF understands that the Environmental Protection Agency (EPA) is currently undertaking an assessment of Virginia’s “AFO and CAFO programs to determine whether they are consistent with the Clean Water Act NPDES requirements and are implemented effectively to achieve the jurisdiction’s animal-agriculture Watershed Implementation Plan (WIP)</p>	<p>EPA has not yet completed its assessment; therefore, consideration of changes to the VPA AFO GP as a result of EPA’s findings will not occur during this regulatory action.</p> <p><b><i>No changes are being</i></b></p>

	<p>commitments to reduce nitrogen, phosphorus, and sediment” pursuant to the May 28, 2013 “Modification Of Settlement Agreement, Fowler et al. v. EPA.” We, therefore, find it suitable for DEQ and the Board to incorporate findings from EPA’s assessment, as appropriate, in the final AFO VPA General Permit.</p>	<p><b><i>proposed to address these comments.</i></b></p>
<p>Ann F. Jennings, Virginia Executive Director – Chesapeake Bay Foundation</p>	<p>CBF incorporates by reference, review and comments provided by the Virginia Coastal Policy Clinic at William &amp; Mary Law School entitled, “Strengthening the VPA General Permit: Managing Animal Feeding Operations in Virginia to Meet State Law and the Bay TMDL,” Fall 2013 (Cannon, R. and Kane, J.), submitted January 21, 2014.</p>	<p>DEQ acknowledges CBF’s concurrence with the named comments, and responses are provided above.</p>
<p>Jeff Kelble – Shenandoah Riverkeeper – Potomac Riverkeeper, Inc.</p>	<p>Shenandoah Riverkeeper is concerned that the proposed GP does not go far enough to protect water quality from AFO pollution, and that the GP will be inadequate to meet Virginia’s Chesapeake Bay total maximum daily load (Bay TMDL) commitments for this sector.</p>	<p>The VPA AFO GP is only one component of the overall plan to address the Chesapeake Bay TMDL. The VPA AFO GP is consistent with the Chesapeake Bay TMDL and WIP, as it mandates certain BMPs required in State Water Control Law that reduce nonpoint source pollution, while the Resource Management Plan program will address site specific voluntary BMP implementation, rather than implement a “one-size-fits-all” approach through the VPA AFO GP.</p> <p>DEQ agrees that neither the VPA AFO GP nor the Resource Management Plan program independently suffice to meet WIP goals. The programs are part of a suite of mandatory and voluntary programs.</p>



		<p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Jeff Kelble – Shenandoah Riverkeeper – Potomac Riverkeeper, Inc.</p>	<p>Virginia’s Phase 1 and Phase 2 Watershed Implementation Plans (WIPs) for the Bay TMDL indicate that AFOs throughout Virginia’s portion of the Bay watershed will need to widely implement several suites of best management practices (BMPs) to meet the state’s Bay goals. Specifically, Virginia established five key sets of BMPs and stated that “[i]mplementation of agricultural BMPs approaching the highest practicable levels is necessary to achieve nutrient and sediment reduction thresholds.”<sup>1</sup> Virginia’s top-priority BMPs include nutrient management, vegetative buffers, and livestock stream exclusion.<sup>2</sup> While the proposed GP requires permitted AFOs to follow nutrient management plans and maintain buffers between waste application and waterways in some circumstances, it falls far short of what the state indicated would be necessary in its WIPs. The proposed GP will be in effect for ten years – until 2024 – and thus the state will need to have these practices fully implemented by the end of this permit term to meet the Bay TMDL’s 2025 goals. If the state has fallen behind on its agricultural loading progress in 2017 due to reliance on voluntary BMP implementation or assumed reductions from other sectors, it will be very difficult to take necessary corrective actions and meet TMDL goals. To achieve this wide BMP implementation the final GP should require livestock stream exclusion fencing at all permitted AFOs. Virginia’s Phase I WIP states that the state will require 95% stream protection with fencing by 2025 to meet Bay goals;</p>	<p>The VPA AFO GP is only one component of the overall plan to address the Chesapeake Bay TMDL, and thus does not include the entire suite of practices identified in the WIP.</p> <p>DEQ acknowledges that additional mandatory measures may have to be implemented in the future if goals are not met. The WIP does not presuppose that additional mandatory measures will be necessary. DEQ may reopen the VPA AFO GP Regulation prior to the end of the ten year term if necessary to mandate additional requirements.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>

	<p>unless the agency amends the proposed GP to require AFOs to install such stream protection fencing, the state will almost certainly fail to meet this goal.</p>	
<p>Jeff Kelble – Shenandoah Riverkeeper – Potomac Riverkeeper, Inc.</p>	<p>The final GP should also require vegetative buffers between waste application and all conduits to surface waters, rather than only between application areas and surface waters themselves. The proposed GP language fails to establish setbacks or buffers between waste application and intermittent streams, ditches or tile lines that drain to surface waters downstream.</p>	<p>The land application setback requirements from surface waters were modeled after language used in the federal regulations pertaining to CAFOs. This language provides adequate flexibility to ensure that discharges to surface waters are avoided, and also provides consistency with other regulations pertaining to CAFOs so that interpretations of land application setbacks can be made clearer and thus more easily enforced.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Jeff Kelble – Shenandoah Riverkeeper – Potomac Riverkeeper, Inc.</p>	<p>Similarly, the GP should restrict waste application that would cause discharges to surface or groundwater via tile lines, ditches, streams, or other features, rather than only prohibiting discharges to sinkholes.<sup>4</sup> These requirements should also apply to animal waste end users. The majority of stream miles in any given watershed are comprised of its intermittent streams, ditches and drain tiles. Failing to prevent direct application to and runoff from these areas dooms the state to failure in actually reducing pollution as necessary to fix the nutrient and algae problems in the Shenandoah River itself, as well as the Chesapeake Bay.</p>	<p>Through the broad discharge prohibitions found at 9VAC25-192-50.A.2 and 9VAC25-192-70, Part II.X.1. <i>Conditions Applicable to All VPA Permits</i>, the VPA AFO GP prohibits direct discharges to state waters through ditches, streams or other features. The effect of tile lines is addressed in the DCR Nutrient Management Plan Standards and Criteria that limit application rates and address leaching potential.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>

<p>Jeff Kelble – Shenandoah Riverkeeper – Potomac Riverkeeper, Inc.</p>	<p>The proposed GP also fails to require adequate nutrient management due to the state’s permissive P-Index. DEQ’s final permit must require AFOs and CAFOs to move away from building up soil phosphorus up to and beyond saturation rates which lead to phosphorus loss to surface waters. This means phasing out use of the P-Index and then eventually moving soil saturation allowances down to levels which protect water quality. The use of the P-Index and continual reliance on the ability to apply more phosphorous than crops will use in a three year cycle simply cannot be justified. Instead, this permit action should be used to create a gradual ten year period to phase out the un-protective P-Index and Soil Saturation methods permitted in nutrient management planning for those that protect water quality by limiting P applications, and phase in those which are agronomic and meet crop needs without building up phosphorous. Virginia developed the P-Index as an interim step, and should move forward with development of a long-term management tool that will better protect water quality without further delay.</p>	<p>Subsection C.1. of <a href="#">§ 62.1-44.17:1</a> of the Code of Virginia specifies that nutrient management plans submitted with registration statements for VPA AFO GP coverage be approved the Department of Conservation and Recreation (DCR). DCR uses the requirements of 4VAC5-15-10 et seq. and the DCR Nutrient Management Standards and Criteria as a benchmark for approving the practices employed in the NMPs. The P-index is currently an approved method in the Standards and Criteria for determining P application rate. If phosphorus (P) application according to the P-index results in elevating soil P levels, then the P-index includes a maximum threshold above which no additional P may be applied, so as to avoid reaching soil P levels that may allow losses detrimental to water quality. <b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Jeff Kelble – Shenandoah Riverkeeper – Potomac Riverkeeper, Inc.</p>	<p>The proposed GP falls short of even requiring this degree of nutrient management by end users of animal waste. As proposed, animal waste end users who receive more than a threshold volume of waste from a permitted AFO or CAFO can choose from several methods to determine maximum waste application rates: phosphorus crop removal rates, 80 pounds per acre every three years, soil test recommendations, or a certified</p>	<p>The end-user requirements for the VPA AFO GP regulation were modeled after the end-user requirements of the VPA Poultry Waste Regulation. The end-user requirements provide options to obtaining a NMP that are equally or more protective than the limitations found in a NMP. Thus if an end-user has</p>

	<p>nutrient management plan.<sup>5</sup> The final permit should require end users to apply all waste in accordance with a certified nutrient management plan, and DEQ should subsequently strengthen these plans such that they will minimize the risk of phosphorus and nitrogen loss to ground and surface waters.</p>	<p>difficulty in obtaining an NMP in a timely manner, he has options that may be simpler to implement but still protective of water quality. In order to ensure the P rate limitations are clear, it is important to note that the 80 lb per acre <u>limit once</u> every 3 years is intended to be a limitation on the P rate, not on the mass of total manure.</p> <p><b><u>Following review of these comments, DEQ modified 9VAC25-192-90.C.1.b. to specify that the limitation is on 80 lbs of phosphorus once every three years.</u></b></p>
<p>Jeff Kelble – Shenandoah Riverkeeper – Potomac Riverkeeper, Inc.</p>	<p><b>The Proposed General Permit Lacks Specificity:</b> Virginia DEQ should clarify the requirements in the proposed GP. First, the GP should impose clearer soil testing requirements. The proposed GP requires AFO owners and waste end users to conduct soil monitoring “at the land application sites” every three years, but does not expressly require testing at every field or further explain how many tests a permittee must conduct or how to conduct them.<sup>6</sup> While a certified nutrient management plan should clarify these details, the final GP should also establish thorough baseline monitoring requirements. Second, the GP should establish clear standards for DEQ approval of digesters and other manure treatment technologies. The proposed GP states that such a technology “shall be approved by the department” but does not set out criteria, a process, or a set of baseline requirements for this approval.<sup>7</sup> Without these clarifications and criteria DEQ cannot demonstrate that permits issued pursuant to this GP</p>	<p>9VAC25-192-70.B.12.c. specifies that soil monitoring criteria must be included in the nutrient management plan (NMP), and that the NMP must be written by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia and that the operator implement the NMP. Implementation of the NMP requires that procedures specified in 4VAC5-15-150.2.f. related to soil sampling be followed. These procedures include specifications for obtaining representative soil samples.</p> <p>Subsection E. of <a href="#">§ 62.1-44.17:1</a> of the Code of Virginia outlines the operational requirements for design and operation of a regulated animal feeding</p>

	<p>will adequately protect local water quality or keep the state on track to meet its Chesapeake Bay TMDL goals.</p>	<p>operation. DEQ recognized that alternatives to traditional waste treatment and storage in anaerobic lagoons, manure pits, above ground storage tanks are emerging, and did not want eligibility for the general permit to be nullified by implementation of new technology, as long as the requirements mandated by State Water Control Law were met. DEQ will review a waste treatment or storage facility based on whether or not the design and operation will meet the requirements of the statute to be protective of state waters, as well as any applicable standard employed by the USDA-NRCS.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Jeff Kelble – Shenandoah Riverkeeper – Potomac Riverkeeper, Inc.</p>	<p><b>Waste Stockpiling:</b> DEQ should revise the proposed GP language authorizing uncovered waste stockpiling without a time limit. The proposed GP authorizes such stockpiling and merely requires the permittee to maintain a 100-foot setback between the stockpile and surface waters and other vulnerable features.<sup>8</sup> DEQ should prohibit all uncovered waste stockpiles, or at a minimum should restrict stockpiling to one day. Due to the high risk stockpiling poses to water quality, the U.S. Environmental Protection Agency (EPA) has clarified that waste stockpiles are part of the manure storage area and part of the AFO production area.<sup>9</sup> DEQ should clarify this in its final GP, as it will in some cases trigger the duty to apply for a</p>	<p>9VAC25-192-70.B.8 was added to mirror the requirement in the VPA Poultry Waste General Permit Regulation that addresses short term storage of litter piles outside a waste storage structure designed to prevent runoff to surface waters. <u>9VAC25-192-90.B.1 requires stockpiles of transferred manure to be kept in a facility or at a site that provides adequate storage if stockpiled for longer than 14 days.</u></p> <p>Manure storage facilities in the VPA AFO GP are</p>

	<p>Virginia Pollutant Discharge Elimination System (VPDES) permit.</p>	<p>already required to include design requirements that prevent discharges. The added requirement in the VPA AFO GP for waste storage setbacks was intended to address situations analogous to the uncovered litter pile, such as additional waste brought on to the farm, or storage of waste outside a manure storage facility designed to prevent runoff.</p> <p>DEQ agrees that proper waste storage must include mechanisms to prevent transport of pollutants to state waters, and that buffers alone may not be adequate, thus the requirement for properly designed and operated waste storage facilities that include freeboard management for liquid facilities and runoff diversion.</p> <p><b>In response to these and other comments, DEQ modified the definition of “waste storage facility” to be more inclusive of the type of wastes managed therein, and the requirement for stored waste in 9VAC25-192-70.B.8 was modified to be more clear that the setback is only a measure in lieu of storage in an approved facility, and to limit storage to 14 days when such storage is outside an approved storage facility.</b></p>
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<p>Jeff Kelble – Shenandoah Riverkeeper – Potomac Riverkeeper, Inc.</p>	<p><b>Local Nutrient Impairment in the Shenandoah River:</b> Less than a month ago and for the first time we can find on record, EPA issued its final 303D/305B list without deciding whether or not the Shenandoah would be listed for algae problems. Shenandoah Riverkeeper submitted reams of photos, studies and personal testimonies that clearly show that the Shenandoah River itself is receiving such high nutrient loadings that algae growth greatly diminishes swimming, fishing and aesthetic enjoyment of the river for at least half the year. The Shenandoah River is indisputably over-fertilized, and its watershed is also the primary animal production area in the Commonwealth. DEQ is obligated to issue permits that are calculated to result in compliance with existing TMDLs and local water quality standards, as well as the Bay TMDL. We assert that Virginia cannot meet local water quality standards – including Virginia’s General Criteria, a.k.a. “narrative standards” – without making the changes to the AFO General Permit recommended in these comments.</p>	<p>The VPA AFO GP is only one component of the overall plan to address water quality concerns. The VPA AFO GP is consistent with the Chesapeake Bay TMDL and WIP, as it mandates certain BMPs required in State Water Control Law that reduce nonpoint source pollution, while other programs, such as the Resource Management Plan program will address site specific voluntary BMP implementation at other farms that may be impacting water quality.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Jeff Kelble – Shenandoah Riverkeeper – Potomac Riverkeeper, Inc.</p>	<p>The AFO GP must set high standards for nutrient management and require BMPs by all permittees if DEQ expects to meet its Chesapeake Bay TMDL goals for this sector and to protect local water quality throughout the state from nutrients, sediment, and pathogens. Because many of the shortcomings of the GP stem from inadequate nutrient management requirements, we further request that DEQ initiate a separate rulemaking to update and strengthen these requirements.</p>	<p>The nutrient management program and associated regulations are administered by the Virginia Department of Conservation and Recreation, thus DEQ cannot initiate a rulemaking related to DCR regulations.</p> <p><b><i>No changes are being proposed to address these comments.</i></b></p>
<p>Denise Mosca - Gloucester</p>	<p>It is important that the general permits being issued are in conformance with the provisions of Virginia’s Watershed Implementation Plan (WIP) agreement</p>	<p>The VPA AFO GP is consistent with the Chesapeake Bay TMDL and WIP, as it mandates certain</p>

	<p>in order to meet the objectives of the Chesapeake Bay Agreement. I read that the proposed general permit does not require that any new Best Management Practices (BMPs) that were committed to in the WIP be implemented. The ten year permit term is a long time not to be advancing the Commonwealth towards it's WIP goals, and I would like to see the GP strengthened in order that these goals be attained.</p>	<p>BMPs required in State Water Control Law that reduce nonpoint source pollution, while other programs, such as the Resource Management Plan program will address site specific voluntary BMP implementation at other farms that may be impacting water quality.</p> <p>DEQ acknowledges that additional mandatory measures may have to be implemented in the future if goals are not met. The WIP does not presuppose that additional mandatory measures will be necessary. DEQ may reopen the VPA AFO GP Regulation prior to the end of the ten year term if necessary to mandate additional requirements.</p>
<p>Hobey Bauhan, President – Virginia Poultry Federation</p>	<p>VPF supports extending the permit as amended for 10 years. We urge the Water Control Board's final approval.</p>	<p>DEQ acknowledges the support. <b>No changes are being proposed to address these comments.</b></p>
<p>Hobey Bauhan, President – Virginia Poultry Federation</p>	<p>There were members of the RAC that expressed support for the permit to mandate BMPs listed with in the Virginia Watershed Implementation Plan (WIP) for the Chesapeake Bay TMDL. VPF, along with other agricultural participants, does not support this proposal, as many operators of AFO's are utilizing rented land over which they have no control of many practices, such as stream exclusion and vegetated buffers. Furthermore, the Code is explicit in what requirements can be included in a general permit regulation and does not</p>	<p>DEQ acknowledges the support. <b>No changes are being proposed to address these comments.</b></p>



	<p>allow for the addition of BMP requirements. This permit also covers operations across the state, not just those that lie within the Bay watershed, making it inappropriate to apply these standards to this regulation. Finally, the BMPs contained in the WIP are meant to be voluntarily implemented, and mandating them would be counter to this specification. This proposal was not included in the final amended regulations, and VPF would like to see this remain unchanged.</p>	
<p>Lareth May, President – Rockingham Farm Bureau</p>	<p>Rockingham County Farm Bureau Board of Directors, 1938 Deyerle Ave., Harrisonburg, VA 22801, supports the position of VA Farm Bureau in the renewal of the General Permit and the proposed changes.</p>	<p>DEQ acknowledges the support. <b>No changes are being proposed to address these comments.</b></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.*

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The changes to the regulation are outlined on the following pages.

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
9VAC25-192 (Chapter Title)	N/A	Chapter Title	Amended to read: VIRGINIA POLLUTION ABATEMENT (VPA) REGULATION AND GENERAL PERMIT FOR ANIMAL FEEDING OPERATIONS Amended Title to clarify that this Chapter includes both the general permit and technical requirements outside of the general permit.
9VAC25-192-10. (Definitions)	N/A	Definitions	Amended Agricultural storm water definition to read: "Agricultural storm water discharge " means a precipitation-related discharge of manure, litter, or process wastewater which has been applied on land areas under the control of an animal feeding operation or under the control of a poultry waste end-user or poultry waste broker in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater. Clarify the definition and make it consistent with other regulations which govern animal feeding operations.
9VAC25-192-10. (Definitions)	N/A	Definitions	Amended Animal feeding operation definition to read: "Animal feeding operation" means a lot or facility where the following conditions are met: 1. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and 2. Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility. Two or more animal feeding operations under common ownership are a single animal feeding operation for the purposes of determining the number of animals at an operation, if they adjoin each other, or if they use a common area or system for the disposal of wastes. Remove "other than aquatic animals" from the definition to eliminate any confusion since we do not cover aquatic animal operation.
9VAC25-32-10. (Definitions)	N/A	Definitions	Added Animal waste definition to read: "Animal waste" means liquid, semi-solid, and solid animal manure[ <del>,-poultry waste</del> ] and process wastewater, compost or sludges associated with [ <del>livestock and poultry</del> ] animal feeding operations including the final treated wastes generated by a digester or other manure treatment technologies. Added the definition to make it consistent with other regulations which govern animal feeding

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
			operations. Amended definition to remove poultry waste so as not to conflict with the poultry waste regulation (9VAC25-630).
9VAC25-192-10. (Definitions)	N/A	Definitions	Added Animal waste end-user definition to read: "Animal waste end-user" means any recipient of transferred animal waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial use for an operation under his control. Added the definition to clarify the use of the term as used in this regulation.
9VAC25-192-10. (Definitions)	N/A	Definitions	Added Animal waste fact sheet definition to read: "Animal waste fact sheet" means the document that details the requirements regarding utilization, storage, and management of animal waste by end-users. The fact sheet is approved by the department. Added the definition to make it consistent with other regulations which govern animal feeding operations.
9VAC25-192-10. (Definitions)	N/A	Definitions	Added Beneficial use definition to read: "Beneficial use" means a use that is of benefit as a substitute for natural or commercial products and does not contribute to adverse effects on health or environment. Added the definition to clarify other terms used in the regulation.
9VAC25-192-10. (Definitions)	N/A	Definitions	Added Nutrient management plan definition to read: "Nutrient management plan" or "NMP" means a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment, and management of animal waste and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters; except that for a animal waste end-user who is not subject to the general permit, the requirements of 9VAC25-192-90 constitute the NMP. Added the definition to make it consistent with other regulations which govern animal feeding operations.
9VAC25-192-10. (Definitions)	N/A	Definitions	Added Organic source definition to read: "Organic source" means any nutrient source including, but not limited to, manures, biosolids, compost, and waste or sludges from animals, humans, or industrial processes, but for the purposes of this regulation it excludes waste from wildlife. Added the definition to clarify other terms used in the regulation. Added the definition to make it

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
			consistent with other regulations which govern animal feeding operations.
9VAC25-192-10. (Definitions)	N/A	Definitions	Added Waste nutrient analysis rate definition to read: "Waste nutrient analysis rate" means a land application rate for animal waste approved by the board as specified in this regulation. Added the definition to clarify other terms used in the regulation.
9VAC25-32-10. (Definitions)	N/A	Definitions "Waste storage facility" means a waste holding pond or tank used to store manure prior to land application, or a lagoon or treatment facility used to digest or reduce the solids or nutrients.	Amended Waste storage facility definition to read: "Waste storage facility" means a waste holding pond or tank used to store manure prior to land application, or a lagoon or treatment facility used to digest or reduce the solids or nutrients [ <u>or a structure used to store manure or waste</u> ]. Amended the definition by adding " <u>, or a structure used to store manure or waste</u> " in order to clarify the new storage requirements proposed in the regulation.
9VAC25-192-10. (Definitions)	N/A	Definitions	Deleted Operator definition which reads: "Operator" means any person who owns or operates an animal feeding operation. The definition of owner is in the VPA Permit Regulation and this definition of operator causes confusion to the meaning for this regulation.
9VAC25-192-10. (Definitions)	N/A	Definitions	Deleted Permittee definition which reads: "Permittee" means the owner whose animal feeding operation is covered under this general permit. The definition of permittee is in the VPA Permit Regulation and this definition of permittee causes confusion to the meaning for this regulation.
9VAC25-192-20. (Purpose, delegation of authority)	N/A	Purpose and Delegation of Authority	Amended subsection A to clarify the pollution activities which are governed by the regulation and general permit. Removed language since this is not just a general permit regulation.
9VAC25-192-20. (Purpose, delegation of authority)	N/A	Purpose and Delegation of Authority	Amended subsection C, the effective date of the permit for reissuance.

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
N/A	NEW 9VAC25-192-25. (Duty to comply)	N/A	Added new section which includes language regarding the duty to comply with the regulation and general permit by the owner of the AFO and the animal waste end-user. Added new section to clarify the duty to comply with the general permit and the regulation, including the technical requirements.
9VAC25-192-50. (Authorization to manage pollutants)	N/A	Authorization to manage pollutants	Added an internal catch line: <u>Owner of an animal feeding operation.</u> Added to clarify which subsection applies to a particular entity.
9VAC25-192-50. (Authorization to manage pollutants)	N/A	Authorization to manage pollutants	Amended subdivision A.1: 1. The <del>owner operator</del> has not been required to obtain a VPDES permit or an individual <u>VPA</u> permit according to <u>subdivision 2 of 9VAC25-32-260 B</u> ; Amended to correct the subsection in accordance with the Code of VA §62.1-44.17:1.
9VAC25-192-50. (Authorization to manage pollutants)	N/A	Authorization to manage pollutants	Amended subdivision A.2 to clarify what is managed under the general permit: 2. The operation of the animal feeding operation shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural stormwater discharges are permitted. Domestic sewage shall not be managed under this general permit. or industrial Industrial waste shall not be managed under this general permit, except for wastes that have been approved by the department and are managed in accordance with 9VAC25-192-70; Added local government ordinance form to the language. Clarify what is allowed to be managed under the general permit.
9VAC25-192-50. (Authorization to manage pollutants)	N/A	Authorization to manage pollutants	Amended subdivision A.3 . Added local government ordinance form to the language. Amended to clarify the proper form to attach for notification from the governing body.
9VAC25-192-50. (Authorization to	N/A	Authorization to manage pollutants	Amended subdivision A.4.: amended language by replacing operator with owner. The statute speaks to the owner of the AFO. Amended to clarify who is required to comply with the

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
manage pollutants)			regulation.
9VAC25-192-50. (Authorization to manage pollutants)	N/A	Authorization to manage pollutants	Amended subdivision A.5.: language by replacing operator with owner. The statute speaks to the owner of the AFO. Replaced permit with registration statement since comments are submitted relevant to the registration statement not the permit. Replaced received by with mailed to. Amended to clarify which document submitted comments are relevant. Amended to make regulation consistent with other general permit language.
9VAC25-192-50. (Authorization to manage pollutants)	N/A	Authorization to manage pollutants	Amended subdivision A.6 to clarify the statutory authority for the training program requirement. Removed the Department of Conservation and Recreation. Replaced operator with permitted owners. The statute speaks to the owner of the AFO. Clarifies statutory authority for the training and who is required to complete the training program.
9VAC25-192-50. (Authorization to manage pollutants)	N/A	Authorization to manage pollutants	Added new subsection B to add language concerning the requirement of the end-user to comply with the technical requirements or obtain coverage under the general permit. Added the end-user to the authorization to manage pollutants governed by the general permit and added requirements similar to the growers (from subsection A.) Added language to clarify who is authorized to manage pollutants
9VAC25-192-50. (Authorization to manage pollutants)	N/A	Authorization to manage pollutants	Added new subsection C to add language concerning continuation of permit coverage. Added new language to make the regulation consistent with other regulations which govern animal feeding operations.
9VAC25-192-50. (Authorization to manage pollutants)	N/A	Authorization to manage pollutants	Added new subsection D (contents are old subsection B) Moved contents of old B. to new D. Replaced operator with permittee. Amended language to clarify responsibility of the permittee.
9VAC25-192-60 (Registration statement)	N/A	Registration Statement	Amended subsection A. Added internal catch line <u>The owner of an animal feeding operation.</u> Replace operator with owner throughout. Added to clarify which subsection applies to a particular entity.

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
9VAC25-192-60 (Registration statement)	N/A	Registration Statement	<p>Added two items to subsection A and renumbered items 7-10 that were in the original list to make room for the additional items:</p> <p><u>7. [ Indicate the types of wastes that will be managed at the facility and how much of each type of waste will be managed;</u></p> <p><u>8. If waste will be transferred off-site, indicate the type of waste and how much will be transferred;</u></p> <p>Added the two items to the registration statement in order to facilitate the application process when an owner proposes to manage off-site generated wastes, treated wastes, or to transfer waste.</p>
9VAC25-192-60 (Registration statement)	N/A	Registration Statement	<p>Amended subdivision 8 (split subdivision into 2 subdivisions 8 &amp; 9) Split subdivision 8 - leaving DCR approved NMP attachment here and moved language (the nutrient management plan must be developed by a certified nmp writer) to subdivision 9.</p> <p>Amended to clarify the requirements of the permit applicant with regards to the attachments.</p>
9VAC25-192-60 (Registration statement)	N/A	Registration Statement	<p>Added subsection B to add language for a registration statement for the end-user. Added to allow for a separate registration statement.</p>
9VAC25-192-60 (Registration statement)	N/A	Registration Statement	<p>Added two items to subsection B and renumbered items 6-8 that were in the original list to make room for the additional items:</p> <p><u>6. [ Indicate the types of wastes that will be managed at the facility and how much of each type of waste will be managed;</u></p> <p><u>7. If waste will be transferred off-site, indicate the type of waste and how much will be transferred;</u></p> <p>Added the two items to the registration statement in order to facilitate the application process when an owner proposes to manage off-site generated wastes, treated wastes, or to transfer waste.</p>
9VAC25-192-60 (Registration statement)	N/A	Registration Statement	<p>Moved contents of B to subsection C. Amended subsection C. Moved contents to allow for new subsection B and amended to correct the citation.</p>
9VAC25-192-70	N/A	Contents of the general	<p>Revised effective and expiration dates in general permit dates. Removed modification dates.</p>

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
(Contents of the general permit)		permit	Amended dates for reissuance of the general permit.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended language in opening paragraph by replacing operator with owner. Added the animal waste end-user. Added to allow for coverage under the general permit if required.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended permit title by adding "and animal waste management". Amended to broaden permit for the animal waste end-user.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended language in second paragraph: Added the animal waste end-users. Deleted "or policies". Added to allow for coverage under the general permit if required. Amended language to make regulation consistent with other regulations that govern AFOs.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended language in third paragraph. Added the titles of the permit parts. Amended language to clarify the subject matter of the parts of the general permit.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part I.B.3. to add "Virginia" to licensed professional engineer. Added "Virginia" to licensed professional engineer to ensure clarity of the requirements.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part I B 3. 3. <u>Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer [ ,or ] an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority [ , or an employee of a soil and water conservation district with appropriate engineering approval authority ] shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.</u> Added "or" to correct the sentence structure after removing "or an employee of a soil and water conservation district with appropriate engineering approval authority" since this is no longer an option due to the USDA-Natural Resources Conservation Service procedural changes.
9VAC25-192-70 (Contents of the	N/A	Contents of the general permit	Amended Part I.B.5.general permit condition. Amended language to clarify condition based on the Code of VA §62.1-44.17:1.



Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
general permit)			
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	<p>Amended Part I B 6. <u>6. For new waste storage or treatment facilities constructed after November 16, 2014, the facilities shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture and approved by the department. A Virginia licensed professional engineer [ ,or ] an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority [ ,or an employee of a soil and water conservation district with appropriate engineering approval authority ] shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.</u>                      Added "or" to correct the sentence structure after removing "or an employee of a soil and water conservation district with appropriate engineering approval authority" since this is no longer an option due to the USDA-Natural Resources Conservation Service procedural changes.</p>
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	<p>Added Part I.B.6. added new general permit condition.                      Added language to allow for new waste storage other than earthen waste storage or liquid waste storage.</p>
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	<p>Moved Part I.B.7. was Part I.B.10.                      Moved notification condition.</p>
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	<p>Added Part I.B.8. added condition related to storage.                      Added condition to make regulation consistent with other regulations which govern AFOs.</p>
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	<p>Amended Part III B 8. [ <u>Semi-solid and solid waste shall be stored in a manner that prevents contact with surface water and groundwater. Waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:</u></p> <ul style="list-style-type: none"> <li>a. <u>Waste shall be covered to protect it from precipitation and wind;</u></li> <li>b. <u>Storm water shall not run onto or under the stored waste;</u></li> <li>c. <u>A minimum of two feet separation distance to the seasonal high water table or an</u></li> </ul>

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
			<p><u>impermeable barrier shall be used under the stored waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X [ <del>10-6</del> 10<sup>-6</sup> ] centimeters per second); and ]</u></p> <p><u>d. ] For waste that is not stored [ in a waste storage facility or ] under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.</u></p> <p>Amended the language to ensure the regulation provides for adequate controls on semi-solid and solid waste storage. The requirements are consistent with the requirements in the poultry waste regulation (9VAC25-630). Amended the permeability rating text to correct a technical error.</p>
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part I.B.9. to replace operator with permittee. Amended to make the general permit language consistent.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	<p>Added Part I.B.10.</p> <p>Added conditions related to wastes treated by a digester or other manure treatment technologies. Includes options to import waste materials to feed the treatment facilities such as a digester. Also includes recordkeeping requirements.</p> <p>Added condition to allow flexibility for managing a digester or other manure treatment technologies and imported waste materials.</p>
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	<p>Amended Part I.B.11. Added condition related to land application of wastes generated on the farm under the nutrient management plan.</p> <p>Added condition to make regulation consistent with other regulations which govern AFOs.</p>

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part I.B.12. Amended language regarding the nutrient management plan requirements. Removed plan for waste utilization (g.), added a new condition in Part I.B.17. Clarify the language.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part I.B.13. Added " <u>Waste shall not be land applied within buffer zones</u> " to clarify restriction. Clarify the prohibition.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part I.B.14. Amended the recordkeeping requirements. Amended the recordkeeping requirements for clarity.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Added Part I.B.15. Added condition to allow for animal waste to be transferred under specific conditions. Added condition to allow for animal waste to be transferred. Added condition to make regulation consistent with other regulations which govern AFOs.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Added Part I.B.16. Added condition to allow for animal waste to be transferred if recordkeeping requirements are met. Added recordkeeping conditions to allow for animal waste to be transferred. Added condition to make regulation consistent with other regulations which govern AFOs.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Added Part I.B.17. Added a condition to include specific closure plan requirements. Added a condition to include specific closure plan requirements.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part I.B.18. Amended to clarify the statutory authority for the training program requirement. Removed the Department of Conservation and Recreation. Replaced operator with permitted owners. The statute speaks to the owner of the AFO. Clarifies statutory authority for the training and who is required to complete the training program.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Added Title of Part II of general permit: "Conditions Applicable to all VPA Permits" Amended language to clarify the subject matter of the parts of the general permit.

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part II.A.2. Removed date because it is obsolete.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part II by adding the contents of Part III to the end of the Part II. Renumbered the subsections. Removed language which was irrelevant to general permits. Amended to allow for the two parts which contained the conditions applicable to all VPA permits to be contained in Part II of the general permit contents. Amended the Parts of the general permit to make regulation consistent with other regulations which govern AFOs.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part III (animal waste end-user general permit conditions) with new language related to animal waste end-users. The new language contains specific general permit conditions for animal waste end-users who are required to obtain coverage under a general permit. The conditions included in this Part are for the animal waste end-users and is similar to Part I for the owner of the AFO. Requirements include: soils and waste monitoring, nutrient management plan, storage conditions, animal waste transfer recordkeeping, land application recordkeeping and land application buffer zones.  Amended to allow for the two parts which contained the conditions applicable to all VPA permits to be contained in Part II of the general permit contents. Amended the Parts of the general permit to make regulation consistent with other regulations which govern AFOs.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	Amended Part III B 3:  <u>3. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer [ ,or ] an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority [ ,or an employee of a soil and water conservation district with appropriate engineering approval authority ] shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.</u> Added "or" to correct the sentence structure after removing "or an employee of a soil and water conservation district with appropriate engineering approval authority" since this is no longer an

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
			option due to the USDA-Natural Resources Conservation Service procedural changes.
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	<p>Amended Part III B 6:</p> <p><u>6. For new waste storage or treatment facilities constructed after November 16, 2014, the facilities shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture and approved by the department. A Virginia licensed professional engineer [ ,or ] an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority [ ,or an employee of a soil and water conservation district with appropriate engineering approval authority ] shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.</u></p> <p>Added "or" to correct the sentence structure after removing "or an employee of a soil and water conservation district with appropriate engineering approval authority" since this is no longer an option due to the USDA-Natural Resources Conservation Service procedural changes.</p>
9VAC25-192-70 (Contents of the general permit)	N/A	Contents of the general permit	<p>Amended Part III B 8:</p> <p><u>8. [ Semi-solid and solid waste shall be stored in a manner that prevents contact with surface water and groundwater. Waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:</u></p> <p><u>a. Waste shall be covered to protect it from precipitation and wind;</u></p> <p><u>b. Storm water shall not run onto or under the stored waste;</u></p> <p><u>c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil</u></p>

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
			<p><u>conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X [ <del>10<sup>-6</sup></del> ] centimeters per second); and ]</u></p> <p><u>d. ] For waste that is not stored [ in a waste storage facility or ] under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.</u></p> <p>Amended the language to ensure the regulation provides for adequate controls on semi-solid and solid waste storage. The requirements are consistent with the requirements in the poultry waste regulation (9VAC25-630). Amended the permeability rating text to correct a technical error.</p>
N/A	NEW 9VAC25-192-80 (Tracking and accounting requirements for animal waste end-users)	N/A	<p>Added new section: The new section was added to outline the technical requirements for end-users of transferred animal waste. The technical requirements address recordkeeping. The technical requirements specify items that must be recorded and maintained by the animal waste end-user. Added clarification of DEQ authority to inspect. Added technical requirements for recordkeeping by animal waste end-users.</p>
N/A	NEW 9VAC25-192-90. (Utilization and storage requirements for transferred animal waste)	N/A	<p>Added new section: The new section was added to outline the technical requirements for end-users of transferred animal waste. The technical requirements address proper storage and appropriate land application practices. The technical requirements specify storage requirements, methods to determine land application rates, buffer requirements, and land application timing. Added clarification of DEQ authority to inspect. Added technical requirements for utilization and storage of animal waste by the end-users.</p> <p>Amended storage requirements: B 1 c. A minimum of two feet separation distance to the seasonal high water table or an</p>

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
			<p><u>impermeable barrier shall be used under the stored [ poultry ] waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X [ <del>10-6</del> 10<sup>-6</sup> ] centimeters per second); and</u></p> <p>Amended language to clarify the requirements for animal waste by removing poultry waste so as not to conflict with the poultry waste regulation (9VAC25-630). Amended the permeability rating text to correct a technical error.</p> <p><u>B1 d. ] For animal waste that is not stored [ in a waste storage facility or ] under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.</u></p> <p>Amended the language to ensure the regulation provides for adequate controls on semi-solid and solid waste storage. The requirements are consistent with the requirements in the poultry waste regulation (9VAC25-630) and the contents of this permit regulation.</p> <p><u>B 4. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer [ , or ] an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority [ <del> -or an employee of a soil and water conservation district with appropriate engineering approval authority ] shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this subsection. This certification shall be maintained on site.</del></u></p> <p>Added "or" to correct the sentence structure after removing "or an employee of a soil and water conservation district with appropriate engineering approval authority" since this is no longer an option due to the USDA-Natural Resources Conservation Service procedural changes.</p>

Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
			<p>Amended utilization requirements:  <u>C 1 b. Animal waste may be applied to any crop once every three years at a rate of no greater than 80 pounds [ of plant available phosphorus ] per acre when:</u>                      Amended language to add "of plant available phosphorus" which was mistakenly omitted at the proposed stage.</p>
N/A	NEW 9VAC25-192-90. (Utilization and storage requirements for transferred animal waste)	N/A	<p><u>(2) The analytical results are from procedures in accordance with [ <del>4VAC5-15-150 A 2 f</del> 4VAC50-85-140 A 2 f ] ; and</u></p> <p>Due to the transfer of the authority for the Nutrient Management Training and Certification Regulations from the Department of Conservation and Recreation to the Virginia Soil and Water Conservation Board, the Nutrient Management regulations were amended. This amendment included renumbering the regulation (Virginia Register Volume 30, Issue 11, eff. February 26, 2014). For this reason, the citations needed to be corrected.</p>
N/A	NEW 9VAC25-192-90. (Utilization and storage requirements for transferred animal waste)	N/A	<p><u>(3) Nutrients from the waste application do not exceed the nitrogen or phosphorus recommendations for the proposed crop or double crops. The recommendations shall be in accordance with [ <del>4VAC5-15-150 A 2 a</del> 4VAC50-85-140 A 2 a ].</u></p> <p>Due to the transfer of the authority for the Nutrient Management Training and Certification Regulations from the Department of Conservation and Recreation to the Virginia Soil and Water Conservation Board, the Nutrient Management regulations were amended. This amendment included renumbering the regulation (Virginia Register Volume 30, Issue 11, eff. February 26, 2014). For this reason, the citations needed to be corrected.</p>
N/A	NEW 9VAC25-192-90. (Utilization and storage requirements for transferred animal waste)	N/A	<p><u>2. The timing of land application of animal waste shall be appropriate for the crop, and in accordance with [ <del>4VAC5-15-150 A 4</del> 4VAC50-85-140 A 4 ] , except that no waste may be applied to ice covered or snow covered ground or to soils that are saturated.</u></p> <p>Due to the transfer of the authority for the Nutrient Management Training and Certification Regulations from the Department of Conservation and Recreation to the Virginia Soil and Water Conservation Board, the Nutrient Management regulations were amended. This amendment included renumbering the regulation (Virginia Register Volume 30, Issue 11, eff. February 26, 2014). For this reason, the citations needed to be corrected.</p>



Current Section Number	Proposed new section number, if applicable	Current Requirement	Proposed Change and Rationale
FORMS (9VAC25-192)	N/A	Forms related to the regulation	<p>Amended section to reflect the changes made in 9VAC25-192-60</p> <p>Added and amended forms:                      Virginia DEQ Registration Statement for VPA General Permit for Animal Feeding Operations for Owners of Animal Feeding Operations, RS VPG1 (rev. [ <del>2/13</del> <u>2/14</u> ] )</p> <p>Added: Virginia DEQ Registration Statement for VPA General Permit for Animal Feeding Operations for Animal Waste End-Users, RS End-Users VPG1 ( [ rev. <del>2/13</del> <u>2/14</u> ] )</p> <p>Added: Virginia DEQ Fact Sheet for Animal Waste Use and Storage (rev. [ <del>2/13</del> <u>4/14</u> ] )                      Amended to reflect the changes made in 9VAC25-192-60.</p> <p>Created Animal Waste Fact Sheet to convey the requirements for animal waste end-users.</p> <p>Updated forms: Registration Statements and Animal Waste Fact Sheet to reflect changes since proposed stage.</p>

## Regulatory flexibility analysis

*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.*

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The regulation includes authorization for coverage under the general permit as well as establishes the utilization, storage, tracking and accounting requirements related to animal waste. The use of the general permit is the alternative to issuing coverage under an individual Virginia Pollution Abatement (VPA) permit. Compliance with the technical requirements is an alternative to requiring animal waste end-users to obtain coverage under the general permit or an individual VPA permit.

## Family impact

*Please assess the 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.*

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It is not anticipated that an amendment to this regulation will have any impacts on the family and family stability.

## 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.*

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AFO - Animal Feeding Operations

Animal waste - "Animal waste" means liquid, semi-solid, and solid animal manure and process wastewater, compost or sludges associated with animal feeding operations including the final treated wastes generated by a digester or other manure treatment technologies.

Animal waste end-user - "Animal waste end-user" means any recipient of transferred animal waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial use for an operation under his control.

300 A.U. - "300 animal units" means 300,000 pounds of live animal weight, or the following numbers and types of animals:

- a. 300 slaughter and feeder cattle;
- b. 200 mature dairy cattle (whether milked or dry cows);
- c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);
- d. 150 horses;
- e. 3,000 sheep or lambs;
- f. 16,500 turkeys;
- g. 30,000 laying hens or broilers.

VPA - Virginia Pollution Abatement