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## Exempt Action Proposed Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation(s)</b>	9VAC25-115
<b>Regulation title(s)</b>	General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Seafood Processing Facilities
<b>Action title</b>	Amend and Reissue the Existing Seafood Processing Facilities General Permit Regulation
<b>Date this document prepared</b>	February 13, 2015

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Administrative Process Act (APA), the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of The Virginia Register Act, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

This rulemaking is proposed in order to reissue the existing VPDES general permit which expires on July 23, 2016. The general permit contains limitations and monitoring requirements for point source discharge of treated wastewaters from seafood processing facilities. The general permit regulation is being reissued in order to continue making it available for these facilities to continue to discharge.

Amendments are proposed to update and clarify definitions, effective dates, authorization, registration statement requirements; general permit limits pages, special conditions, stormwater pollution prevention plans and conditions applicable to all permits.

## Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.*

APA means the Administrative Process Act.

BOD means biological oxygen demand.

CFR means Code of Federal Regulations.

DEQ means the Department of Environmental Quality.

EPA means the Environmental Protection Agency.

NPDES means National Pollutant Discharge Elimination System.

SWPPP means stormwater pollution prevention plan.

TAC means technical advisory committee and is an ad hoc committee consisting of interested stakeholders and staff formed to provide advice to DEQ in drafting amendments to the regulation.

TMDL means a total maximum daily load and is defined in the regulation.

µg/l means micrograms per liter.

USC means United States Congress

VAC means the Virginia Administrative Code.

VPDES means the Virginia Pollutant Discharge Elimination System and is recognized by EPA as Virginia's pollutant discharge elimination system program. Virginia was authorized to administer this program (VPDES) in 1975. Furthermore, in 1991 the Commonwealth was authorized to administer a General VPDES Permit Program.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the Board to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters, § 62.1-44.15(10) authorizes the Board to adopt regulations, and § 62.1-44.15(14) authorizes the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes. Further, § 62.1-44.16 specifies the Board's authority to regulate discharges of industrial wastes, § 62.1-44.20 provides that agents of the Board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations, and § 62.1-44.21 authorizes the Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters. Section 402 of the

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

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The proposed regulatory action is needed in order to establish permitting requirements for discharges from seafood processing facilities to protect the quality of state waters. The existing permit expires on July 23, 2016, and the regulatory action is necessary in order to reissue the permit for another five-year term. The goal of the regulatory action is to continue the existence of the general permit that establishes limitations and monitoring requirements for point source discharges from seafood processing facilities that ensures protection of the environment in the receiving stream.

### Substance

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

The general permit will establish limitations and monitoring requirements for point source discharges from seafood processing facilities. As with an individual VPDES permit, the effluent limits in the general permit will be set to protect the quality of the waters receiving the discharges. The primary issue that needs to be addressed is that the existing general permit expires on July 23, 2016 and must be reissued in order to continue making it available after that date. There are no substantive changes.

### Issues

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

The advantages to the public and the agency are that a VPDES general permit will continue to be available to seafood processing facilities to enable them to discharge safely to surface waters. The regulatory action poses no disadvantages to the public or the Commonwealth.

### Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are*

*no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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There are no requirements that exceed applicable federal requirements.

### Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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There are no localities particularly affected by the proposed regulation.

### Alternatives

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

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There are two alternatives for compliance with federal and state requirements to permit wastewater and stormwater point source discharges to surface waters. One is to issue individual VPDES permits to each facility. The other is to reissue the general VPDES permit to cover this category of discharger. A general VPDES is the least burdensome, intrusive and costly alternative to achieve the purpose of the regulation.

Another alternative considered was whether oyster aquaculture operations that are sorting and rinsing oysters and then shipping the product needed the oyster sorting and rinsing aspect of the operation covered under this general permit. It was determined that this activity was part of the aquaculture industry and shellfish aquaculture of this type is not subject to the concentrated aquatic animal feeding operations federal effluent guidelines and therefore, no VPDES permit was needed.

### Public participation

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal, the impacts of the regulated community and the impacts of the regulation on farm or forest land preservation.*

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In addition to any other comments, the State Water Control Board is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and on any impacts of the regulation on farm and forest land preservation. Also, the Board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so at the public hearing or by mail, email or fax to Eleanore Daub, P.O. Box 1105, Richmond, VA 23218, (804) 698-4111 (phone), (804) 698-4032 (fax) or [elleanore.daub@deq.virginia.gov](mailto:elleanore.daub@deq.virginia.gov). Comments may also be submitted through the Public Forum feature of

the Virginia Regulatory Town Hall web site at [www.townhall.virginia.gov](http://www.townhall.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

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

### Family impact

*Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

This regulation will have no direct impact on the institution of the family or family stability.

### Periodic review/small business impact review announcement

*If you wish to use this exempt proposed stage to announce a periodic review (§ 2.2-4017 & EO-17 (2014)) and a small business impact review (§ 2.2-4007.1) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete this section.*

In addition, pursuant to Executive Order 17 (2014) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

### Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency** regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
Section	NA	Definition of stormwater not	Definition for stormwater was deleted as it

10		deleted.	is repetitive of the same definition in the VPDES Permit Regulation and the words and terms used in Chapter 115 have the meaning defined in the VPDES Permit Regulation (9VAC25-31). No impact.
NA	Section 15	Applicability of incorporated references based on the dates that they became effective not in the regulation.	Applicability of incorporated references based on the dates that they became effective. This section was added to update all Title 40 Code of Federal Regulations (CFR) within the document to be those published as of July 1, 2014. This is a recommendation from the DEQ Office of Policy so dates do not need to be added for each CFR reference. No impact.
Section 20 and 50	NA	Purpose and Part I - Effective and expiration dates reflect 2011 -2016 term.	Purpose and Part I - Effective and expiration dates were updated to reflect this reissuance. Impact – allows permit to be used for another 5-year term (2016-2021).
Section 30 A, B	NA	Same requirement.	Authorization – Reformatted to match structure of other general permits being issued at this time. The requirement that the discharge must meet the assumptions and requirements of a total maximum daily load (TMDL) was reworded to match other general permits. No impact.
Section 30 C	NA	Same requirement.	Authorization –Clarified that <i>"Compliance with this general permit constitutes compliance for purposes of enforcement with the federal Clean Water Act §§ 301, 302, 306, 307, 318, 403 and 405 (a) through (b), the State Water Control Law, and applicable regulations under either, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation"</i> which better mirrors the language in the permit regulation at 9VAC25-31-60. No impact as this is a clarification.
Section 30 D	NA	Continuation of Permit Coverage – dates are updated to continue to allow coverage under the 2006 expired general permit until the new permit is reissued and coverage is granted or coverage is denied; provided the permittee has submitted a timely registration and is in compliance with the existing permit..	Continuation of Permit Coverage – dates are updated to continue to allow coverage under the 2011 expired general permit until the new permit is reissued and coverage is granted or coverage is denied; provided the permittee has submitted a timely registration and is in compliance with the existing permit. Impact - these dates are updated with each reissued general permit so permittees can discharge legally and safely if the permit reissuance process is delayed.
Section 40	NA	Registration Statement – Clarification does not exist although statement that late	Registration Statement – clarified that existing owners are allowed to miss the June 23, 2016 deadline for registration

		<p>registration statements will be accepted but not retroactive is present. Registration deadline for existing individual permit owners that wish to be covered under this general permit is 210 days prior to the expiration date of the individual permit. The allowance to submit registrations by electronic mail is not mentioned.</p>	<p>submittal, but as long as they submit a complete statement before the expiration date of the permit (July 23, 2016), DEQ will grant a continuance under the old 2011 permit until such time as the board reissues the permit or determines that they are not eligible for continued coverage. This is language that is going into all general permits as they are reissued. Registration deadline for existing individual permit owners that wish to be covered under this general permit was changed from 210 to 240 days prior to the expiration date of the individual permit. This extra 30 days gives DEQ time to review the registration and if coverage is not appropriate, the permittee still has another 30 days to submit an individual permit application and still meeting their "180 day prior to" permit deadline for individual permit application submittal. Several clarifications were also added to the required registration information to ensure DEQ receives the needed information to make a determination about coverage. Finally, the allowance to submit registrations by electronic mail was added. No likely impact.</p>
Section 50 Part I A	NA	<p>General Permit Limits – effective and expiration dates reflect the current 2011-2016 permit term. Clarifications do not exist.</p>	<p>General Permit Limits – effective and expiration dates changed to reflect the upcoming permit term. Annual monitoring clarified to reflect it is based on a calendar year. Hand-shucked oyster processing for existing sources which process more than 1,000 lbs of raw material per day (Limit page I A 18) added a definition of raw material which for hand-shucked oyster processing means the weight of the shucked product. This is different from raw material in the traditional food processing industry which means the product as it comes to the plant (e.g., whole fish or whole clams). This interpretation reflects the existing federal effluent guidelines for the seafood processing industry and is not a new interpretation. No impact.</p>
Section 50 Part I B		<p>General Permit Special Conditions – clarifications do not exist.</p>	<p>General Permit Special Conditions – In special condition 6 clarified that the permittee shall notify the department if they exceed 100 µg/l or 500 µg/l <u>of the toxic pollutant</u> not limited in the permit. This is not a new condition, rather a clarification referring back to what is</p>

			<p>actually being measured (the toxic pollutant). The quantification level for biological oxygen demand (BOD) was corrected to one significant digit and not two significant digits (2 rather than 2.0). This accurately reflects the BOD analytical test methodology. New special condition 10 contains termination procedures that describe what the permittee does if they wish to terminate their coverage under this permit. It is standard language that applies to all general permits. No impact.</p>
Section 50 Part II	NA	<p>Stormwater Pollution Prevention Plans (SWPPP) – deadlines reflect the current 2011 - 2016 permit term. Clarifications do not exist. Preparation or updates and implementation of SWPPP for existing facilities were not later than December 30, 2011 and new facilities were required to prepare and implement the SWPPP prior to submitting the registration statement.</p>	<p>Stormwater Pollution Prevention Plans (SWPPP) – deadlines changed to reflect the upcoming permit term. Preparation (or update) and implementation of SWPPP changed to within 60 days of permit coverage. This made all SWPPP preparation (or update) and implementation deadlines the same for all existing and new permittees. Deleted paragraph at B 5 which required the SWPPP to include a summary of sampling data collected because there is no stormwater sampling associated with this permit. Deleted wording that is difficult to enforce such as a requirement to do something <i>to the maximum extent possible</i> or <i>as soon as practicable</i> or <i>if possible</i>. New paragraph G was added that lists allowable non-stormwater discharges. These allowable discharges are standard language for stormwater permits that was inadvertently left out of these stormwater requirements. No impact – clarifications of existing practices.</p>
Section 50 Part III	NA	<p>Conditions Applicable to All VPDES Permits – Requirement in A 4 that samples must be taken in accordance with <a href="#">1VAC30-45</a>, Certification for Noncommercial Environmental Laboratories, or <a href="#">1VAC30-46</a>, Accreditation for Commercial Environmental Laboratories not in permit but is an existing regulatory requirement. Part III B 2 – Requirement for records retention requirements for sewage sludge use and disposal</p>	<p>Conditions Applicable to All VPDES Permits – Added a requirement in A 4 that samples must be taken in accordance with <a href="#">1VAC30-45</a>, Certification for Noncommercial Environmental Laboratories, or <a href="#">1VAC30-46</a>, Accreditation for Commercial Environmental Laboratories. This is a new regulatory requirement effective January 1, 2012, and is being added to all general permits as they are reissued. Part III B 2 - Removed records retention requirements for sewage sludge use and disposal since sewage discharges are not covered by this permit. In Part III I 3, added online allowance for immediate (24-hour) noncompliance reporting. In Part III L</p>



		<p>since sewage discharges was in permit. In Part III I 3,online allowance for immediate (24-hour) noncompliance reporting was not mentioned. In Part III L requirement to meet sewage sludge standards was in the regulation. In Part III Y, waiving the automatic transfer timing (30 days in advance of proposed transfer) was not mentioned. References to modifications and revocations and reissuances were in the regulation.</p>	<p>deleted requirement to meet sewage sludge standards as sewage discharges are not covered by this permit. In Part III Y, revised so that the board may waive the automatic transfer timing (30 days in advance of proposed transfer). Permittees are rarely able to meet this requirement and the staff thinks they need some flexibility with this. Also references to modifications and revocations and reissuances have been removed as these events are not appropriate for coverage under general permits. No impact as these are clarifications of existing practices or removal of requirements that do not apply to this permit.</p>
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**Regulatory flexibility analysis**

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The reissuance of the general VPDES permit accomplishes the objectives of applicable law and minimizes the costs to a small business owner and simplifies the application process. Without the general permit, a small business owner would be required to obtain an individual permit which would increase the complexity of a permit application and permit costs.