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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9 VAC 25-190
Regulation title(s)	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining
Action title	Amend and Reissue Existing General Permit Regulation
Date this document prepared	March 9, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

The focus of the proposed action is amending and reissuing the VPDES general permit for wastewater and stormwater discharges from nonmetallic mineral mines. The current permit expires on June 30, 2019 and needs to be reissued so that nonmetallic mineral mines with point source discharges of wastewater and stormwater to surface waters can continue to have general permit coverage. The proposed action also will update the general permit as necessary to ensure it remains current, clear and effective, and will continue to protect water quality from discharges associated with this industry.

In addition, a periodic/ small business impact review of this regulation will be conducted as part of this regulatory action. Please see the Agency Background Document located at www.townhall.virginia.gov for the specific details on the conduct of the review.

Acronyms and Definitions

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

APA: Administrative Process Act
Board: State Water Control Board
EO: Executive Order
EPA (U.S. EPA): United States Environmental Protection Agency
MSGP: Multi-Sector General Permit
NOIRA: Notice of Intended Regulatory Action
NPDES: National Pollutant Discharge Elimination System
TMDL: Total Maximum Daily Load
USC: United States Code
VAC: Virginia Administrative Code
VPDES: Virginia Pollutant Discharge Elimination System

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency’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 State Water Control Board to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters and § 62.1-44.15(7) authorizes the Board to adopt rules governing the procedures of the Board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the Board to adopt such regulations as it deems necessary to enforce the general water quality management program, §62.1-44.15(14) authorizes the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes, § 62.1-44.16 specifies the Board's authority to regulate discharges of industrial wastes, § 62.1-44.20 provides that agents of the Board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations, and § 62.1-44.21 authorizes the Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters. Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991 to authorize the Commonwealth to administer a General VPDES Permit Program.

Purpose

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

The proposed rulemaking is essential to the protection of health, safety or welfare of the citizens of the Commonwealth. Proper permitting requirements for discharges protect water quality and living resources

of Virginia's waters for consumption of fish and shellfish, recreational uses and conservation in general. The primary issue that needs to be addressed is that the existing general permit expires on June 30, 2019 and must be reissued in order to continue to make a general permit available for nonmetallic mineral mines after that date. Other issues that may need consideration are whether:

- Additional TMDL requirements are needed for impaired waters;
- Additional requirements are needed to address ammonia;
- Stormwater management requirements need to be updated to correspond with EPA's 2015 MSGP;
- Additional benchmarks, limits or special conditions are needed;
- Registration statement questions need to be added, deleted or updated; and,
- Clarification of other aspects of the permit, regulation, forms or instructions is needed.

Substance

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

The general permit will establish limitations and monitoring requirements for point source discharges from nonmetallic mineral mines. 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. No specific changes to the existing general permit have been identified at this time. Amendments may be identified following the submittal of public comments on this notice, and by the technical advisory committee during deliberations on this general permit regulation. Potential issues that may need to be addressed as the regulation is developed are in "Purpose" above.

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.

These discharges are considered to be point sources of pollutants and, thus, are subject to regulation under the VPDES permit program. There are two alternatives for compliance with the federal and state requirements to permit wastewater discharges from nonmetallic mineral mines. One alternative is to issue individual VPDES permits to each facility. The other is to reissue the existing VPDES nonmetallic mineral mining general permit to cover this category of dischargers. Individual permits will be issued to those facilities that do not qualify for coverage under the general permit.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

In addition, please see the periodic review/small business impact review announcement section below for details on specific comments requested for the conduct of the review of this regulation being conducted as part of this regulatory action

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Peter Sherman, Office of VPDES Permits, Virginia DEQ, P.O. Box 1105, Richmond, VA 23218; Phone (804) 698-4044; FAX 698-4032; peter.sherman@deq.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

Public hearing at proposed stage

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall 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.

Periodic review /small business impact review announcement

If you wish to use this NOIRA 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.

Technical Advisory Committee

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

The Board is using a technical advisory committee to develop a proposal. Persons interested in assisting in the development of a proposal should notify the Department contact person by the end of the comment

period and provide their name, address, phone number, email address and the organization you represent (if any). Any persons who want to be on the advisory committee are encouraged to attend the public meeting mentioned above. The primary function of the advisory committee is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the advisory committee will be sent to all applicants.

Family Impact

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

There is no impact on the institution of the family and family stability.