



townhall.virginia.gov

Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9VAC25-110
Regulation title(s)	Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Domestic Sewage Discharges Less Than or Equal to 1,000 GPD
Action title	2021 Amendment and Reissuance of the Existing Regulation
Date this document prepared	February 6, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

This general permit regulation establishes limitations, monitoring requirements and other special conditions for point source discharges of treated domestic sewage from treatment works with a design discharge flow of less than or equal to 1,000 gallons per day to surface waters in order to maintain surface water quality.

This regulatory action is proposed to amend and reissue the existing general permit, which expires on August 1, 2021.

In addition, a periodic/small business impact review of this regulation will be conducted as part of this regulatory action.

Acronyms and Definitions

Please define all acronyms or technical definitions used in the Agency Background Document.

Board: State Water Control Board
EPA (U.S. EPA): United States Environmental Protection Agency
DEQ: Department of Environmental Quality
NOIRA: Notice of Intended Regulatory Action
GPD: Gallons Per Day
NPDES: National Pollutant Discharge Elimination System

USC: United States Code
 VAC: Virginia Administrative Code
 VDH: Virginia Department of Health
 VPDES: Virginia Pollutant Discharge Elimination System

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The impetus of this regulatory change is Virginia Code § 62.1-44.15 (5a) which states, "All certificates issued by the Board under this chapter shall have fixed terms. The term of a Virginia Pollutant Discharge Elimination System permit shall not exceed five years." This general permit expires on August 1, 2021, and must be reissued in order to make coverage available for discharges of treated domestic sewage from treatment works with a design discharge flow of less than or equal to 1,000 gallons per day that discharge to surface waters after August 1, 2021.

The periodic review of this regulation is mandated by Executive Order 14 (as amended July 16, 2018). <http://TownHall.Virginia.Gov/EO-14.pdf>.

Legal basis

Please identify: (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 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 this regulation 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.

This proposed regulatory action is needed in order to establish permitting requirements for discharges of treated domestic sewage from treatment works with a design discharge flow of less than or equal to 1,000

gallons per day to surface waters in order to protect the health, safety and welfare of citizens. The existing general permit expires on August 1, 2021 and must be reissued to cover existing and new domestic sewage discharges from treatment works with a design discharge flow of less than or equal to 1,000 gallons per day. Some issues that may need to be addressed are enhancing coordination with the Virginia Department of Health (VDH), ensuring that the applicability threshold for this permit is clearly conveyed, confirming that maintenance and monitoring requirements are well explained, examining opportunities to reduce burden, and any other issues that arise from publishing this notice of intent and during the technical advisory committee meetings.

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 treated domestic sewage from treatment works with a design discharge flow of less than or equal to 1,000 gallons per day. The effluent limits, monitoring requirements and special conditions in the general permit will be reviewed to ensure that the permit is still protective of water quality. The primary issue that needs to be addressed is that the existing general permit expires on August 1, 2021 and must be reissued in order to continue making it available after that date. Some issues that may need to be addressed are enhancing coordination with VDH, ensuring that the applicability threshold for this permit is clearly conveyed, confirming that maintenance and monitoring requirements are well explained, and examining opportunities to reduce burden. Amendments may be identified following the submittal of public comments on this Notice and by the technical advisory committee during deliberations of this general permit regulation.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There are two alternatives for compliance with federal and state requirements to permit discharges from point source discharges of treated domestic sewage from treatment works with a design discharge flow of less than or equal to 1,000 gallons per day. One is to issue individual VPDES permits to each establishment, which would require that each owner must submit an application for a VPDES permit with the corresponding fees. The other is to reissue this general VPDES permit to cover this category of dischargers. Owners may register for coverage under the general permit by submitting a limited amount of information and pay the corresponding general permit fees, which are less than the fees for an individual permit. Thus, the general permit is the less intrusive and less costly alternative for small businesses and other in-scope entities. General permits also require fewer DEQ staff resources to issue.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) 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; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public Participation

Please indicate whether the agency is seeking comments on this regulation, including ideas to assist the agency in the development of the regulation 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 are 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 regulation.

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

The Board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to: Peter Sherman, P.O. Box 1105, Richmond, Virginia 23218, phone: 904 698-4044, FAX: 804 698-4032, and peter.sherman@deq.virginia.gov. In order to be considered, comments must be received by 11:59 pm 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 (<https://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.

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). 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.