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Exempt Action: Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-194
VAC Chapter title(s)	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Vehicle Wash Facilities and Laundry Facilities
Action title	Update and amend the regulation that expires on October 15, 2022 in order to continue to offer general permit coverage for this industry.
Date this document prepared	8/13/2021

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The regulation specifies requirements for vehicle wash and laundry facilities to discharge process wastewater to protect water quality. The most significant amendments to this regulation are updating definitions, adding 5,000 GPD as a limit, updating operations and maintenance manual requirements.

Mandate and Impetus

Identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."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 the 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 October 15, 2022 and must be reissued in order to make coverage available for seafood processors that discharge to surface waters after that date.

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.

- DEQ: Department of Environmental Quality
- DMR: Discharge Monitoring Report
- EPA (U.S. EPA): United States Environmental Protection Agency
- GPD: Gallons per Day
- MS4: Municipal Separate Storm Sewer System
- NAICS: North American Industry Classification System
- NPDES: National Pollutant Discharge Elimination System
- SCC: State Corporation Commission
- SIC: Standard Industrial Classification
- TAC: Technical Advisory Committee
- USC: United States Code
- VAC: Virginia Administrative Code
- VPDES: Virginia Pollutant Discharge Elimination System

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

The promulgating entity is the State Water Control Board. 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 explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

This proposed regulatory action is needed in order to establish permitting requirements for discharges from vehicle wash facilities and laundry facilities in order to protect the health, safety and welfare of citizens. The existing general permit expires on October 15, 2022 and must be reissued to cover existing and new vehicle wash and laundry discharges. The goal is to update the permit and the regulation to be consistent with other VPDES general permits.

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.

Substantive provisions include adding new definitions for "golf course equipment", "inlet protection measures", "lawn maintenance equipment, "NAICS" and "SIC" and revising definitions of "laundry" and "vehicle wash" in existing section 10. Adding a flow limit of 5,000 gallons per day to the limits page for vehicle wash facilities that discharge a monthly average flow rate less than or equal to 5,000 gallons per day in existing section 70 A. Including oil water separators, trash and other debris in the solids management plan and O&M plan in existing section 70 B 6 (Part I B 6). Adding stormwater inlet protection measure use and maintenance, frequency of settling basin cleaning and solids handling and a schedule for process water sampling attempts to the O&M manual requirement in existing Part I B 13 (section 70). Adding a requirement to submit electronic registration forms and discharge monitoring reports when these are made available by the department in existing sections 60 D and Part II C 2 (section 70).

Issues

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

The advantages to the public and the agency of reissuing this permit are that a VPDES general permit will continue to be available to facilities with eligible discharges enabling them to discharge to surface waters in a manner that is protective of those waters without the increased cost and more complicated application process associated with issuing an individual permit. There are no known disadvantages.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change that is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected:
None

Localities Particularly Affected:
None

Other Entities Particularly Affected:
None

Regulatory Flexibility Analysis

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

The reissuance of the VPDES general 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.

Public Comment Received

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

No comments were received during the Notice of Intended Regulatory Action.

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 and the impacts of the regulated community.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts of this regulatory proposal and any impacts of the regulation on farm and forest land preservation. The agency/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) 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 for the public comment file may do so by mail, email or fax to Eleanore Daub, P.O. Box 1105, Richmond, Virginia 23218, phone: 804-698-4111 (for questions), elleanore.daub@deq.virginia.gov or Fax: 804-698-4178 (**please insure recipient [Eleanore Daub] is on fax or cover page of fax**). Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at (<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://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. If the regulatory change will be 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 change. Please include citations to the specific section(s) of the regulation that are changing.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-194-10. Definitions.		<p>No definitions exist for “Golf Course Equipment,” Inlet Protection Measures,” Lawn Maintenance Equipment,” “NAICS” and “SIC.”</p> <p>Vehicle wash definition excludes only chemical spreading equipment.</p>	<p>Added definitions for “Golf Course Equipment,” “Inlet Protection Measures,” “Lawn Maintenance Equipment,” “NAICS” and “SIC.” These definitions were added to clarify various requirements in the regulation.</p> <p>Clarified definition for “Vehicle Wash” to include references to NAICS and SIC codes to be consistent with other VPDES general permit regulations.</p> <p>Clarified that vehicle wash does not include chemical, fertilizer or pesticide spreading equipment.</p> <p>Moved the definition of “Maintenance Equipment” to the definition of “Vehicle Wash” (added street sweepers and catch basin cleaner trucks directly to the list of allowable vehicles) so the phrase “maintenance equipment” would not conflict with the same phrase in the definition of “Lawn Maintenance Equipment.”</p> <p>Many of these changes were done as a result of discussion at the TAC meeting on June 10, 2021.</p> <p>The new definitions for “Golf Course Equipment” and “Lawn Maintenance Equipment” may impact some permittees if they are currently getting permit coverage for washing equipment used for fertilizer, pesticide or herbicide application because the new definitions exclude these applications.</p> <p>The definition for “Inlet Protection Measures” may require permittees that rely only on inlet protection to maintain water quality to add additional inlet protection measures since a combination of both equipment and other best management practices are included as part of the definition.</p>
9VAC25-194-15. Applicability of incorporated references based on the dates that they became effective.		Effective date for the Title 40 CFR is July 1, 2017	Effective date for the Title 40 CFR changed to July 1, 2021. No impact.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
<p>9VAC25-194-40. Effective date of the permit.</p>		<p>Effective date of permit is October 16, 2017 – October 15, 2022.</p>	<p>Effective date of permit is January 1, 2023 – December 31, 2026</p> <p>Updated to cover a new permit term. The effective date is moved to January 1, 2023 which is 2.5 months after the current 5 year term. Ending a permit term in the middle of the month as the permit is currently set up disrupts DMR or e-DMR record population, which is programmed to create DMR records based on full calendar months, quarters and semi-annual or annual time periods. Permit coverage will be administratively continued until January 1, 2023.</p> <p>There is an impact because during the period of administrative continuance (from October 15, 2022 until December 31, 2022, no new permit coverage can be issued. Administrative continuance of permit coverage can only apply to existing permittees. New permittees cannot apply for a permit that is expired.</p>
<p>9VAC25-194-50. Authorization to discharge.</p>		<p>Continuation of permit coverage requires submittal of complete registration statement before October 16, 2017.</p>	<p>Removed the specific date and provide that a complete registration statement must be submitted at least 60 days prior to permit expiration or as specified by the Board.</p> <p>This is being done to all general permit regulations to make the language more generic and avoid having to change dates at every reissuance.</p> <p>No impact.</p>
<p>9VAC25-194-60 A and B. Registration statement.</p>		<p>Registration statement deadlines and required submittals. Deadline 30 days prior expiration of permit, commencement of discharge or adding a new process.</p>	<p>Changed 30 days to 60 days to be consistent with other general permits due dates, and allowed for a later date established by the Board.</p> <p>The impact is that permittees will have to submit a registration statement and other notifications to DEQ sooner. However, the regulation also allows for DEQ to accept a late registration statement but coverage cannot be retroactive.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-194-60 C. Registration statement.		No email, latitude, longitude or SCC requirements.	<p>Various grammar changes. Added email, latitude, longitude and SCC entity identification number.</p> <p>These changes were added to make the registration requirements similar to other general permits. Latitude and longitude were added for e-reporting requirements per EPA. SCC entity identification number added to be clear on the owner's name for permitting and enforcement purposes.</p> <p>Some impact as the registrants will be required to find latitude longitude via a phone application or via the DEQ online VEGIS database. https://www.deq.virginia.gov/connectwithdeq/vegis.aspx</p> <p>Some entities will also be required to obtain an email.</p> <p>Some entities will be required to obtain an SCC entity identification number. Typically, businesses operating in Virginia must already have an SCC entity identification number. This only required if the entity in not a sole proprietor).</p>
9VAC25-194-60 D. Registration statement.		Registration statement shall be delivered to the department by postal or electronic mail.	<p>Added that once the 9VAC25-31-1020 (Electronic Reporting) date is established for this industry, registration statements shall be submitted electronically. Three months' notice shall be given by the department about this requirement.</p> <p>Some impact because once electronic reporting dates are established and technology is developed at the department, the permittees will be required to file registration statements electronically. This may be difficult if the registrant has no available internet access (even via a public library) or computer/internet skills. Waivers are available under very limited circumstances.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-194-70. General permit.		Effective and expiration dates October 16, 2017 – October 15, 2022	<p>Effective date of permit is January 1, 2023 – December 31, 2026</p> <p>Updated to cover a new permit term. The effective date is moved to January 1, 2023 which is 2.5 months after the current 5 year term. Ending a permit term in the middle of the month as the permit is currently set up disrupts DMR or e-DMR record population, which is programmed to create DMR records based on full calendar months, quarters, semi-annual or annual time periods. Permit coverage will be administratively continued until January 1, 2023.</p> <p>There is an impact because during the period of administrative continuance (from October 15, 2022 until December 31, 2022, no new permit coverage can be issued. Administrative continuance of permit coverage can only apply to existing permittees. New permittees cannot apply for a permit that is expired.</p>
9VAC25-194-70. General permit. Part I A		Flow is a monitoring requirement and the permittee must notify DEQ when flow exceeds this amount.	<p>Added a 5,000 GPD limit for flow to reflect the maximum flow rate allowed by the Part I A limits page. This was discussed in the TAC meeting as a potential addition so it can be tracked more efficiently during the term of the permit.</p> <p>By adding this as a limit instead of a monitoring requirement, some permittees may get a warning letter if the flow exceeds 5,000 GPD.</p>
9VAC25-194-70. General permit. Part I B 1		Special condition includes weekly visual examinations of the effluent including sheens, floating solids, or visible foam.	<p>Presence of a discharge is added to the weekly visual examination. This is done to document to DEQ inspectors whether a “no discharge” result on the annual DMR is accurate.</p> <p>Some impact as another piece of information must be added to the operational log.</p>
9VAC25-194-70. General permit. Part I B 6		Settling basins shall be cleaned frequently to achieve effective treatment and all solids shall be handled, stored, and disposed of so as to prevent a discharge to state waters of such solids.	<p>The special condition now requires that oil water separators, trash and other debris are part of the solids management plan. The schedule for cleaning shall be in the O&M manual. These are clarifications specific to solids management at vehicle washes.</p> <p>Some impact as permittees must add new information to the solids management plan and O&M manual.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-194-70. General permit. Part I B 9		Permittees discharging into a MS4 shall notify the owner of the MS4 of the existence of the discharge at the time of registration and include that notification with the registration statement. The notice shall include the name of the facility, a contact person and contact information, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number.	<p>Added phone number and email as a detail required under contact information. This was requested by the TAC.</p> <p>Added "if known or existing" under the requirement to provide the facility's VPDES general permit number since new issuances would not have a VPDES general permit number.</p> <p>There may be an impact if a permittee does not have internet access and will be required to obtain that technology in order to provide an email.</p>
9VAC25-194-70. General permit. Part I B 13		The O&M manual requirements include effluent sampling techniques, a discussion of BMPs or stormwater inlet protection methods, treatment system operation, the sludge/solids management plan, procedures for performing the visual examination and a date when the O&M manual was updated.	<p>Clarifying that the O&M manual should contain stormwater inlet protection measures directions for use and maintenance of equipment and should contain (with the sludge/solids management plan) the frequency of cleaning solids from settling basins and oil/water separators. Also, the O&M manual should include the handling of solids from the settling basins or the oil/water separator, trash or other debris such that there is no discharge to state waters.</p> <p>Some impact as permittees must add new information to the O&M manual.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-194-70 Part II C 2			<p>Added that once the 9VAC25-31-1020 (Electronic Reporting) date is established for this industry discharge monitoring reports shall be submitted electronically. Three months' notice shall be given by the department about this requirement.</p> <p>Some impact because once electronic reporting dates are established and technology is developed at the department, the permittees will be required submit discharge monitoring reports electronically. This may be difficult if the registrant has no available internet access (even via a public library) or computer/internet skills. Waivers are available under very limited circumstances.</p>
9VAC25-194-70 Part II I 4		Contains immediate notification requirements for noncompliance which may adversely affect state waters or may endanger public health.	<p>Updated the web site address for electronic immediate notification.</p> <p>No impact.</p>
9VAC25-194-70 Part II I 5		No requirement.	<p>Added a requirement that where the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement or submitted incorrect information in a permit registration statement or in any report to the department, it shall promptly submit such facts or information.</p> <p>This is a requirement in the VPDES permit regulation at 9VAC25-31-190 L 9.</p> <p>Some impact as the permittee needs to be aware of this new requirement.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-194-70 Part II J 1 b		The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit	Removed “elsewhere in this permit” and specified this in Part I B 12. No impact.
9VAC25-194-70 Part II W		The permittee shall allow the director, or an authorized representative, upon presentation of credentials and other documents as may be required by law to enter the property, see records and take samples.	Clarified that the authorized representative includes an authorized contractor acting as a representative of the administrator. This is required by 9VAC25-31-190 I. No impact.
9VAC25-194-70 Part II Y		Permits are not transferable to any person except after notice to the department.	Changed to say that permit coverage is not transferable to any person except after notice to the department. This is because general permits are “covered” under the permit regulation and therefore, permit coverage may be transferred. This paragraph was also renumbered to match the numbering of other general permit regulations. No impact.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and

supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no potential impact of the proposed regulatory action on the institution of the family and family stability.