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Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-860
VAC Chapter title(s)	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Potable Water Treatment Plants
Action title	VPDES General Permit -Potable Water Treatment Plants - Amend and Reissue Existing Regulation
Final agency action date	November 29, 2022
Date this document prepared	October 24, 2022

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 potable water treatment plants to discharge process wastewater to protect water quality. The most significant amendments to this regulation are updating definitions, adding total suspended solids and chlorine discharge limits for reverse osmosis and nanofiltration plants and including future electronic reporting requirements. This regulatory action is proposed to amend and reissue the existing general permit, which expires on June 30, 2023.

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). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”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 Pollution Discharge Elimination System permit shall not exceed five years." This general permit expires on June 30, 2023 and must be reissued in order to make coverage available for potable water treatment plants that discharge to surface waters after that date. If this permit is not re-issued in a timely manner, no new coverage is available to any new facility owner or operator and such owners or operators would be required to obtain individual VPDES permits, which require more time to develop and issue, and impose significantly greater burden and costs on permittees and increased administrative burden on DEQ.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

DEQ: Department of Environmental Quality
 EPA (U.S. EPA): United States Environmental Protection Agency
 NPDES: National Pollutant Discharge Elimination System
 PREP: Pollution Response Program
 TAC: Technical Advisory Committee
 USC: United States Code
 VAC: Virginia Administrative Code
 VPDES: Virginia Pollutant Discharge Elimination System
 WTP: Water Treatment Plant

Statement of Final Agency Action

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.

On November 29, 2022, the State Water Control Board adopted the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Potable Water Treatment Plants – 9VAC25-860 as a final regulation.

Legal Basis

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 for this regulation 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.

Changes to this chapter of the Virginia Administrative Code are exempt from Article 2 of the Administrative Process Act (2.2-4006 A 8).

Purpose

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's intended to solve.

This proposed regulatory action is needed in order to establish permitting requirements for discharges from potable water treatment plants in order to protect the health, safety and welfare of citizens. The existing general permit expires on June 30, 2023 and must be reissued to cover existing potable water treatment plant discharges. The goal is to update the permit and the regulation to be consistent with other VPDES general permits.

Substance

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 updating definitions, adding total suspended solids and chlorine discharge limits for reverse osmosis and nanofiltration plants and including future electronic reporting requirements.

Issues

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 to the public, agency or regulated community.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no requirements that exceed applicable federal requirements. There is no change to previously reported information.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

There is no change to previously reported information which was as follows:

Other State Agencies Particularly Affected - None

Localities Particularly Affected – there are many localities that operate drinking water treatment plants for their locality that have coverage under this permit but none bear a disproportionate material impact.

Other Entities Particularly Affected - None

For purposes of "Locality Particularly Affected" under the Board's statutes

Public Comment

Summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. Ensure to include all comments submitted: including any 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.

There were no comments received in response to impact to small businesses.

The existing permit regulation is needed because it expires on June 30, 2023 and must be reissued for another term to remain available to new and current permittees. If this permit is not re-issued in a timely manner, no new coverage is available to any new facility owner or operator and such owners or operators would be required to obtain individual VPDES permits, which require more time to develop and issue, and impose significantly greater burden and costs on permittees and increased administrative burden on DEQ. In addition, internal staff review and TAC meeting input have identified areas where the general permit could be improved.

The regulation is a technical regulation but written as clearly as possible to convey the requirements to maintain water quality.

The regulation does not overlap, duplicate or conflict with federal or state law or regulation. Staff from the Office of Drinking water at the Virginia Department of Health (the agency responsible for finished water treatment) participated on the technical advisory committee.

The regulation was evaluated during periodic review in October 2020 and before that at permit reissuance which was effective July 2018.

Commenter	Comment	Agency response
Jennifer Fulton, Acting Chief, Clean Water Branch US EPA Mid-Atlantic Region	The draft permit allows for automatic transfer of coverage to a new permittee if the current permittee notifies the department within 30 days of the transfer of the title to the facility or property. This permit condition appears to be inconsistent with 40 CFR 122.61(b)(1) which requires the permittee to notify the Director at least 30 days in advance of the proposed transfer date. EPA recommends VADEQ	DEQ intends to retain the language as drafted to ease the burden of administering the general permit on staff. The 30 day prior notification deadline is rarely met when property is transferred and DEQ staff prefer the

	revisit the automatic transfer of coverage condition in the permit to ensure its consistency with the regulations.	requirement reflect the normal timing of events so waivers or additional documentation is not needed.
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Details of Changes Made Since the Previous Stage

List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
9VAC25-860-10, 50, 60 and 70.	NA	The term “board” is used for most actions related to the permit in the proposed stage.	Replaced “board” with “department” wherever the requirement is referring to a permit action.	This conforms to recently enacted legislation (SB 657). In the balance of the general permit/ regulation, changed “board” to “department” where the reference was to a permit action. No impact.
9VAC25-860-10	NA	The definition “Department” or “DEQ” means the Virginia Department of Environmental Quality was stricken as an amendment in the proposed stage because definitions in the permit regulation do not need to be repeated in the general permit regulations.	The definition was reinstated.	The recently enacted legislation (SB 657) assumed this definition to be present to correspond with the new definition of “Board” that was part of the SB 657 amendments so it was decided to keep the definition of “Department.” No impact.
9VAC25-860-15		Applicability of incorporated references based on the dates that they became effective was changed to July 1, 2021 in the proposal.	Effective date for the Title 40 CFR changed to July 1, 2022.	Effective date for the Title 40 CFR changed to July 1, 2022 to reflect the most recent federal fiscal year. No impact.

Details of All Changes Proposed in this Regulatory Action

List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new

requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-860-10, 50, 60 and 70.	NA	The term "board" is used for most actions related to the permit in the proposed stage.	Replaced "board" with "department" wherever the requirement is referring to a permit action. This conforms to recently enacted legislation (SB 657). In the balance of the general permit/ regulation, changed "board" to "department" where the reference was to a permit action. No impact.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-860-10. Definitions.		No definition for “conventional filtration treatment.”	<p>Added definition for “conventional filtration treatment” per the recommendation of the TAC since the term is used in this regulation. The definition is taken from the VDH Waterworks Regulation 12VAC5-590-10.</p> <p>Amended definition for "Membrane treatment" to mean a pressure driven or vacuum process. “Vacuum” was added at the request of the TAC to reflect the fact that membrane treatment can be pressure or vacuum driven.</p>
9VAC25-860-15. 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, 2022. No impact.
9VAC25-860-40. Effective date of the permit.		Effective date of permit is July 1, 2018 and expires on June 30, 2023.	<p>Effective date of permit changed to July 1, 2023 and expires on June 30, 2028.</p> <p>Updated to reflect new five year permit term.</p>
9VAC25-860-50. D Authorization to discharge.		Subdivision 1 describes requirements for continuation of permit coverage.	Same requirement, amendments made to language to match other general permit continuation language. No impact.
9VAC25-860-60 A Registration statement.		Subsection A contains deadlines for registration statement submittals for new and existing facilities.	Same requirements, amendments made to language to match other general permit registration language. No impact.

<p>9VAC25-860-60 C. Registration statement.</p>		<p>Subsection C contains registration requirements.</p> <p>Question #6 asks for flow information (daily maximum actual or projected process wastewater flow rate (MGD or GPD), typical volume, duration of discharges, and frequency of discharge. Question also asks for latitude and longitude.</p> <p>Question #7 provides examples for types of treatment.</p> <p>Question #8 asks for other VPDES permit numbers that allow discharges.</p> <p>No question asking for Virginia Department of Health Public Water Supply Identification (PWSID) number.</p> <p>After insertion of VDH PWSID number, the following subdivisions are renumbered.</p> <p>Question #13 asks for information on chemicals used in the production of drinking water and process wastewater treatment, to include (i) a description of chemicals, (ii) a proposed or actual schedule and quantity of chemical usage, (iii) a description of any chemical or chemical usage changes since the previous registration statement was submitted, and (iv) a description of which chemicals have no likelihood</p>	<p>Amendments made to language to match other general permit registration requirement language in questions 2, 12 and 16. No impact.</p> <p>Question #6 changed to require daily maximum and monthly average process wastewater flow and typical volume deleted. No impact as this information is required by the permit. Clarified that latitude and longitude should be in decimal degrees (six digits - ten-thousandths place. This is consistent with the VPDES Construction General Permit 9VAC25-880-50 for a similar requirement. No impact.</p> <p>Question #7 provided examples for types of treatment but clarified that “conventional” was “conventional filtration treatment” to match new definition in section 10. No impact.</p> <p>Question #8 same question but clarifies DEQ wants VPDES or VPA permit numbers.</p> <p>Question #9 inserted which asks for (PWSID) number. This assists DEQ in identifying and crosschecking VDH and DEQ potable WTPs. No impact as all potable WTPs already know their VDH PWSID number.</p> <p>Question #13 revised to ask for a schematic drawing showing the treatment of the water from raw water intake through finished water distribution. Indicate clearly where backwash, reject water, clean in place water, and disinfection chemicals could enter the process wastewater and exit the outfall to state waters. Also include in schematic where solids from any treatment process are settled or dried. This was done so DEQ can clearly see what process water is being discharged so that the appropriate permit limits page is applied to that facility. Minor impact as some</p>
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Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
		of entering the process wastewater.	permittees may have to redraw their schematics to be clearer where process waters are discharged.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-860-60 E. 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>
9VAC25-860-70. General permit.		Effective and expiration dates July 1, 2018 – June 30, 2023.	Updated to next term July 1, 2023 to June 30, 2028.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
<p>9VAC25-860-70. General permit. Part I A 1</p>		<p>Footnote (2) states that the reported estimated flow is to be based on the technical evaluation of the sources contributing to the discharge.</p> <p>Footnote (4) contains instructions for composite sampling.</p>	<p>Amended footnote (2) to say the estimated flow “may be” based on a technical evaluation of the sources contributing to the discharge. Flow is often measured using a flow meter (which is more accurate than an estimate) so the footnote estimate is an allowance and not a requirement. No impact as this reflects existing procedures.</p> <p>Footnote (4) instructions for composite sampling clarified to match other permits with similar composite instructions. Also added that composite sample procedures for batch discharges unable to meet the above requirements may be approved by DEQ on a case by case basis. This is a clarification to add flexibility to batch composite procedures as batch discharges may be very short and variable. DEQ has had to approve alternative compositing procedures in the past that met the spirit and intent of this footnote in order to receive representative samples. This is a clarification of existing procedures. No impact.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-860-70. General permit. Part I A 2		Part I A 2 contains limits for reverse osmosis and nanofiltration plants.	<p>Added limits for TSS and chlorine under certain circumstances. TSS applies when conventional filtration treatment is used at the reverse osmosis plant and present in the discharge. Chlorine applies when chlorine is present in the discharge. As drinking water treatment scenarios have changed over the years, DEQ has determined that conventional treatment technologies can be used prior to the reverse osmosis or nanofiltration and should therefore contain TSS and chlorine limits similarly to Part 1 A 1 pages. This will impact plants that contain these mixed treatment technologies to include TSS and chlorine in their discharges. DEQ estimates there is currently one facility impacted by these additional requirement.</p> <p>Composite sampling procedures in footnote (3) were amended as described in Part I A 1 (footnote (4)) above.</p>
9VAC25-860-70. General permit. Part I B		Subdivision 8 contains compliance reporting conditions for the limits in Part I A.	<p>Subdivision clarified to add instructions for how to calculate the monthly average and the daily maximum for quarterly reporting. This may impact facilities that have been calculating averages or maximums differently.</p> <p>Deleted the instructions on how to calculate quantity when samples are below detection. There are no quantity related calculations with QLs so the instructions are not needed. No impact.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-860-70 Part II C		Monitoring results shall be submitted on a form provided by DEQ.	<p>Added that once the 9VAC25-31-1020 (Electronic Reporting) date is established for this industry, DMRs 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 DMRs 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>
9VAC25-860-70 Part II G, H, I, L and Y		<p>Subsection D contains the duty to provide information that the board requests for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit.</p> <p>Subsection G contains unauthorized discharge reporting requirement.</p> <p>Subsection H contains unusual discharge reporting requirements</p> <p>Subsection I contains noncompliance reporting requirements.</p> <p>Subsection L contains the requirement to reapply for coverage.</p> <p>Subdivision Y contains transfer of permit coverage requirements.</p>	<p>D, G, H, I, L and Y contain the same requirements but amendments made to the language to match other general permit language in these requirements.</p> <p>Subsection I was also amended to reflect more recent reporting requirements after discussions with DEQs Pollution Response Program (PREP) staff who requested all after hours reporting be done online via the PREP portal. This portal automatically notifies regional offices and logs the report in the database. This requirement should not be a problem for this particular industrial sector as most of these permittees are localities with internet access so online access is available.</p>

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.

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.