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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9 VAC25-890
VAC Chapter title(s)	General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (VAR04)
Action title	Amend and Reissue the Small MS4 General Permit
Date this document prepared	June 3, 2021

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 (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 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 rulemaking is proposed in order to amend and reissue the existing general permit which expires on October 31, 2023. The general permit governs local governments and state and federal agencies that discharge stormwater from municipally owned separate storm sewer systems located within the Census Urbanized Area as determined by the Bureau of Census.

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

Define all acronyms or technical definitions used in this form.

DEQ: Department of Environmental Quality
 EPA (U.S. EPA): United States Environmental Protection Agency
 MS4: Municipal Separate Storm Sewer System
 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

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, petition for rulemaking, periodic review, or board decision). 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 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 31, 2023 and must be reissued in order to make coverage available for Small Municipal Separate Storm Sewer Systems discharging to surface waters.

Legal Basis

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

The basis of this regulation is §62.1-44.15:25 of the Code of Virginia which authorizes the State Water Control Board under the Virginia Stormwater Management Act to issue, deny, revoke, terminate or amend stormwater permits and adopt regulations for the control of stormwater discharges from Municipal Separate Storm Systems to surface 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

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, explain any potential issues that may need to be addressed as the regulation is developed.

The proposed regulatory action protects water quality in the Commonwealth of Virginia which is essential to the health, safety and welfare of Virginia’s citizens. The proposed action authorizes municipal owners or operators of separate storm sewer systems located within the Census Urbanized Area to discharge stormwater to waters of the state. The general permit establishes the minimum control measures to reduce the potential discharge of pollutants in municipal stormwater as well as requirements for demonstration of compliance with TMDL wasteload allocations for local watersheds and the Chesapeake Bay. The primary issue that needs to be addressed is that the existing general permit expires on October 31, 2023 and must be reissued to authorize small MS4s to continue to discharge under the general permit.

Substance

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

Changes to the existing general permit include updating the permit effective dates of the general permit, revisions to provide clarity to permit requirements and correcting typographical errors. Based on concerns expressed during the previous reissuance of the general permit, DEQ is considering either replacement of the existing general permit effective July 1, 2023 or shortening the term of the reissued general permit to June 30, 2028 to match the fiscal year reporting requirements under the regulation. Amendments may be identified following the submittal of public comments on this notice, through the work of the technical advisory committee, or to comply with federal regulations and watershed plans.

Alternatives to Regulation

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.

One alternative to promulgating a regulation for the small MS4 general permit is the issuance of individual permits to authorize the discharge of stormwater from MS4s. However, the application and maintenance fee costs associated with an individual permit are significantly higher than those for coverage under the general permit. There are currently 104 small MS4s covered under the general permit.

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.

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The agency 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 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: 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 may do so by mail or email to Derick Winn, DEQ, Office of VPDES Permits, P.O. Box 1105, Richmond, VA 23218, phone 804/698-4114, email derick.winn@deg.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall (<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 before 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 (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar (<https://www.virginia.gov/connect/commonwealth-calendar>).

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's 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.