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Exempt Action: Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-880
VAC Chapter title(s)	General VPDES Permit for Discharges of Stormwater from Construction Activities
Action title	CH880- 2024 Amendment and Reissuance of the VPDES Stormwater Construction General Permit Regulation
Date this document prepared	5/11/23

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.

This regulatory action is proposed to amend and reissue the existing general permit regulation which expires on June 30, 2024. This general permit regulation authorizes the discharge of stormwater from construction activities equal to or greater than 1 acre of land disturbance or less than 1 acre of land disturbance within a larger common plan of development or sale that results in one acre or more of land disturbance. This regulatory action is needed for existing and new construction activities to be covered under this general permit regulation. The revisions to the general permit made through this regulatory action focused on changing citations and references to be consistent with the new Virginia Erosion and Stormwater Management Regulation (9VAC25-875, effective July 1, 2024); improving the clarity and readability of language in the permit; updating provisions to be consistent with other recently reissued VPDES permits; and amending and adding language and new provisions to be consistent with the reissued 2022 EPA Construction General Permit.

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 § 62.1-44.15:26(a) which states “All state permits issued by the Board under this article shall have fixed terms. The term of a state permit shall be based upon the projected duration of the project, the length of any required monitoring, or other project operations or permit conditions; however, the term shall not exceed five years.” This general permit regulation expires on June 30, 2024 and must be reissued in order to make coverage available for discharges of stormwater from construction activities after June 30, 2024.

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 (or Department): Department of Environmental Quality
- EPA (U.S. EPA): United States Environmental Protection Agency
- NPDES: National Pollutant Discharge Elimination System
- USC: United States Code
- VAC: Virginia Administrative Code
- VPDES: Virginia Pollutant Discharge Elimination System
- CGP: General VPDES Permit for Discharges of Stormwater from Construction Activities

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 basis of this regulation is Virginia Code § 62.1-44.15.:25 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 regulated construction activities to state waters. These discharges are defined as stormwater discharges from large construction activity and stormwater discharges from small construction activity.

Section 402 of the federal 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 authorized the Commonwealth to administer a VPDES General 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

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.

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 and is needed in order to establish appropriate and necessary permitting requirements for discharges of stormwater from large and small construction activities. Under the federal Clean Water Act, these discharges are considered point source discharges and thus are subject to regulation under the VPDES permit program. The programmatic and technical requirements implemented by this general permit regulation are contained within the Virginia Stormwater Management Program Regulation (9VAC25-870-10 et seq.), which is in the process of being re-codified into the new Virginia Erosion and Stormwater Management Regulation (9VAC25-875). The proposed regulatory action authorizes discharges of stormwater from large and small construction activities and establishes the best management practices and control measures necessary to control such discharges. This regulatory action also implements the post-development water quality and water quantity design criteria as required in the Virginia Stormwater Management Program Regulation. The primary issue that needs to be addressed is that the existing general permit regulation expires on June 30, 2024, and must be reissued to continue to authorize stormwater discharges from construction activities through general permit coverage. Failure to reissue this general permit prevent any new construction activities from being covered by under the general permit after June 30, 2024.

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.

Changes to the existing general permit regulation include updating the effective dates of the general permit to July 1, 2024, through June 30, 2029, updating requirements to be consistent with EPA’s 2022 Construction General Permit, revisions to provide clarity to permit requirements, and correcting typographical errors.

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 are that a VPDES general permit will continue to be available to construction site operators to enable them to discharge safely to surface waters without the increased cost and more complicated application process associated with obtaining an individual VPDES permit. Clarifications to permit requirements will assist all stakeholders with understanding permit requirements. There are no known disadvantages to the public or the agency.

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:

The Virginia Department of Transportation (VDOT) is particularly affected because of the amount of construction activities that they undertake requiring a CGP. This permit provides VDOT with a streamlined permitting approach for construction activities that are covered by this permit. If this permit is not re-issued prior to expiration, VDOT, like other entities would be required to obtain an individual permit for each construction project that disturbs one or more acres.

Localities and Other Entities Particularly Affected:

There are no localities or other entities particularly affected by the proposed regulation. The CGP is applicable statewide to any operator of a construction activity that disturbs one acre or greater or less than one acre and part of a common plan of development that will disturb one of more acres. This general permit provides localities with a streamlined permitting approach for construction activities that are covered by this permit. If this permit is not re-issued prior to expiration, localities, like other entities would be required to obtain an individual permit for each construction project that disturbs one or more acres.

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 General VPDES Permit for Discharges of Stormwater from Construction Activities accomplishes the objectives of applicable law and minimizes the costs to construction site operators and simplifies the application process. Without the general permit, operators would be required to obtain an individual permit which would increase the complexity of a permit application, time to obtain permit coverage, 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.

Commenter	Comment	Agency response
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<p>Jason Williams, Dominion Energy</p>	<p>Electronic Submittals: Dominion Energy would appreciate more detailed language throughout the regulation specifying that permittees may submit and maintain records electronically and sign documents electronically using a valid, legal electronic signature process. For example, the signatory requirement under 9VAC25-220. Part II.A.F.4. Inspection report., could be reworded as follows: <i>j. The date and signature or electronic signature of the qualified personnel and the operator or its duly authorized representative.</i> Similarly, under 9VAC25-880-50. B. and C., DEQ could specify that the registration statement submittal and associated signature may be electronic.</p> <p>Maintenance Fees: Under 9VAC25-880-30. Authorization to discharge., permittees must submit permit fees. Dominion Energy finds that the annual maintenance fees pursuant to the construction stormwater general permit are difficult to track for both the regulated public and the agency. Annual invoicing can be inconsistent, and updates to the billing contact can be difficult to incorporate after the first registration statement is submitted. Dominion Energy finds that it can be challenging to verify with the Department of Environmental Quality (“DEQ”, “Department”) which sites owe fees and also to process the payment. Dominion Energy recommends that the Department offer an online system where permittees can look up their project fees and pay invoices by credit card. We also recommend that DEQ develop an online form which captures all required information and can accompany the annual submittal of online payments.</p> <p>Registration Statement: Under 9VAC25-880-50.B.14, Dominion Energy has identified the need to clarify the terms ‘Total land area of development’ and ‘estimated area to be disturbed’ in regard to erosion and sediment control/stormwater management plans. This language has caused confusion regarding what aspects of the project should be reflected in each of these items, and specifically, how to account for areas of forest and open space. Dominion Energy suggests that DEQ develop or incorporate the relevant definitions by reference, such as: <i>14. Total land area of development and estimated</i></p>	<p>Thank you for your comments on the NOIRA for the reissuance of Virginia Construction General Permit. Below are the department’s responses to each of the comments.</p> <p>Electronic submittals: The department has considered this comment and decided not to make the suggested changes as it believes the suggested changes would not meet requirements of EPA’s Cross-Media Electronic Reporting Rule.</p> <p>Maintenance Fees: The department has decided against making these suggested changes due to the lack of resources that it would take to set up and operate then type of website suggested in the comment.</p> <p>Registration Statement: The department addressed this comment in the proposed CGP by replacing “total land area of development” with “total area of the construction site.” This will reduce confusion because “construction site” is a defined term in the permit.</p> <p>Termination of general permit coverage: The department did not make the suggested change to list additional forest/open space BMP types. Localities have their own requirements for closing out projects, and listing these additional BMPs in the permit would harm that flexibility.</p> <p>The department did not add the additional timeline for notifying permittees of the completeness of their notice of termination package. The permit states the</p>
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<p><i>area to be disturbed by the construction activity during this permit term (to the nearest one-hundredth of an acre). When determining which areas to account for under this requirement, see the definitions of “development” and “land disturbance” under 8VAC870-10.</i></p> <p>We provide additional suggestions for the registration statement form later in this letter.</p> <p>Termination of general permit coverage: Under 9VAC25-880-60, the Notice of Termination (“NOT”) form is included by reference. It would better reflect current practice, if the best management practice (“BMP”) list on page two of the current NOT form could include all forest/open space BMP types. We request that the instructions or the Stormwater Management Facility details table on page 3 clearly indicate which fields are required to be filled out for Conserved Open Space.</p> <p>Additionally, it would improve regulatory certainty and project planning, if the Virginia Stormwater Management Program authority (“VSMP”, which may be either DEQ or a locality) would notify operators within a specified amount of time of NOT package completeness. We recommend 14 days which is consistent with the typical timeline for processing registration statements. Increased transparency in the NOT processes will give the permittee more certainty relative to the expected permit termination date.</p> <p>General Permit: Under 9VAC25-880-70, to ensure reuse opportunities are maximized, Dominion Energy would appreciate specific language instructing the operator how to document the movement of stockpiles or dispose of dirt at locations other than permitted landfills. The current practice is to discuss the option with the assigned inspector and document in the stormwater pollution prevention plan (SWPPP) in cases where acceptable reuse facilities are identified.</p> <p>Further, we note that the registration statement form requires information on any offsite disposal areas. It would be helpful if the DEQ provided clarifying language in 9VAC25-880-70 regarding how to proceed if offsite disposal areas (whether permitted landfills or other) are identified after the registration statement is submitted.</p>	<p>timeline provided in statute for when a notice of termination becomes effective.</p> <p>General Permit:</p> <p>The department did not make the suggested changes for reporting the location of off-site support activities and excavated material disposal areas. After discussions with the TAC and internally, no workable alternative was found to what currently exists in the permit.</p> <p>Reporting requirements:</p> <p>Part II H- Corrective actions:</p> <p>The department separated the referenced subsection into two separate subsections to better highlight the requirements and offer more clarity.</p> <p>Part III G- Reports of unauthorized discharges:</p> <p>The department changed the language to clarify that notification of an unauthorized discharge should be sent to both the department and the VESMP authority.</p> <p>Part III J- Notice of planned changes:</p> <p>The department added new language from EPA’s 2022 Construction General Permit that addresses this issue.</p> <p>Commentor was invited to participate on the TAC.</p>
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	<p>It would also be most efficient if DEQ could clarify that off-site stockpiling, such as in a laydown yard or storage facility, which is covered by a separate authorization does not need to be listed under Section III of the registration statement form. Dominion Energy requests that DEQ reword the instructions in Section III of the form to avoid confusion over the extent of activities that need to be described. We suggest the following language:</p> <p><i>List all off-site support activities and excavated material disposal areas being utilized for this project requiring coverage under this authorization. Include additional areas on a separate page. Do not include areas that are covered by a separate authorization.</i></p> <p>Reporting Requirements: Under 9VAC25-880 Part II.H. Corrective Actions., we recommend that DEQ clarify reporting requirements for sediment discharged beyond the authorized limits of disturbance where there is no sediment entering a waterway. The current permit states as follows: <i>The operator may be required to remove accumulated sediment deposits located outside of the construction activity covered by the general permit as soon as practicable in order to minimize environmental impacts. The operator shall notify the VSMP authority and the department...prior to the removal of sediments accumulated in surface waters including wetlands.</i></p> <p>This language suggests that notification is required when sediments are accumulated in surface waters, but does not specifically identify whether reporting is required for discharges to upland areas outside the limits of disturbance (“LOD”). Clarifying these requirements will ensure that operators are adhering to permit requirements while also avoiding an unnecessary reporting burden on the agency and permittee where reporting is not required.</p> <p>Under 9VAC25-880 Part III.G. Reports of Unauthorized Discharges., Dominion Energy has identified the need for more clarity regarding who is to be contacted with required notifications where the locality is the VSMP authority. The current permit requires the operator to, “notify the Department of Environmental Quality” when</p>	
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Commenter	Comment	Agency response
	<p>there are unauthorized discharges within 24 hours. However, this section goes on to further require reporting to “the department and the VSMP authority within five days”. We seek clarity on whether it is DEQ’s intent to be notified of unauthorized discharges for instances where the locality is the VSMP and if solely the local VSMP is required to be notified within 24 hours. In instances where both DEQ and the local VSMP are notified, there have been situations where authorities having jurisdiction interpreted the discharge and prescribed corrective actions differently or have suggested that DEQ reporting was not required.</p> <p>Under, 9VAC-25-880 Part III.J. Notice of planned changes., we have identified the need for clarifying language in instances where the permittee has requested a planned change and is awaiting a response from the Department. There may be instances where field conditions necessitate moving forward with the change with the understanding that our construction activities and stormwater management may have to be further modified to accommodate additional changes that DEQ requires to approve the planned modification.</p> <p>Dominion Energy also suggests that the TAC be given the opportunity to discuss establishing thresholds that trigger the notice of planned change requirements. For instance, the West Virginia Department of Environmental Protection’s guidance on this matter provides that no formal modification is required when the LOD is being reduced or expanded by 0.5 acres or less.</p>	

Committer	Comment	Agency response
<p>Patrick Fanning, Chesapeake Bay Foundation</p>	<p>CBF would appreciate being considered for membership on the Technical Advisory Committee (TAC) the Virginia Department of Environmental Quality (DEQ) is convening to consider changes to the next round of the permit. Please include Patrick Fanning on the TAC and Joe Wood as his alternate.</p> <p>The TAC will also need to address important issues such as the adoption of changes made by the U.S. Environmental Protection Agency (EPA) in its 2022 Construction General Permit; the sufficiency of the existing Construction General Permit’s requirements for concrete wash water; considerations of storm intensity, duration, and frequency given the impacts of climate change and how to address such impacts; and how this permit will incorporate forthcoming turbidity water quality standards being developed by DEQ at the request of the State Water Control Board.</p>	<p>Thank you for your comments on the NOIRA for the reissuance of Virginia Construction General Permit.</p> <p>The department has maintained existing language on the need for operators to minimize sediment discharges in a manner that addresses the amount, frequency, and duration of precipitation.</p> <p>The department incorporated changes from EPA’s 2022 Construction General Permit and used suggestions from TAC members to directly address concrete wash water and turbidity.</p> <p>Committer was invited to participate on the TAC.</p>
<p>Matt DiBella, Greensite Concrete Washout, LLC</p>	<p>Careless handling of concrete wash water on construction sites creates a serious pollution risk from construction activities. Currently, the construction, maintenance, and dismantling of concrete wash water pits increases this risk by allowing wash water to be disposed of through infiltration.</p> <p>The commenter requested that requirements be considered to better control the disposal of concrete wash water from construction activities.</p>	<p>Thank you for your comments on the NOIRA for the reissuance of Virginia Construction General Permit.</p> <p>The department has included language from EPA’s 2022 Construction General Permit that addresses this issue by clarifying that concrete wash water may not be disposed of through infiltration or otherwise disposed of on the ground.</p> <p>Committer was invited to participate on the TAC.</p>

<p>David Sligh, Wild Virginia</p>	<p>I am submitting these comments on behalf of Wild Virginia. We believe the process for developing the new version of the referenced permit must include analyses that have previously not been conducted, to determine whether there is a reasonable potential that discharges authorized by the permit will result in water quality standards (WQS) violations. Further, we assert that discharges made from sites covered by the conditions in the current general permit have resulted in WQS violations and that changes must be made to prevent these occurrences in the future.</p> <p>Also, Wild Virginia would like to be part of the Technical Advisory Committee (TAC) to work on developing the new permit. We have extensive experience with both the technical and legal/regulatory issues involved and are prepared to contribute to the deliberations of the group. Water Quality Standards Virginia Pollution Discharge Elimination System (VPDES) permits much ensure that all provisions of the water quality standards¹ will be met by discharges authorized under the permit conditions. This is true for general as well as individual VPDES permits. Therefore, the Department of Environmental Quality (DEQ) must conduct a reasonable potential analysis before issuance of this permit.</p> <p>In this regard, our concerns include but are not limited to the following:</p> <ul style="list-style-type: none"> • All pollutants or parameters that are pertinent to the discharges' impacts on state waters must be analyzed and appropriately controlled under the permit. Solids carried in runoff water must, of course, be addressed but examples of other parameters that are affected by the activities involved with construction include temperature and a range of pollutants that may be released to streams when soils are disturbed. <p>Water temperatures may well be increased in runoff from developed sites and could have serious impacts on coldwater streams and aquatic biota. Further, where runoff water is trapped in detention basins or other structures, temperatures may be substantially raised. For trout waters or waters that are habitat for other sensitive coldwater species, these impacts may be of great concern. Pollutants such as phosphorus, heavy</p>	<p>Thank you for your comments on the NOIRA for the reissuance of Virginia Construction General Permit.</p> <p>This permit is limited controlling the discharge of stormwater from construction activities. This permit cycle considers the existing controls from the current Virginia CGP and EPA's reissued 2022 CGP and takes into consideration the comments of TAC members in updating these requirements.</p> <p>Commentor was invited to participate on the TAC.</p>
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	<p>metals like arsenic, and organic chemicals are often bound to soil particles and may be discharged. These materials may reach the streams attached to the soils or detached during treatment of the runoff and discharged separately from solids. We know that soils in some areas of Virginia have significant amounts of arsenic bound to clays due to historic use of pesticides, particularly on orchards. Likewise, applications of sewage sludge and poultry waste have resulted in the deposition of a range of metals and organics that can affect the quality of the discharges. Some of these pollutants may be discharged upon land disturbance.</p> <ul style="list-style-type: none"> • All parts of the WQS regulations must be considered in the permit review and controls must be designed to meet them. If support of any criteria, narrative and numeric, and of the antidegradation policy cannot be assured under the general permit conditions, this permit review should specify such situations and require applicants to seek individual VPDES permits. DEQ has previously refused to analyze possible interference with recreation or other human uses from construction stormwater discharges and this deficiency must be remedied. Sediment-laden discharges that threaten aquatic life have also been allowed without proper acknowledgement or controls. <p>Before DEQ can assess compliance with antidegradation, information about baseline conditions must be collected. This would likely need to be supplied to the agency at the time a registration statement is submitted and the permit must specify the nature and quality of such data to be submitted in every necessary case. Where high quality would be lowered, this can only be allowed after a social or economic necessity is proven.</p> <ul style="list-style-type: none"> • The effectiveness and pollutant removal efficiencies of best management practices (BMPs) for erosion and sediment control can vary greatly and cannot be relied upon to ensure compliance with WQS without additional analysis. For example, where soils are heavy in clay-sized particles settling structures and filtering devices will often be inadequate to remove these pollutants and protect receiving waters. For this and other reasons, it will be necessary to require enhanced treatment methods in some areas. 	
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Commenter	Comment	Agency response
	<ul style="list-style-type: none"> • The requirements of the permit should include measures such as limits to the amount of area to be disturbed at any one time in preference to merely structural measures of pollution control. • DEQ must anticipate that a full analysis of all pollution parameters and all parts of the WQS will make more sites ineligible for coverage under the general permit. Procedures must be developed to enhance the collection and analysis of necessary information to make this screening decision efficient and reliable. We ask that, during this permit review, DEQ provide detailed information about its procedures and practices for reviewing registration statements, any occasions where additional information was required of applicants, and any instances when proposed activities were deemed ineligible for general permit coverage. 	

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 department 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 Scott Van Der Hyde, DEQ, P.O. Box 1105 Richmond, VA 23218, phone number 804-659-1541 (for questions), fax number 804-698-4178 (please ensure recipient [Scott Van Der Hyde] is on fax or cover page of fax), email: scott.vanderhyde@deq.virginia.gov. 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
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<p>9VAC25-880-1</p>		<p>Definitions.</p>	<p>The introductory paragraph was revised to improve readability and incorporate the new title and citation of the Virginia Erosion and Stormwater Management Regulation, which will become effective on July 1, 2024.</p> <p>Minor changes were made to terms throughout this section to ensure consistent use of terminology, improve readability, and correct grammatical errors. These minor changes did not alter, narrow, or expand the meaning of terms.</p> <p>New terms that were added and terms containing more significant changes are as follows:</p> <p>“Construction dewatering” is a new definition added to provided clarity for a new dewatering discharge section in the permit. This new definition incorporates language from EPA’s dewatering definition along with proposed language from the TAC.</p> <p>“Construction site” definition was revised to include water area, which conforms with the EPA’s definition construction site. Language was added to clarify that “construction site” includes construction support activities located on-site or off-site.</p> <p>“Construction support activity” is a new definition was that added based on the definition from EPA’s 2022 Construction General Permit (CGP). This term was previously used in Virginia’s CGP but was not defined.</p> <p>“Measurable storm event” definition was revised to comply with the addition of snow melt in EPA’s 2022 CGP.</p> <p>“Qualified personnel” is a new definition that was added to address the new stormwater team requirements in EPA’s 2022 CGP. The bulk of the definitions is pulled from 9VAC25-870-10. Additional language was developed by the department and added to detail certification options for qualified personnel.</p>
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Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-880-10		Purpose.	Existing language has been removed and replaced with new language to improve the clarity and readability of this section.
9VAC25-880-15		Applicability of incorporated by references based on the dates that they became effective.	A change was made to update the reference to the Code of Federal Regulations to its most current version.
9VAC25-880-20		Effective date of general permit.	Updated the dates that the general permit is effective to reflect the July 1, 2024 to June 30, 2029 permit term.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-880-30		Authorization to discharge.	<p>Minor changes were made throughout this section to ensure consistent use of terms, improve readability, and correct grammatical errors. These minor changes did not alter the requirements of this section.</p> <p>Subsections containing more significant changes are listed below.</p> <p>Subsection A 2: Language added to clarify that permit fees includes all outstanding permit maintenance fees.</p> <p>Subsection C 2: Language added to allow for reporting new support activities in a modified registration statement once the need for the additional support activity is known.</p> <p>Subsection D: Language added to clarify that off-site construction support activities that are not authorized under the CGP shall not be included in calculating total land area of development and estimated area to be disturbed in the registration statement.</p> <p>Subsection F: This section was revised to be consistent with the authorized nonstormwater discharge sections in other recently issued general permits. These changes were made to ensure consistency across permits.</p> <p>Subsection H: Change in the timeline for submitting a completed registration statement from 60 days to 90 days prior to the expiration date of the permit. This change is meant to grant more time in reviewing registration statements for continuation of general permit coverage.</p> <p>Adds a requirement that all past due general maintenance fees must be paid prior to continuation of a general permit. This is intended to ensure that these fees are paid.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-880-40		Delegation of authorities to state and local programs.	Minor changes were made throughout this section to ensure consistent use of terms, improve readability, and correct grammatical errors. These minor changes did not alter the requirements of this section.

<p>9VAC25-880-50</p>		<p>Registration statement.</p>	<p>Minor changes were made throughout this section to ensure consistent use of terms, improve readability, and correct grammatical errors. These minor changes did not alter the requirements of this section.</p> <p>Subsections containing more significant changes are listed below.</p> <p>Subsection A 2 a (1): Change in the timeline for submitting a completed registration statement from 60 days to 90 days prior to the expiration date of the permit. This change is meant to grant more time in reviewing registration statements for continuation of general permit coverage.</p> <p>Subsection A 3: Changes were made to the title of this subsection, unnecessary language was removed, and other language was updated. These changes are meant to improve clarity and readability.</p> <p>Subsection B 2: Requirement to include a State Corporation Commission entity identification number was added to ensure consistency with the department's other general permits.</p> <p>Subsection B 4: Changes requirement for submitting an 8.5-inch by 11-inch format site map to a legible site map. This was done to grant flexibility for submitting site maps while still ensuring the contents are readable.</p> <p>Subsection B 9: "or erosion and sediment control plans" was added account for the consolidation of 9VAC25-840 and 9VAC25-870.</p> <p>Subsection B 10 and 11: Subsections reformatted to improve readability and clarity.</p> <p>Subsection B 13: Subsection reformatted to improve readability and clarity.</p> <p>Subsection B 17: Subsection B 17 was moved to a newly created Subsection C because the contents deal with preparing</p>
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Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>a stormwater pollution prevention plan (SWPPP) rather than the contents of a registration statement.</p>
9VAC25-880-60		Termination of general permit coverage.	<p>Minor changes were made throughout this section to ensure consistent use of terms, improve readability, and correct grammatical errors. These minor changes did not alter the requirements of this section.</p> <p>Subsections containing more significant changes are listed below.</p> <p>Subsection B 2: Change to the timeline for which the termination of authorization to discharge from 60 days to 90 days after receipt of a notice of termination. This change was made to comply with § 62.1-44.15:26.1 of the Code of Virginia.</p> <p>Language was added to clarify the timeline for the termination of permit coverage does not apply if the operator is notified of an issue by the VESMP authority or the department.</p>
9VAC25-880-70		General permit.	<p>Minor changes were made throughout this section to ensure consistent use of terms, improve readability, and correct grammatical errors. These minor changes did not alter the requirements of this section.</p> <p>Subsections containing more significant changes are listed below.</p> <p><u>Part I</u></p> <p>Subsection A 2: Language added to allow for reporting new support activities in a modified registration statement once the need for the additional support activity is known.</p> <p>Subsection E: This section was revised to be consistent with the authorized nonstormwater discharge sections in other recently issued general permits. These changes were made to ensure consistency across permits.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>Subsection F 3: Change to the timeline for which the termination of authorization to discharge from 60 days to 90 days after receipt of a notice of termination. This change was made to comply with § 62.1-44.15:26.1 of the Code of Virginia.</p> <p>Language was added to clarify the timeline for the termination of permit coverage does not apply if the operated is notified of an issue by the VESMP authority or the department.</p> <p>Subsection F 4: Language added to improve clarity about which sections of the permit must be followed when submitting a notice of termination.</p> <p><u>Part II Stormwater Pollution Prevention Plan</u></p> <p>Subsection B 1 e: Revisions were made to existing language to improve readability and to add additional detail and clarity to what must be included in the construction site map.</p> <p>Added new language that requires listing the locations of areas where polymers, flocculants, or other stormwater treatment chemicals are used or stored. This language is from previous EPA permits but is new to Virginia's permit.</p> <p>Subsection B 2 c: Revisions were made to improve readability and incorporate new defined terms.</p> <p>New language was added to subsections B 2 c (6)-(8). These additions provide additional clarity on where directing stormwater to vegetated areas, minimizing soil compaction, and preserving topsoil would be considered infeasible. The new language in these subsections comes from EPA's permit.</p> <p>Subsection B 4 e (4)-(5): Revisions were made to incorporate changes in terms from EPA's 2022 CGP.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>New language was added to clarify that concrete wash water cannot be disposed of through infiltration or otherwise disposed of on the ground. This new language is in response to issues raised through NOIRA public comments and during the TAC.</p> <p>Subsection B 8: This is a new subsection that is being added to Virginia’s 2024 CGP. This section is in response to new EPA requirements for controlling construction dewatering discharges. The department followed EPA’s concept of creating a turbidity benchmark that is not an effluent limitation.</p> <p>Subsection B 10: Revisions change “delegation of authority” to “duly authorized representative.” This change creates consistency with other sections of the permit and clarifies whose information needs to be included in the SWPPP.</p> <p>In addition, new language was added directing permittees to the provisions in the permit detailing signature and certification requirements. This was done to make the permit easier to navigate.</p> <p>Subsection B 11: Language was added clarifying that the SWPPP must contain a signature and certification and directing permittees to the provisions in the permit detailing signature and certification requirements. This was done to add clarity around requirements and to make the permit easier to navigate.</p> <p>Subsection C 5: Language was added directing permittees to the provisions in the permit detailing signature and certification requirements.</p> <p>Subsection D: Revisions were made, and new language was added to clarify requirements for where a notice of coverage letter must be posted.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>Subsection F 2: “Seven days” replaced with “five business days” to create consistency throughout the permit. Language was revised to add the need for routine maintenance as a trigger for this subsection.</p> <p>Subsection F 3: This is a new subsection incorporating new EPA requirements for what an operator must do in the event that they have to repeatedly repair the same stormwater control at the same location.</p> <p>Subsection G 1: Language was added to clarify that the qualified personnel conducting inspections may be a person on the operator’s staff or a third party hired to conduct inspections.</p> <p>Subsection G 2 b (2): New language was added from EPA’s 2022 CGP that adds more detail around when an inspection must take place in the event of a measurable storm event.</p> <p>Subsection G 3: Revisions made to fix numbering issues that existed in past permits and to account for new defined terms.</p> <p>Subsections d and e were added to incorporate language from EPA’s permit stating that all stormwater discharge locations and all construction dewatering discharge locations must be inspected. This language existed in previous EPA permits but is new to Virginia’s CGP. At the request of the TAC, this language was altered from the EPA requirement to state that documentation of the visual quality and other characteristics of discharges are only required when an inspection indicates that pollutants are being discharged.</p> <p>Subsection G 4: Revisions made to account for new defined terms.</p> <p>Subsections c and d were added to incorporate language from EPA’s permit stating that all stormwater discharge</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>locations and all construction dewatering discharge locations must be inspected. This language existed in previous EPA permits but is new to Virginia's CGP. At the request of the TAC, this language was altered from the EPA requirement to state that documentation of the visual quality and other characteristics of discharges are only required when an inspection indicates that pollutants are being discharged.</p> <p>New language was added in subsection I to require reporting of incidents of noncompliance or a certification that the construction activity is in compliance with the SWPPP.</p> <p>New language was added directing permittees to the provisions in the permit detailing signature and certification requirements.</p> <p>Subsection H: Revision was made to change "seven days" to "five business days" to create consistency throughout the permit.</p> <p>Subsection 2 was added to detail corrective actions that must be taken if required by the new construction dewatering turbidity benchmark in 9VAC25-880-70 B 8.</p> <p>Part III: Conditions applicable to all VPDES permits.</p> <p>Subsection H: Revision was made to change "five days" to "five calendar days." This was done to create a clear distinction from the use of "five business days" in other parts of the permit.</p> <p>Subsection I: This subsection was updated to ensure consistency with other recently reissued general permits in Virginia. The changes from this section come from the recently reissued General Permit for Vehicle Wash Facilities and Laundry Facilities (9VAC25-194-70). The revisions include changing "surface waters" to "state waters," minor linguistic</p>

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			<p>and number revisions, and changes to the subsection dealing with making reports to the department or VESMP authority.</p> <p>Subsection K: Revision made to add notices of termination to the types of documents requiring signatures.</p> <p>Subsection M: Change in the timeline for submitting a completed registration statement from 60 days to 90 days prior to the expiration date of the permit. This change makes this subsection consistent with the requirements of 9VAC25-880-50 A 2 a (1).</p>

Changes are made throughout this regulation to update citations and references to the Erosion and Sediment Control Regulations (9VAC25-840), Erosion and Sediment Control and Stormwater Management Certification Regulations (9VAC25-850), and Virginia Stormwater Management Program Regulation (9VAC25-870) to reflect the consolidation of these three chapters into the Virginia Erosion and Stormwater Management Regulation (9VAC25-875). Additionally, the term “board” was changed to “department” throughout the regulation in response to Chapter 356 of the 2022 Acts of Assembly.

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.

This regulation will have no direct impact on the institution of the family or family stability.