



[townhall.virginia.gov](http://townhall.virginia.gov)

## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9 VAC25-880
<b>VAC Chapter title(s)</b>	General VPDES Permit for Discharges of Stormwater from Construction Activities
<b>Action title</b>	<b>CH880- 2024 Amendment and Reissuance of the VPDES Stormwater Construction General Permit Regulation</b>
<b>Date this document prepared</b>	March 1, 2022

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 regulatory action is proposed in order 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. This regulatory action is needed in order for existing and new construction activities to be covered under this general permit regulation.

### Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

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

## 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 § 62.1-44.15:26(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.

## 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 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 surface 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.

## 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 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.**). 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.

### **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 regulation include updating the effective dates of the general permit to July 1, 2024, through June 30, 2029, revisions to provide clarity to permit requirements, and correcting typographical errors. Additional 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 requirements 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.*

---

There are two alternatives for compliance with federal and state permitting requirements for discharges of stormwater from construction activities. One alternative is to issue an individual VPDES permit for each construction activity and have each construction activity operator submit an individual permit application with the corresponding fees. The second alternative is to reissue the general permit regulation to cover this category of discharges and allow construction activity operators to obtain coverage under the general permit regulation. Reissuing the general permit regulation is less intrusive and less costly for businesses, including small businesses. General permits also require fewer DEQ staff resources to issue permit coverage while continuing to protect human health and the environment.

### **Periodic Review and Small Business Impact Review Announcement**

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

---

This NOIRA is not being used to announce a periodic review or a small business impact review. A separate action addressed these reviews and provided a comment period from September 27, 2021 to October 18, 2021. No public comments were received during the periodic or small business impact reviews.

## 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.

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

Anyone wishing to submit written comments may do so by mail, email or fax to Joseph Crook, DEQ, P.O. Box 1105 Richmond, VA 23218, phone number 804-814-8324 (for questions), fax number 804-698-4178 (please ensure recipient [Joseph Crook] is on fax or cover page of fax), email: Joseph.Crook@deq.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://commonwealthcalendar.virginia.gov/>.

## 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). 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.