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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)	9VAC25-110
VAC Chapter title(s)	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Domestic Sewage Discharges Less Than or Equal to 1,000 gallons per day (GPD)
Action title	CH110- 2026 Amendment and Reissuance of the Existing Regulation
Date this document prepared	February 28, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), 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, 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 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 general permit regulation establishes limitations, monitoring requirements and other special conditions for point source discharges of treated domestic sewage from treatment works with a design discharge flow of less than or equal to 1,000 GPD to surface waters to maintain surface water quality.

This regulatory action is proposed to amend and reissue the existing general permit, which expires on July 31, 2026.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

Board: State Water Control Board
 U.S. EPA: United States Environmental Protection Agency
 DEQ: Department of Environmental Quality
 NOIRA: Notice of Intended Regulatory Action
 GPD: Gallons Per Day
 NPDES: National Pollutant Discharge Elimination System
 USC: United States Code
 VAC: Virginia Administrative Code
 VDH: Virginia Department of Health
 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 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 this regulatory change is § 62.1-44.15 (5a) of the Code of Virginia 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 July 31, 2026, and must be reissued to make coverage available for discharges of treated domestic sewage from treatment works with a design discharge flow of less than or equal to 1,000 (GPD) that discharge to surface waters after July 31, 2026.

The periodic review of this regulation is mandated by the ORM procedures and § 2.2-4007.1 of the Code of Virginia.

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 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 §1342) 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.

40 CFR parts 122, 123 and 124 implement the NPDES permit program under § 402. These provisions cover basic EPA permitting requirements, what a State must do to obtain approval to operate its program in lieu of a federal program and minimum requirements for administering the approved State program, and procedures for EPA processing of permit applications and appeals. Section 122.2 provides the specific authority for regulating “treatment works treating domestic sewage” where a permit is necessary to protect public health and the environment from the adverse effects of sewage sludge or to ensure compliance with the technical standards for sludge use and disposal developed under § 405(d) of the Clean Water Act (33 USC §1345).

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

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.

This proposed regulatory action is needed to establish permitting requirements for discharges of treated domestic sewage from treatment works with a design discharge flow of less than or equal to 1,000 GPD to surface waters to protect the health, safety and welfare of citizens. The existing general permit expires on July 31, 2026, and must be reissued to cover existing and new domestic sewage discharges from treatment works with a design discharge flow of less than or equal to 1,000 GPD. An issue that may need to be addressed is enhancing coordination with the Virginia Department of Health (VDH) because individual single-family dwellings are subject to VDH regulations as stated in 12VAC5-640, which addresses alternative discharging sewage treatment systems. Other issues that may need to be addressed include considering the need and alternatives for clarifying the definition of "individual single-family dwelling," considering options for implementing electronic reporting requirements, confirming that maintenance and monitoring requirements are well explained, examining opportunities to reduce burden, and any other issues that arise from publishing this notice of intent and during the technical advisory committee meetings.

There is no fee required to obtain coverage under this general permit. Thus, the general permit is the less intrusive and less costly alternative for small businesses and other in-scope entities. General permits also require fewer DEQ staff resources to issue.

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.

The general permit will establish limitations and monitoring requirements for point source discharges from treated domestic sewage from treatment works with a design discharge flow of less than or equal to 1,000 GPD. The effluent limits, monitoring requirements and special conditions in the general permit will be reviewed to ensure that the permit is still protective of water quality. The primary issue that needs to be addressed is that the existing general permit expires on July 31, 2026, and must be reissued in order to continue making it available after that date.

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 requirements to permit discharges from point source discharges of treated domestic sewage from treatment works with a design discharge flow of less than or equal to 1,000 GPD. One is to issue individual VPDES permits to each establishment, which would require that each owner must apply for a VPDES permit with the corresponding fees. The other is to reissue this general VPDES permit to cover this category of dischargers. Owners may register for coverage under the general permit by submitting a limited amount of information. There is no fee required to obtain coverage under this general permit. Thus, the general permit is the less intrusive and less costly alternative for small businesses and other in-scope entities. General permits also require fewer DEQ staff resources to issue.

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 the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it 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.”

In addition, pursuant to the Office of Regulatory Management (ORM) procedures and § 2.2-4007.1 of the Code of Virginia, the Board is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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 Board is providing an opportunity for comments on this regulatory proposal through a public comment forum, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation. The 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) 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 for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to Jeanette Ruiz, Regulatory and Guidance Analyst, DEQ Office of Water Permitting, P.O. Box 1105, Richmond, Virginia 23218, 804-494-9636, and jeanette.ruiz@deq.virginia.gov. To be considered, comments must be received by 11:59 pm 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. 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 DEQ'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 technical advisory committee is to develop recommended regulation amendments for DEQ consideration through the collaborative approach of regulatory negotiation and consensus. Multiple 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 technical advisory committee will be sent to all applicants.