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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)	9VAC25-820
VAC Chapter title(s)	General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia
Action title	CH 820-2026 Amendment and Reissuance of the Existing Regulation
Date this document prepared	July 10, 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 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 general permit regulation governs facilities holding individual VPDES permits that discharge or propose to discharge total nitrogen or total phosphorus, or both to the Chesapeake Bay or its tributaries. The facilities are authorized to discharge to surface waters and exchange credits for total nitrogen or total phosphorus, or both. Nitrogen and Phosphorus are both nutrients.

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

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

- Board: State Water Control Board
- CFR: Code of Federal Register
- DEQ: Department of Environmental Quality
- NOIRA: Notice of Intended Regulatory Action
- NPDES: National Pollutant Discharge Elimination System
- ORM: Office of Regulatory Management
- U.S. EPA: United States Environmental Protection Agency
- 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 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.”

Section 62.1-44.19:14 of the Code of Virginia requires the State Water Control Board to issue this regulation and specifies requirements for this general permit regulation.

The impetus of the 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 Pollution Discharge Elimination System permit shall not exceed five years." This general permit expires on December 31, 2026, and must be reissued in order to make coverage available for facilities holding individual VPDES permits that discharge or propose to discharge total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries.

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 the State Water Control Law, § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.19:14 of the Code of Virginia directs the State Water Control Board to issue a Watershed General VPDES Permit authorizing point source discharges of total nitrogen and total phosphorus to the waters of the Chesapeake Bay and its tributaries, § 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 U.S. 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 U.S. EPA processing of permit applications and appeals. Section 122.1 (40 CFR §122.1 requires permits for the discharge of “pollutants” from any “point source” into “waters of the United States.”

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

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 total nitrogen and total phosphorus from sewage treatment works and industrial facilities already authorized by an individual VPDES permit to protect the health, safety, and welfare of citizens. The existing general permit expires on December 31, 2026, and must be reissued to cover new and existing nitrogen and phosphorus discharges. The general permit establishes annual effluent loading limits for total nitrogen and total phosphorus and establishes the conditions by which credits (the difference in pounds between the facility’s limit and the mass actually discharged) may be exchanged. The general permit also establishes how any increase in nitrogen or phosphorus loading from a new or expanding discharger must be offset by other nutrient reductions elsewhere in the basin.

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 establishes nutrient load limits and monitoring requirements for discharges to the waters of the Chesapeake Bay and its tributaries. The nutrient load limits, monitoring requirements and special conditions of 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 December 31, 2026, and must be reissued to continue making it available after that date. Amendments may be identified following the submittal of public comments on this Notice and by the technical advisory committee during deliberations of this general permit regulation.

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.

As §62.1-44.19:14 of the Code of Virginia directs the Board to issue this regulation, there are no viable alternatives.

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.”

This NOIRA is not being used to announce a periodic review or 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 Board is providing an opportunity for comments on this regulatory proposal, 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 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 **Morgan Emanuel, Regulatory and Guidance Analyst, DEQ Office of Water Planning, P.O. Box 1105, Richmond, Virginia 23218, phone: 804-494-9635 and morgan.emanuel@deq.virginia.gov**. In order 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 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 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 advisory committee is to develop recommended regulation amendments for DEQ's 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.