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Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-415
VAC Chapter title(s)	Policy for the Potomac River Embayments
Date this document prepared	September 4, 2020

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**.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

CBOD₅ - Carbonaceous Biochemical Oxygen Demand
TSS- total suspended solids
VPDES- Virginia Pollutant Discharge Elimination System

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 or 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.

Section 62.1-44.15 (3a) of the Code of Virginia authorizes the board "To establish such standards of quality and policies for any state waters"

Section 62.1-44.15 (10) of the Code of Virginia authorizes the State Water Control Board "To adopt such regulations as it deems necessary to enforce the general water quality management program of the Board in all or part of the Commonwealth". The State Water Control Board has adopted this regulation under this authority.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

This regulation is applicable to the Potomac River embayments - specifically waters of the Potomac River from the fall line at Chain Bridge in Arlington County to the Route 301 Bridge in King George County. The regulation requires effluent limitations in VPDES permits for point sources, particularly sewage treatment plants, that are more stringent than what might otherwise be required by the VPDES Permit Regulation (9VAC25-31-10 et seq.) and the Water Quality Standards (9VAC25-260-10 et seq.). The regulation sets monthly average levels for effluent concentrations of Carbonaceous Biochemical Oxygen Demand (CBOD₅), total phosphorus, ammonia as nitrogen, and total suspended solids (TSS).

Alternatives to this regulation were considered by the Department. One alternative considered was the repeal of the regulation. This alternative was rejected. The more stringent effluent limitations required in the area impacted by the regulation were originally requested and supported by the localities that are affected by it. The localities wanted to make certain that discharges of CBOD₅, total phosphorus, ammonia as nitrogen, and TSS were controlled at levels more stringent than what otherwise might be required by the normal VPDES permitting process. In essence, the localities wanted to make certain that the use of instream dilution to calculate effluent limits was minimized. They made these requests because these waters have a high recreation use by citizens of the localities. Improvements in water quality have been observed over time as a direct result of the implementation of these strict effluent limits.

The Department also considered revising the regulation. The requirements of the regulation continue to be needed; however, the regulation contains outdated references to regulations that need to be updated. The regulation will be revised to update the names of referenced regulations. The regulation, as currently written, does not place unreasonable hardships on the regulated community without justifiable benefits to human health and protection of the environment.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

An advisory group was not formed for the purposes of assisting with the periodic review. No comments were received during the public comment period.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation imposes more stringent effluent limitations in the area impacted by the regulation. These more stringent effluent limitations were initially requested by the impacted localities. The regulation provides additional protections to public health and safety initially requested by the impacted localities. The regulation is clearly written and easily understandable.

Decision

Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The requirements of the regulation continue to be needed. During the periodic review, names of regulations referenced by the regulation were identified as incorrect. The regulation will be amended to make these corrections.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

The regulation, although more stringent than what is required throughout most of the state, is considered essential by the localities affected by it and ensures the protection of the beneficial uses of state waters and, accordingly, protection of the health, safety, and welfare of citizens.

No comments were received during the public comment period.

This regulation is complex and sets maximum levels for effluent concentrations of CBOD₅, total phosphorus, ammonia as nitrogen, and total suspended solids (TSS).

A periodic review was last conducted on this regulation in 2001. The effluent limitations contained in this regulation continue to remain applicable.

This regulation requires effluent limitations in VPDES permits for point sources, particularly sewage treatment plants, that are more stringent than what might otherwise be required by the VPDES Permit Regulation (9VAC25-31-10 et seq.) and the Water Quality Standards (9VAC25-260-10 et seq.). The regulation does address failing septic drain fields at residences, industrial and commercial operations, and public facilities, and provides for an exemption from the treatment requirements of the regulation if replacing a failing septic system. Any proposed new discharging system would be subject to the treatment performance requirements of the regulation. If it is not feasible for the location of a proposed new discharge or one with a failing septic drain field to connect to a publicly-owned treatment plant and there is no other feasible alternative other than to discharge, they may obtain a discharge permit issued in conformance with the VPDES Permit Regulation (9VAC25-31-10 et seq.) and the Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day (9VAC25-110-10 et seq.). Small businesses would likely be addressed through this provision, which would minimize the economic impact this regulation has on small business.

Family Impact

Please assess the potential impact of the regulation’s impact on the institution of the family and family stability.

This regulation does not have a direct impact on the family or family stability.