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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)	9VAC25-190
VAC Chapter title(s)	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining
Date this document prepared	September 10, 2021

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.

USC- United States Code
U. S. EPA- United States Environmental Protection Agency
VPDES- Virginia Pollutant Discharge Elimination System
VTCA- Virginia Transportation Construction Alliance

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.

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 1251 et seq.) authorizes states to administer the National Pollutant Discharge Elimination System 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.

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.

One alternative considered was the repeal of this regulation. This alternative was rejected. This regulation provides the regulated community with a streamlined permitting process. Without this regulation, regulated entities that are currently eligible to operate under the provisions of the general permit would be required to obtain individual permits to operate. This regulation is the least burdensome alternative available for achieving the purpose of the regulation.

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 informal advisory group was not formed to assist with the periodic review.

Commenter	Comment	Agency response
Rob Lanham Virginia Transportation Construction Alliance (VTCA)	VTCA Respectfully request that the State Water Control Board and DEQ consider revising the VPDES General Permit Regulation for Storm Water Discharge Associated with Nonmetallic Mineral Mining to include a means for nonmetallic mine operators to quickly dewater pits that have become flooded due to significant storm events and that have become non-operational as a	This issue was raised by VTCA during the reissuance process of this general permit in 2019 and was addressed in the response to comment for that general permit. DEQ is aware of VTCA's ongoing concern and in an effort to explore potential solutions DEQ has met with industry two times to date. DEQ recognizes that large storms can pose challenges to a range of permitted facilities, including nonmetallic mines. However, DEQ has not identified a basis to fully waive

	result. Aggregate Producers believe they can facilitate best management practices to reduce the impact of discharging stormwater during and following significant storm events while allowing for the expeditious dewatering of pits.	effluent limitations applicable to nonmetallic mineral mine dewatering for conditions created by such storms and such a waiver would be inconsistent with the long established requirements under this General Permit developed to protect water quality.
Rob Lanham Virginia Transportation Construction Alliance (VTCA)	If DEQ decides to revise this regulation in response to this periodic review requests VTCA and our Aggregate Producer Members request to be included as part of any stakeholder involvement and/or advisory committees.	The agency utilizes the Virginia Regulatory Town Hall website to notify the public of any opportunities to serve on advisory panels. When the Notice of Intended Regulatory Action is published, it will set out the process and contact information for groups or individuals that want to participate on the Technical Advisory Committee. The agency encourages all individuals to register to receive email notifications from the Virginia Regulatory Town Hall website concerning agency regulations.

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 establishes a general permit for storm water discharges associated with nonmetallic mineral mining industrial facilities and is necessary for the protection of public health, safety, and welfare. 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 regulation is effective and continues to be needed; however, this general permit is scheduled to expire on June 30, 2024. This regulation will be amended to re-issue the general permit and the agency will consider revisions to the permit as part of the amendment process.

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 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.

This regulation continues to be needed. The general permit covers discharges from nonmetallic mineral mining industrial facilities. These discharges are considered to be point sources of pollutants and thus are subject to regulation under the VPDES permit program. The permit regulation specifies requirements that protect water quality below the discharge and that are essential to protect the health, safety, or welfare of citizens. If this regulation were repealed, individual permits would be required to conduct these activities.

Comments were received from the Virginia Transportation Construction Alliance (VTCA) during the periodic review. DEQ is aware of VTCA's ongoing concerns with the challenges that large storms can pose to permitted facilities, including nonmetallic mines. In an effort to explore potential solutions, DEQ has met with industry two times to date outside of the periodic review process to discuss their concerns.

This regulation establishes procedures for obtaining coverage under this general permit, and portions of the regulation may be viewed as complex due to the technical requirements included in the regulation. This regulation is clearly written and easily understandable.

The regulation does not overlap, duplicate, or conflict with federal or state law or regulation as the State Water Control Board is the delegated authority to regulate point source discharges to surface water.

The State Water Control Board last re-issued this regulation in 2019. This regulation is evaluated and necessary changes are made to the regulation when the permit is re-issued.

The reissuance of the general VPDES permit accomplishes the objectives of applicable law, minimizes the costs to a small business owner and simplifies the application process. Without the general permit, a small business owner would be required to obtain an individual permit, which would increase the complexity of a permit application and the costs to obtain permit coverage.

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.