



townhall.virginia.gov

Periodic Review and Small Business Impact Review Report of Findings

Agency name	Department of Environmental Quality
Virginia Administrative Code (VAC) Chapter citation(s)	9 VAC 25-820
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
Date this document prepared	October 10, 2023

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*.

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.

DEQ: Department of Environmental Quality
EPA (U.S. EPA): United States Environmental Protection Agency
NPDES: National Pollutant Discharge Elimination System
VAC: Virginia Administrative Code
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 402 of the 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 authorize the Commonwealth to administer a General VPDES Permit Program. Legal authority for issuing general permits under State Water Control Law is §62.1-44.15(5), 15(10), and 15(14).

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.

Section 62.1-44.19:14 of the Code of Virginia directs the State Water Control Board to issue this regulation, and specifies requirements the general permit must contain. There are no viable alternatives to this 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’s 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. One public comment was submitted in favor of retaining the regulation in its current form.

Commenter	Comment	Agency response
Chesapeake Bay Foundation and James River Association. Elizabeth Ronston (CBF), Patrick Fanning (CBF), Thomas Dunlap (JRA)	The Watershed General Permit is required by statute (Va. Code § 62.1-44.19:14) and is part and parcel of the Chesapeake Bay Watershed Nutrient Credit Exchange Program (Va. Code § 62.1-44.19:12 et seq.) that allows for the efficient sequencing of facility upgrades throughout the Bay watershed in Virginia. Therefore, the regulation cannot be repealed. As the agency evaluates the required considerations during periodic review, we submit that the Watershed General Permit is necessary for the protection of public health, safety, and welfare, and for the economic performance of important governmental functions, as it sets an achievable and economical approach for meeting nutrient reductions from regulated facilities in the Bay watershed.	DEQ intends to maintain the regulation in its current form at this time.

	<p>It would also be inappropriate to amend the Watershed General Permit at this time. First, the current Watershed General Permit is set to expire December 31, 2026. Any necessary updates would be most appropriately considered through the reissuance process and any associated stakeholder advisory group, as needed. Second, the facility wasteload allocations referenced in the Watershed General Permit are subject to a statutorily-required, periodic review every 10 years pursuant to Va. Code § 62.1-44.19:14(D). Therefore, any consideration of changes to facility wasteload allocations must be conducted during this decennial review.</p>	
--	--	--

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

§62.1-44.19:14 of the Code of Virginia directs the State Water Control Board to issue this regulation. This regulation protects the water quality of state surface waters and thus 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).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The regulation is effective and continues to be needed; however, this general permit is scheduled to expire on June 1, 2026. 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.

Section 62.1-44.19:14 of the Code of Virginia directs the State Water Control Board to issue this regulation; thus, the regulation continues to be needed to comply with state law.

One public comment was submitted in favor of retaining the regulation in its current form, and cited the requirement in state law for the Board to issue a Watershed General VPDES permit.

The regulation establishes the procedures for the permitting of Total Nitrogen and Total Phosphorus discharges in the Chesapeake Bay watershed and allows for trading of nutrient credits to minimize costs to the regulated facilities (including small businesses) and allows for future growth. This regulation is clearly written and easily understandable and accomplishes the objectives of applicable law.

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 2022. This regulation is evaluated and necessary changes are made to the regulation when the general permit is re-issued.

Family Impact

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

This regulation will have no direct impact on the institution of the family or family stability.