



*Commonwealth of Virginia*

*VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY*

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**SUBJECT:** Technical Advisory Committee (TAC) Meeting to Discuss the 2023 Reissuance of 9VAC25-196 Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less

**TO:** TAC Members and DEQ Staff (listed below)

**FROM:** Joseph Bryan, Office of VPDES Permits

**DATE:** December 21, 2021

A TAC meeting was held on August 9, 2021 at the DEQ Piedmont Regional Office, 4949a Cox Road, Glen Allen VA, 23060. The meeting began at 1:00 PM. Participants attending the meeting were:

<u>Name</u>	<u>Organization</u>
Kevin Rideout	Iluka Resources
Takisha Cannon	Fairfax County Dept. of Public Works and Env. Services
Allan Brockenbrough	DEQ – CO, Manager, Office of VPDES Permits
Joseph Bryan	DEQ – CO VPDES
Curt Linderman	DEQ – CO VPDES
Elleanore Daub	DEQ – CO VPDES
Peter Sherman	DEQ – CO VPDES
Troy Nipper	DEQ – CO Compliance
Ann Zimmerman	DEQ – NRO VPDES

Information provided before the meeting included:

- Role of TAC handout.
- Link to current 9VAC25-196

Information provided at the meeting

- Mark-up of 9VAC25-196 Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less;
- Agenda

### Discussion

Joseph Bryan, Department of Environmental Quality (DEQ), reviewed the agenda and facilitated introductions. He then presented pertinent background information (slides) regarding the general permit regulation and the rulemaking. The current general permit expires March 1, 2023 and this action will amend and reissue the permit for another five-year term. The Notice of Intended Regulatory Action (NOIRA) was published October 12, 2020 (one comment was received via the Town Hall website). This TAC was formed and met on August 9, 2021. The TAC seeks a consensus on an updated general permit regulation. DEQ management will consider the TAC recommendations and present a proposed regulation to the State Water Control Board (SWCB).

DEQ noted that the draft general permit language being presented includes minimal edits (e.g., permit term dates, E-reporting, and certain generic language changes being made to all VPDES general permits). The discussion at the TAC meeting then addressed the draft changes to the permit language. The general scope of and comments from the meeting are summarized below.

**9VAC25-196-15. Applicability of incorporated references based on the dates that they became effective** – The reference to the Code of Federal Regulations date will be updated to July 1 of the most recent update year preceding the proposed and final rule. DEQ noted that in the past the Code of Federal Regulations have become effective later in the month of July.

**9VAC25-196-40. Effective date of the permit** – The draft specified an effective date of March 2, 2023, and expiration of March 1, 2028. DEQ discussed making the effective date April 1, 2023 and the expiration March 31, 2028, since monitoring is quarterly and a monitoring period would begin on April 1 (the permit would be administratively continued for just under a month, during which time no new coverages could be granted). The draft was changed to the April 1, 2023 effective date.

**9VAC25-196-50. Authorization to discharge** – Under “G. Continuation of permit coverage” changed the timing for submission of a complete registration statement from 30 to 60 days to be consistent with other general permits.

**9VAC25-196-60. Registration statement** – Under “A. Deadlines for submitting registration statements,” for new facilities and facilities covered under the expiring general permit, changed

the timing for submission of a complete registration statement from 30 to 60 days to be consistent with other general permits. For existing facilities subject to an individual permit, changed the timing for submission of a complete registration statement from 210 to 240 days (same reason) and allowed later submittal if established by the board.

Also, under E, added language that requires electronic submission of registration statements following notice from DEQ and a three month period (notice will be provided after the E-reporting system is deemed ready and an effective date is determined).

A TAC member observed that in some cases buildings have cooling towers but the owners/builders are not aware of VPDES program requirements. She asked how they could be made aware of potentially applicable permit requirements.

A TAC member asked if there is a threshold under which a cooling water discharge is not subject to this permit. DEQ responded that at present there is no such threshold.

DEQ stated that currently there are 20 active coverages under this general permit. Another DEQ staff person pointed out that it is likely there are more facilities that probably should have coverage.

DEQ stated they will review the E-reporting language to make sure it is sufficient with regard to new facilities.

**9VAC25-196-70. General permit** – Changed the effective date to April 1, 2023 and the expiration date to March 31, 2028. As discussed under section 60 above, the permit would be administratively continued for just under a month, during which time no new coverages could be granted.

The TAC discussed changing how the TRC max limit is expressed in both limits tables (it is “nondetectable” at present, with footnote 3). DEQ identified need to make the limit and footnote consistent with applicable standards and requirements, including the approach in individual permits. This should not materially change compliance. During the meeting, changed “nondetectable” to 0.019 mg/l in the freshwater limits table (will update footnote 3 in this table to match individual permit language). Also changed “nondetectable” to 0.011 mg/l in the saltwater limits table (will update footnote 3 to match individual permit language). Changed the quantification level for Chlorine to 100 ug/l in both tables. Further research on the applicable chlorine criteria is required.

Under Part II, Conditions Applicable to All VPDES Permits, in C 2, added language that requires electronic submission of monitoring reports (DMRs) following notice from DEQ and a three month period (notice will be provided after the E-reporting system is deemed ready and an effective date is determined).

Section II G (Reports of unauthorized discharges) and H (Reports of unusual or extraordinary discharges) include a requirement to notify DEQ. The initial draft referenced Part II I 4 (submission of incomplete or incorrect information in the registration statement). Following discussion, DEQ corrected these to reference Part II I 3 (methods for 24-hour reporting).

DEQ noted that the draft includes the new web link for pollution response reporting.

DEQ pointed out that under “[d]uty to reapply,” permittees with current coverage must submit a new registration 60 days prior to expiration. The existing permit specifies 30 days. This change is for consistency with other general permits.

DEQ asked if the TAC members had any other comments. No comments were offered.

### **NOIRA Comment**

DEQ pointed out that one comment was received in response to the NOIRA. It asked if DEQ was tracking air and water emissions from data centers, stated that DEQ was not informing the public about these emissions, questioned long-term costs, and suggested studies were needed. The TAC discussed whether this was germane to this general permit reissuance (no data centers are currently covered under this general permit).

### **CWA Section 316(b)**

There was discussion of how to address CWA section 316(b) requirements (best technology available permit requirements for cooling water intake structures). Two basic approaches were discussed: 1) making an eligibility determination up front in the permit, or 2) evaluating each relevant facility through collecting basic information via the registration statement. If the second approach is used, several informational items were identified and added to the draft. The approach to 316(b) is still to be determined and DEQ will copy the TAC regarding these decisions. DEQ is concurrently working to develop a comprehensive 316(b) implementation strategy for VPDES permits.

Currently five permitted facilities withdraw water from surface waters (four of these are hydropower facilities).

A DEQ staff person pointed out that there are both federal and state 316(b) regulations. At present, the DEQ regulations specify requirements for new facilities that use such intakes while existing facilities must meet federal requirements under section 316(b) of the Clean Water Act determined by the department on a case-by-case, best professional judgment (BPJ) basis.

A DEQ staff person explained that nationally there are some legal decisions that address the status of jurisdictional waters at hydropower facilities (i.e., water going through a turbine is not a withdrawal from a water of the U.S.; however, water piped for other uses at such a facility can be a withdrawal).

DEQ also noted that the federal 316(b) provisions include requirements for the protection of threatened and endangered species, which has complicated DEQ’s overall approach to addressing cooling water intake requirements in permits.

One TAC member pointed out that if the general permit requires information pertaining to intake impacts, permittees may ask the locality for that information. At present, her county collects some benthic and macroinvertebrate data but does not collect biological data.

### **Other Topics**

A TAC member observed that USGS sampling in her county identified some elevated nitrate levels in some cooling tower discharges (e.g., 5.5 mg/l). DEQ asked if air controls were present. The general permit includes an ammonia limit if chloramines are used for disc disinfection. DEQ noted that certain Chesapeake Bay sampling identified similar levels of nitrates (no toxicity concern).

Another TAC member pointed out that it is extremely helpful to permittees to have the permit begin at the start of a monitoring period. Partial monitoring periods raise uncertainty about when and if a second sample may be required. DEQ concurred.

Next steps: Circulate a meeting summary for review/comment. DEQ will internally review the issues discussed above. DEQ will work on a final draft for proposal and this will be shared with the TAC. The final proposed general permit regulation will be provided once the SWCB package is released. With regard to comments on this summary, please provide specific input regarding the general permit to Joseph Bryan at [joseph.bryan@deq.virginia.gov](mailto:joseph.bryan@deq.virginia.gov).