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Exempt Action Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9VAC25-860
Regulation title(s)	Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Potable Water Treatment Plants
Action title	Amend and Reissue the Potable Water Treatment Plant General Permit
Date this document prepared	May 15, 2017

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Administrative Process Act (APA), the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of The Virginia Register Act, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This rulemaking is proposed in order to reissue the existing VPDES general permit which expires on June 30, 2018. The general permit contains limitations and monitoring requirements for point source discharge of process wastewaters resulting from the production of potable water. The general permit regulation is being reissued in order to continue making it available for these facilities to continue to discharge.

In addition, a periodic review/small business impact review was conducted as part of this regulatory action. Please see the periodic review/small business impact review result section for additional information.

Substantive changes to the existing regulation include:

- Removing the requirement to submit a groundwater monitoring plan with the registration if the plan has been previously submitted and approved;
- Allowing for electronic submittals of registration statements;
- Defining how to estimate discharge flow as “a technical evaluation of the sources contributing to the discharge”;
- Removing the allowance for reduced monitoring for reverse osmosis plants;
- Requiring a corrective action plan when groundwater is contaminated; and,
- Changing the requirement to conduct whole effluent toxicity testing from facilities with a one-time daily maximum flow of greater than or equal to 50,000 gallons per day to facilities with a daily maximum flow rate greater than or equal to 50,000 gallons per day over three consecutive monitoring periods.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

- APA: Administrative Process Act
 DEQ: Department of Environmental Quality
 EPA: (U.S. EPA): United States Environmental Protection Agency
 MS4: Municipal Separate Storm Sewer System
 NAICS: North American Industry Classification System
 NPDES: National Pollutant Discharge Elimination System
 O&M: Operations and Maintenance
 TAC: Technical Advisory Committee
 USC: United States Code
 VAC: Virginia Administrative Code
 VPDES: Virginia Pollutant Discharge Elimination System
 WET: Whole Effluent Toxicity

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’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 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.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The proposed regulatory action is needed in order to establish appropriate and necessary permitting requirements for discharges of process wastewater to surface waters from potable water treatment plants. Protecting water quality in the Commonwealth’s surface waters is necessary to protect the health, safety and welfare of citizens. These discharges are considered to be point sources of pollutants and thus are subject to regulation under the VPDES permit program. The primary issue that needs to be addressed is that the existing general permit expires on June 30, 2017 and must be reissued in order to continue making it available after that date.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of changes” section below.

Substantive changes to the existing sections of the regulation include:

- 9VAC25-860-60 C Registration statement - Removing the requirement to submit a groundwater monitoring plan with the registration if the plan has been previously submitted and approved;
- 9VAC25-860-60 E Registration statement - Allowing for electronic submittals of registration statements;
- 9VAC25-860-70 A 1 and 2(General Permit (Limits) – Defining how to estimate discharge flow as “a technical evaluation of the sources contributing to the discharge”;
- 9VAC25-860-70 A 1 and 2(General Permit (Limits) – Remove allowance for reduced monitoring for reverse osmosis plants;
- 9VAC25-860-70 B 7 General Permit (Special Conditions) - Requiring a corrective action plan when groundwater is contaminated; and,
- 9VAC25-860-70 B 10 General Permit (Special Conditions) - Changing the requirement to conduct whole effluent toxicity testing from facilities with a one-time daily maximum flow of greater than or equal to 50,000 gallons per day to facilities with a daily maximum flow rate greater than or equal to 50,000 gallons per day over three consecutive monitoring periods.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community,

government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

The advantages to the public and the agency are that a VPDES general permit will continue to be available to potable water treatment plants to enable them to discharge safely to surface waters without the increased cost and more complicated application process associated with issuing an individual permit. There are no disadvantages.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements that exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected by the proposed regulation as the regulation applies statewide.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

There are two alternatives for compliance with federal and state requirements to permit wastewater point source discharges to surface waters. One is to issue individual VPDES permits to each facility. The other is to reissue the general VPDES permit to cover this category of discharger. A general VPDES permit is the least burdensome and least costly alternative to achieve the purpose of the regulation.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal, the impacts of the regulated community and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts of this regulatory proposal and any impacts of the regulation on farm and forest land preservation. Also, the board is 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) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Eleanore Daub, P.O. Box 1105, Richmond, Virginia 23218, elleanore.daub@deq.virginia.gov, phone (804) 698-4111, fax (804) 698-4032. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

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

Periodic review/small business impact review report of findings

This section may be used to report the results of a periodic review/small business impact review. Otherwise, delete this section.

Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (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.

There were no comments received following the publication of the Notice of Periodic Review in the Notice of Intent Comment Period. Public comments were received from two localities requesting to participate on the technical advisory committee. They both were invited. The necessity to protect public health, safety and welfare is addressed in "Purpose" above. The complexity of the regulation and ideas to make it clearer were discussed in the technical advisory committee and appropriate changes were made. 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 regulation was evaluated in 2013 when the permit was reissued last permit term.

Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency** regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
9VAC25-860-10. Definitions	NA	Municipal separate storm sewer (MS4) is defined.	MS4 definition is deleted because the same definition exists in the 9VAC25-31 (VPDES Permit Regulation). This general permit regulation states that "The words and terms used in this regulation shall have the meanings defined in the State Water Control Law and 9VAC25-31, the VPDES Permit Regulation, unless the context clearly indicates otherwise, except that for the purposes of this chapter: No impact.
9VAC25-860-10. Definitions	NA	Potable water treatment plant definition does not contain the North American Industry Classification System (NAICS) code.	Potable water treatment plant definition expanded to include the NAICS code 221310 for water supply and irrigation systems. No impact.
9VAC25-860-15. Applicability of incorporated references based on the dates that they became effective.	NA	Effective date for the Title 40 CFR is July 1, 2012	Effective date for the Title 40 CFR changed to July 1, 2017. No impact.
9VAC25-860-20. Purpose.	NA	Purpose of regulation is to govern discharge of wastewater from potable water treatment plants.	Purpose clarified to govern discharge of <u>process</u> wastewater from potable water treatment plants. Process wastewater is defined in 9VAC25-31 (VPDES Permit Regulation). No impact as this was always the intent of the purpose.
9VAC25-860-40. Effective date of the permit.	NA	Old effective dates December 24, 2013 – June 30, 2018.	New effective dates July 1, 2018 – June 30, 2023. No impact.
9VAC25-860-50. Authorization to discharge.	NA	Paragraph D 1 references 2008 permit and 2013 registration statement due date go be eligible for continuation of permit coverage.	New dates referencing 2013 permit and 2018 registration statement due date to be eligible for continuation of permit coverage. No impact.
9VAC25-860-50. Authorization to discharge.	NA	Paragraph D 2 references 2008 permit on which to base enforcement actions or cease discharge under a continued permit.	New dates referencing 2013 permit on which to base enforcement actions or cease discharge under a continued permit. No impact.
9VAC25-860-60. Registration	NA	Paragraph A 2 references 2008 existing covered permittees and their 2013 registration statement due	New dates referencing 2013 existing covered permittees and their 2018 registration due date. No impact.

statement.		date.	
9VAC25-860-60. Registration statement.	NA	Paragraph B references 2013 permit due dates for late registration statement allowances.	New dates referencing 2018 permit due dates for late registration statement allowances. No impact.
9VAC25-860-60. Registration statement.	NA	Paragraph C 6 does not ask for latitude and longitude.	Paragraph C 6 added latitude longitude to registration statement requirement. This is necessary to properly identify facility and outfall locations in the DEQ Comprehensive Environmental Database System. No impact, information is easily obtainable on any free online mapping service.
9VAC25-860-60. Registration statement.	NA	Paragraph C 6 and C 12 refer to 'wastewater' in the questions.	Clarified that wastewater is 'process wastewater' as opposed to other conventional ideas of wastewater being sewage or gray water. Process wastewater is defined in 9VAC25-31 Permit Regulation. No impact as this was always the intent.
9VAC25-860-60. Registration statement.	NA	Paragraph C 9 requires submittal of a groundwater monitoring plan.	Requires submittal of groundwater monitoring plan unless the plan has already been submitted to DEQ. Also requires the name of the plan and the date of board approval. The TAC didn't think the plan needed to be submitted again if DEQ already had the plan. Citing the plan and the date of approval will require the permittee to check on the actual existence of the plan and DEQ can look the plan up if necessary based on the name and date. No impact.
9VAC25-860-60. Registration statement.	NA	Paragraph C 11 requires result of WET evaluation required by 2008 permit.	Requires result of WET evaluation required by 2013 permit. No impact.
9VAC25-860-60. Registration statement.	NA	Paragraph C 13 requires information on chemicals used at the plant.	Clarified that the chemicals DEQ is interested in are those used in the production for drinking water and process wastewater treatment. DEQ thought it important to know these types of chemicals on the site since they could appear in the process wastewater or spilled on the site. The TAC also thought it would be helpful if the permittee had an opportunity to describe whether any of the listed chemicals would have no likelihood of entering the process wastewater. No impact.
9VAC25-860-60. Registration statement.	NA	Paragraph C 15 uses the acronym 'MS4' with no explanation.	Added 'municipal separate storm sewer system before 'MS4.' No impact.
9VAC25-860-60. Registration statement.	NA	No paragraph E.	New paragraph explains the registration statement shall be delivered to the department's regional office by postal or electronic mail. No impact, although allowing electronic submittals of registration statements to DEQ is a recent allowance in all General Permits as they are reissued and should make it easier to submit registration statements.
9VAC25-860-70. General permit.	NA	Effective dates December 24, 2013 – June 30, 2018.	New dates July 1, 2018 – June 30, 2023. No impact.
9VAC25-860-70. General permit.	NA	Opening paragraph states the authorized discharge is in accordance with the cover page, Part I Effluent Limitations, Monitoring Requirements, and Part II Conditions Applicable to All VPPDES permit.	Added that the authorized discharge is also in accordance with the information submitted with the registration statement (because that is what DEQ uses to determine if the discharge can be authorized). Added also Special Conditions to Part I authorization because the special conditions are also part of the permit requirements. No impact, wording is similar to other general permits and individual permits.
9VAC25-860-70. General permit.	NA	Paragraph Part I A 1 and 2 does not have a definition of 'estimate' for the sample type for flow measurements.	Added a footnote to define 'estimate' as based on the technical evaluation of the sources contributing to the discharge. This is a definition used in individual permits. DEQ thought the term should be

			explained similarly to individual permits. Also renumbered the footnotes because of the new footnote (2) in Part I A 1. No impact.
9VAC25-860-70. General permit.	NA	Paragraph Part I A 2 has an allowance for reduced monitoring.	Deleted this allowance as it has not been used and there is no explanation when reduced monitoring would be allowed. If adding language to describe under what conditions to grant reduced monitoring then language must be added to explain under what conditions reduced monitoring is revoked. Since there is only one permittee covered under Part I A 2 and that permittee does not have reduced monitoring, DEQ thought it was not needed and too complicated for a general permit. No impact since no permittees covered under this general permit have reduced monitoring.
9VAC25-860-70. General permit.	NA	Part I B 1 Special Conditions has a daily requirement for inspection of the effluent and maintenance of the wastewater treatment facility when discharging.	Same requirement but clarified it is for the 'process' wastewater treatment facility. No impact as this was always the intent.
9VAC25-860-70. General permit.	NA	Part I B 3 Special Conditions has a requirement that only chemicals listed on the owner's registration statement are allowed.	Clarified that the chemicals listed are those used for water and process wastewater treatment so that insignificant chemicals (e.g., cleaning products, lawn products) are not included in this requirement. No impact as this was always the intent. Also added that the owner shall indicate whether the chemical is likely to enter state waters through the process discharge. This corresponds to the questioning about chemicals in 9VAC25-860-60. Registration statement paragraph C 13.
9VAC25-860-70. General permit.	NA	Part I B 7 Special Conditions requires the permittee to sample and report groundwater monitoring in accordance with the plan submitted with the registration statement (9VAC25-860-60 C 9).	Added that a corrective action plan be submitted within 60 days if contamination is identified by the DEQ. This requirement for correction of contamination is in the VPDES permit manual and placed in individual permits with groundwater monitoring. DEQ thought requirements about what to do if contamination was found in groundwater was missing from this permit. This will affect existing permittees with groundwater monitoring if contamination is found. It will also allow any water treatment plant individual permittees that have groundwater contamination to move to the general permit and continue correction action under the general permit.
9VAC25-860-70. General permit.	NA	Paragraph Part I B 9 Special Conditions contains the O&M manual requirements and time period allowed to develop the O&M manual.	Added that the O&M manual must be updated within 90 days of coverage. This will affect all covered permittees since they have not previously been required to update the O&M manual with each reissuance.
9VAC25-860-70. General permit.	NA	Paragraph Part I B 9 Special Conditions contains O&M procedures for wastewater.	Clarified that the O&M procedures are for the process wastewater. No impact as this was always the intent.
9VAC25-860-70. General permit.	NA	Paragraph Part I B 10 Special Conditions requires facilities with daily maximum flow rates greater than or equal to 50,000 gallons per day to conduct WET testing if they have not already done so.	Changed so that facilities with daily maximum flow rates greater than or equal to 50,000 gallons per day over three consecutive monitoring periods to conduct WET testing. The TAC agreed that sometimes a potable water treatment plant might go temporarily over 50,000 depending on production needs, but that one daily flow should not immediately require them to do WET testing. Making the WET requirement apply after three consecutive monitoring periods exceeding 50,000 gallons per day seemed more reasonable. The impact is that some permittees may not be required to do WET testing under this new scenario.
9VAC25-860-70. General	NA	Paragraph Part I B 10 Special Conditions lists the organisms to be used in WET testing.	Corrected the spelling on <i>Cyprinodon variegatus</i> .

permit.			
9VAC25-860-70. General permit.	NA	Paragraph Part 1 B 10 d Special Conditions requires repeat WET testing if the characteristics of the effluent change.	Added a clarification that the repeated sets of WET testing (acute or chronic) are applicable to the current characteristics of the treatment plant effluent for clarity and to track the language in subparagraph (a). No impact.
9VAC25-860-70. General permit.	NA	Paragraph Part 1 B 12 Special Conditions provides termination procedures and in paragraph b (4) (d) says that "a statement indicating that termination of coverage is being requested for another reason (state the reason)."	Clarified this by removing (state the reason) in parenthesis with "and a description of the reason." No impact.
9VAC25-860-70. General permit.	NA	Paragraph Part 1 B 12 Special Conditions provides termination procedures and in paragraph c the certification language refers to "wastewater discharges."	Clarified certification language to refer to "process wastewater." No impact as this reflects the intent.
9VAC25-860-70. General permit.	NA	Part II B, C, L and X Conditions Applicable to All Permits (various conditions).	Requirements related to sewage sludge and modification, revoke and reissue language deleted as sewage sludge does not apply to this permit nor do modifications or revoke and reissue. No impact.
9VAC25-860-70. General permit.	NA	Part II Y Conditions Applicable to All Permits contains requirements for transferring permit coverage if the current permittee notifies the department at least 30 days in advance of the proposed transfer of the title of the facility or property.	Changed transfer deadline to within 30 days of the transfer of title. This reflects what usually happens and is more reasonable. This change has been added to all general permits as they are reissued. This will help permittees to better comply with this condition.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The reissuance of the general VPDES permit accomplishes the objectives of applicable law and minimizes the costs to a small business owner and simplifies the application process. However, most of these water treatment plants are owned by localities and are not small businesses.