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Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-192-10 et seq.
VAC Chapter title(s)	Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management
Action title	2024 Reissue and amend, as necessary, the Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management
Final agency action date	June 25, 2024
Date this document prepared	April 19, 2024

This information is required for executive branch review pursuant to 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. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to 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*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The State Water Control Board (Board) is taking this action to reissue and amend, as necessary, the existing Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (9VAC25-192-10 et seq.). Section 62.1-44.17:1 of the Code of Virginia, states that the Board shall adopt a general VPA permit to cover animal feeding operations having 300 or more animal units (as defined in 9VAC25-192-10) utilizing a liquid manure collection and storage system. The current VPA regulation and general permit expires on November 15, 2024. This regulation governs the pollutant management activities of animal wastes at animal feeding operations not covered by a Virginia Pollutant Discharge Elimination System permit and animal waste utilized or stored by animal waste end-users. These animal feeding operations may operate and maintain treatment works

for waste storage, treatment, or recycling and may perform land application of manure, wastewater, compost, or sludges.

The general permit is the primary permit mechanism used to cover animal feeding operations which confine livestock (300 or more animal units) such as, but not limited to, swine, dairy and beef cattle across the Commonwealth. During this action, language will be amended to update the incorporation by reference date of 40 CFR references in the regulation as necessitated by changes to the Federal Rules.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

The impetus of the regulatory change is § 62.1-44.15 (5a) of the Code of Virginia, which states, "All certificates issued by the Board under this chapter shall have fixed terms. ... The term of a Virginia Pollution Abatement permit shall not exceed 10 years, except that the term of a Virginia Pollution Abatement permit for confined animal feeding operations shall be 10 years." The general permit issued through this regulation must be reissued in order to meet the requirements of § 62.1-44.17:1 of the Code of Virginia and continue the general permit coverage of confined animal feeding operations. This regulation expires on November 15, 2024, and must be reissued to cover the existing animal feeding operations and any new animal feeding operations. There are currently 108 animal feeding operations covered under the general permit. If the regulation is not reissued in a timely manner, the operations that are covered under the general permit as well as any new operations that need a permit will be required to seek coverage under an individual VPA permit, which require more time to develop and issue, and impose a greater burden and costs on permittees and increased administrative burden on DEQ.

Acronyms and Definitions

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

- AFO - Animal Feeding Operations
- Board - State Water Control Board
- CAFO - Concentrated Animal Feeding Operations
- CFR - Code of Federal Regulations
- DCR - Department of Conservation and Recreation
- DEQ or department - Department of Environmental Quality
- NMP - Nutrient Management Plan
- VPA - Virginia Pollution Abatement

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On June 25, 2024, the Department of Environmental Quality staff will recommend that the State Water Control Board adopt the final amendments to the Virginia Pollution Abatement Regulation and General Permit for Animal Feeding Operations and Animal Waste Management as presented.

Legal Basis

Identify (1) the agency or other promulgating entity, 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 entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

In 1994, the Virginia General Assembly passed House Bill 222 (1994 Acts of Assembly Chapter 698, codified as § 62.1-44.17:1 of the Code of Virginia) establishing the general permit for confined animal feeding operations (AFOs). The Act required the Board to adopt the general permit, establish provisions for issuing the general permits and establish criteria for the design and operation of the confined AFOs. Section 62.1-44.17:1 of the Code of Virginia authorizes the Board to establish and implement the general permit for confined AFOs having 300 or more animal units. The regulation and general permit first became effective on November 16, 1994. Since 1994, the regulation has been reissued two more times, the last becoming effective on November 16, 2014. Changes to this chapter of the Virginia Administrative Code are exempt from Article 2 of the Administrative Process Act (§ 2.2-4006 A 8 of the Code of Virginia).

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The purpose of this regulatory action is to reissue and amend, as necessary, the existing Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management. This regulation expires on November 15, 2024, and must be reissued to make general permit coverage available to the existing animal feeding operations and any new animal feeding operations. This action will maintain permitting requirements for pollutant management activities associated with animal wastes at animal feeding operations that are not covered by a Virginia Pollutant Discharge Elimination System permit and animal waste utilized or stored by animal waste end-users. The goal is to update the regulation and the permit to be consistent with the other VPA general permit for poultry waste management (9VAC25-630) and to protect water quality.

Substance

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.

This action is primarily a reissuance of the existing general permit regulation and does not include significant changes; however, the following items are included in this regulatory action:

1. Definitions. The amendments include the addition of five new defined terms, the inclusion in Section 10 of two already defined terms, and the revisions to five defined terms. The additions and amendments to the definitions section will facilitate a better understanding of the terms used throughout the regulation sections.
2. Groundwater monitoring requirements. The amendments include two revisions to the groundwater monitoring requirements for the permittee, including:
 - a. Adding of a permit condition that describes when a permittee is required to submit a groundwater monitoring action plan; and
 - b. Specifying which parameters must be analyzed by a laboratory accredited under the Virginia Environmental Laboratory Accreditation Program.
3. Animal Waste Storage Requirements. The amendments include conditions applicable to animal waste storage, including:
 - a. Clarifying which tools are to be used to determine the floodplain when siting waste storage facilities;
 - b. Providing specific permit conditions to outline what is considered adequate storage of semi-solid and solid waste;
 - c. Adding a permit condition that addresses situations where animal waste storage can be threatened by emergencies such as fire or flood; and
 - d. Requiring notification to the department prior to the closure of a liquid waste storage facility.
4. Nutrient Management Plan (NMP) Submittal. The amendments require the permittee to submit NMP revisions approved by DCR to the department within 30 days of the DCR approval.
5. Permit Conditions in Part II of the general permit. The amendments to Part II include amending, re-organizing and renumbering requirements that are applicable to all VPA general permits to make the regulation consistent with the VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-10 et seq.).
6. Continuation of permit coverage. The amendments remove the dates of prior permit regulations and make the section consistent with language in the VPA Regulation and General Permit for Poultry Waste Management.
7. Documents incorporated by reference. The amendments update the incorporation by reference date of 40 CFR references in the regulation.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The primary advantage of the regulatory action is the reissuance of the regulation that will allow for animal feeding operations to be covered under a general permit instead of each animal feeding operation having to apply for coverage under an individual permit. The general permit contains provisions appropriate for the protection of state waters, while limiting the time and resources required for an animal feeding operation to register for permit coverage. This is an advantage for the public, the regulated community, and the Commonwealth. There are no disadvantages of the proposed regulatory action.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no applicable federal requirements for animal feeding operations that do not discharge or propose to discharge to state waters. The VPA Regulation and General Permit for Animal Feeding Operations and Animal Waste Management is a state program with requirements included in the regulation necessary to meet state statutory requirements.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected

This general permit regulation affects the Virginia Department of Conservation and Recreation since this regulation includes requirements for Nutrient Management Plans. The requirements for developing Nutrient Management Plans fall under the purview of the Virginia Department of Conservation and Recreation.

Localities Particularly Affected

This general permit regulation affects the entire state; no localities are identified to be particularly affected by this regulatory action.

Other Entities Particularly Affected

This general permit regulation affects the permitted livestock growers and unpermitted and permitted end-users of animal waste. No other entities are identified to be particularly affected by this regulatory action.

Public Comment

Summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. Ensure to include all comments submitted: including any received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

This permit regulation continues to be needed to cover over 100 permitted animal feeding operations across the Commonwealth.

During the 60-day comment period for the proposed regulation, the department received comments from three farmers, one agricultural organization, and one environmental organization and another environmental organization that submitted comments on behalf of four other environmental organizations. The three farmers who submitted comments are small business owners and operators. They stated their support for the reissuance of the general permit for another 10-year period; the continuation of provisions to manage a manure storage facility in the event of an imminent breach due to no fault of the manager; and the allowance for the land application of manure in an emergency. They also stated their opposition to mandatory groundwater monitoring and asked the department to consider only making changes to the permit requirements that are rooted in science; consider the volatility in the livestock industry; and acknowledge that farmers will need time to fund any changes to their operations if changes are made to the permit requirements.

The comments from the agricultural organization were supportive of the proposed changes to the continuation of the general permit language; the addition of the groundwater monitoring action plan and the laboratory accreditation conditions; the addition of the waste storage siting and closure conditions;

and the emergency requirements for land application condition. The agricultural organization was opposed to increasing the minimum freeboard at all waste storage impoundments; establishing groundwater parameters and monitoring for bacteria species; requiring semi-annual or annual groundwater monitoring and additional well locations; requiring electronic or digital submission of groundwater monitoring data; performing annual liner integrity inspections for in-ground impoundments; closing unlined or compacted soil earthen waste storage facilities constructed prior to December 1, 1998; closing all existing manure impoundments that are in close proximity to surface water or groundwater, that sit in groundwater, or are located within the one-hundred (100) year floodplain; requiring stream exclusion fencing and vegetated buffers for pastures; requiring electronic or digital NMP submission to DEQ and the submission of revisions to the NMP prior to the expiration of the previous NMP.

The comments from one of the environmental organizations were supportive of the concept of the groundwater monitoring corrective action plan and the new requirement to submit all revised NMPs to the department. They requested changes including: excluding the use of covered lagoons or digesters from coverage under the general permit; requiring surface water monitoring; increasing groundwater, soil and waste monitoring and adding parameters; increasing the land application buffers; refining the exception for severe-weather-related land application of animal waste; requiring animal waste sludge surveys; defining the 25 year, 24 hour storm; expanding information submitted with the registration statement; expanding public notice requirements; requiring NMPs to be updated and certified annually; requiring submittal of monitoring results and extending the timeframe to maintain; improving closure requirements; extending the timeframe to maintain records; and improving the notification of unauthorized discharges.

The comments from another environmental organization requested further changes including: requiring groundwater monitoring wells for all earthen lagoons; requiring at least two downgradient groundwater monitoring wells; increasing the frequency of monitoring to monthly; making the results available to the public and requiring electronic reporting; adding monitoring for E. Coli, Cryptosporidium, and Giardia lamblia bacteria; adding limits for the Nitrates and bacteria; adding limits for Ammonia Nitrogen and Nitrate Nitrogen; adding non-detect limits for bacteria; requiring liner integrity testing and monthly inspections; expanding basic liner requirements to all earthen lagoons built before 1994; adding new language and restrictions based on EPA environmental justice indices; and defining terms related to emergencies. Their comments were supportive of the concept of the corrective action plan; and the new requirement to submit all revised NMPs to the department.

The following are the comments received along with the Department’s response to the comments.

Commenter	Comment	Agency response
Jeremy Moyer	Please keep the wording of the general AFO permit similar to what it has been for the last decade. If any changes are made please make them rooted in scientifically proven information. Increasing the regulatory burden on businesses that are following the rules and caring for the land that their livelihood depends on is not practical.	Thank you for your comments, support, and your participation on the Technical Advisory Committee. Revisions to the wording in the permit have been made, in many cases, to make it consistent with requirements in the base regulation, the Virginia Pollution Abatement (VPA) Permit Regulation, 9VAC25-32, and Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management, 9VAC25-630. Consistency among the VPA programs will help the regulated community by increasing efficiency and familiarity with regulatory requirements. Detailed information about the changes to the regulation are provided in the Details

Commenter	Comment	Agency response
		<p>of All Changes section of this document.</p> <p>No changes are being proposed to address these comments.</p>
<p>Kyle Leonard</p>	<p>We are a family owned and operated dairy and poultry farm in the Shenandoah Valley. We believe there should continue to be provisions to manage a manure storage facility in the event of an imminent breach due to no fault of the manager. Land application of manure needs to be allowed in an emergency. We work closely with the local DCR office to implement our nutrient management plan and have always contacted them if our application of manure is necessary outside of the plan guidelines. We also oppose mandatory groundwater monitoring. Most streams are actually monitored voluntarily. Our children were involved in stream water monitoring projects while they were in public schools. There are also a number of environmental groups that are actively monitoring streams for excessive levels of fecal bacteria. Please consider these thoughts when considering the new VPA and CAFO rules and please make the permit good for a 10 year period.</p>	<p>Thank you for your comments and support.</p> <p>Amendments to Part I C 5 and Part III C 5 of 9VAC25-192-70 and 9VAC25-192-90 C 4 allow a permittee to land apply animal waste outside of the spreading schedule outlined in the NMP in cases where the waste storage facility is threatened by emergencies such as fire or flood or where these conditions are imminent.</p> <p>Section 62.1-44.17:1.E.4. of the Code of Virginia specifies which waste storage facilities and under what conditions that groundwater monitoring will be required by the regulatory program (general permit): <i>E.4. The operation shall be monitored as follows: ... (iii) ground water shall be monitored at new earthen waste storage facilities constructed to an elevation below the seasonal high water table or within one foot thereof; and (iv) all facilities previously covered by a Virginia Pollution Abatement permit that required ground water monitoring shall continue such monitoring.</i></p> <p>Requiring groundwater monitoring wells at all liquid waste storage facilities and spray fields is inconsistent with the requirements established by the Code of Virginia and is not required in the general permit regulation.</p> <p>The permit term is established by § 62.1-44.15 (5a) of the Code of Virginia, which states: <i>All certificates issued by the Board under this chapter shall have fixed terms. ... The term of a Virginia Pollution Abatement permit shall not exceed 10 years, except that the term of a Virginia Pollution Abatement permit for confined animal feeding operations shall be 10 years.</i></p>

Commenter	Comment	Agency response
		<p>The permit term will be 10 years, from November 16, 2024 to November 15, 2034.</p> <p>No changes are being proposed to address these comments.</p>
<p>Leigh Pemberton</p>	<p>I support continuing the 10 year livestock permit. With the volatility in the livestock industry farmers need time to fund permitting changes to their operations.</p>	<p>Thank you for your comments and support.</p> <p>No changes are being proposed to address these comments.</p>
<p>Virginia Farm Bureau Federation - Jake Tabor</p>	<p>The Virginia Farm Bureau Federation (VFBF) appreciates the opportunity to submit comments to the Department of Environmental Quality (DEQ) on the Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management [9 VAC 25 - 192].</p> <p>Virginia Farm Bureau is the Commonwealth's largest general farm organization, representing more than 33,000 farmers of nearly every type of crop and livestock across Virginia. Farm Bureau and its members have worked together to build a sustainable future of safe and abundant food, fiber, and renewable fuel for the United States and the world.</p> <p>VFBF appreciates being involved on the Technical Advisory Committee (TAC) and the Department's work to update the General Permit for Animal Feeding Operations for renewal ahead of its expiration on November 15th, 2024.</p>	<p>Thank you for your comments.</p> <p>No changes are being proposed to address these comments.</p>
<p>Virginia Farm Bureau Federation - Jake Tabor</p>	<p>Farm Bureau concurs with the consensus recommendations of the Technical Advisory Committee.</p> <p><i>9VAC25-192-50.C. Continuation of general permit coverage</i></p> <p>VFBF supports the proposed changes, as these are necessary in the event where the board, through no fault of the owner of permittee, does not issue the next consecutive general permit with an effective date on or before the expiration date of the expiring general permit to allow the permittee to continue operating under the 2024 VPA coverage. This change is needed to avoid a lapse in permit coverage and will allow the permittee to continue business operations while waiting for any requirements of the next general permit to take effect.</p>	<p>Thank you for your comments and support.</p> <p>No changes are being proposed to address these comments.</p>
<p>Virginia Farm Bureau Federation - Jake Tabor</p>	<p><i>9VAC25-192-70 Contents of the general permit, Part I.A. Pollutant Management and monitoring requirements</i></p>	<p>Thank you for your comments and support.</p>

Commenter	Comment	Agency response
	<p>We support the addition of subsection six (6) which reflects the Department’s practice of requiring submission of a groundwater monitoring action plan within 30 days of the permittee obtaining potential noncompliant groundwater monitoring results. We also support subsection seven (7) which clarifies that analysis of the groundwater samples for ammonia nitrogen and nitrate nitrogen shall be performed by a laboratory accredited under the Virginia Environmental Laboratory Accreditation Program.</p>	<p>No changes are being proposed to address these comments.</p>
<p>Virginia Farm Bureau Federation - Jake Tabor</p>	<p>Under 9VAC25-192-70. Contents of the general permit. B. Site design, storage, and operations requirements, we support the following:</p> <ul style="list-style-type: none"> • Subsection two (2) clarifying how the one-hundred (100) year floodplain is determined when siting a waste storage facility. • Subsection 8.d which clarifies the siting and storage requirements for semi-solid and solid animal wastes that are not stored in a waste storage facility or under roof. • Subsection eleven (11) clarifying requirements during closure of a liquid waste storage facility. 	<p>Thank you for your comments and support.</p> <p>No changes are being proposed to address these comments.</p>
<p>Virginia Farm Bureau Federation - Jake Tabor</p>	<p><i>9VAC25-192-70. Contents of the general permit. C. Animal waste use and transfer requirements</i></p> <p>We support subsection five (5) which allows and stipulates how animal waste may be land applied when a waste storage facility is threatened by an emergency or faces imminent danger from conditions conducive to an emergency.</p>	<p>Thank you for your comments and support.</p> <p>No changes are being proposed to address these comments.</p>
<p>Virginia Farm Bureau Federation - Jake Tabor</p>	<p><i>9VAC25-192-70. Contents of the general permit. Part II Conditions Applicable to all VPA Permits <u>this General Permit</u></i></p> <p>We support K. Bypass 1-3. which provides emergency bypass provisions to help protect the human health and life and prevent waste storage facility and other property damage.</p>	<p>Thank you for your comments and support.</p> <p>No changes are being proposed to address these comments.</p>
<p>Virginia Farm Bureau Federation - Jake Tabor</p>	<p>Some members of the TAC recommended changes that were either not accepted by consensus of the TAC or the Department deemed as already covered by the general permit, outside the purview of the general permit, or was not authorized by statute and those recommendations were not included in the proposed rule by the Department. We concur with DEQ’s stated reasons for the omission of the following suggested changes to this general permit:</p>	<p>Thank you for your comments and support.</p> <p>No changes are being proposed to address these comments.</p>

Commenter	Comment	Agency response
	<ul style="list-style-type: none"> • Increasing the minimum free board height of all waste storage impoundments • Establishing groundwater parameters and monitoring for bacteria species • Requiring semi-annual or annual groundwater monitoring and additional well locations • Requiring electronic or digital submission of groundwater monitoring data • Perform annual liner integrity inspections for in-ground impoundments • Close unlined or compacted soil earthen waste storage facilities constructed prior to December 1, 1998 • Close all existing manure impoundments that are in close proximity to surface water or groundwater, that sit in groundwater, or are located within the one-hundred (100) year floodplain • Require stream exclusion fencing and vegetated buffers for pastures • Require electronic or digital Nutrient Management Plan submission to DEQ 	
<p>Virginia Farm Bureau Federation - Jake Tabor</p>	<p>The Virginia Farm Bureau Federation respectfully submits these comments and appreciates the Administration’s attention to this issue.</p>	<p>Thank you for your comments.</p> <p>No changes are being proposed to address these comments.</p>
<p>Virginia Farm Bureau Federation – Tony Banks</p>	<p>As a member of the Technical Advisory Committee that reviewed Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management [9VAC25-192], I am disappointed to learn of the following newly proposed requirement: 9VAC25-192-70 - Part I C 2. was Part I B 12. & Part III C 2. 12. 2. The permittee shall implement a nutrient management plan (NMP) developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia and approved by the Department of Conservation and Recreation and maintain the plan <u>NMP</u> on site. <u>All revised and Department of Conservation and Recreation approved NMPs shall be submitted to the department prior to the expiration of the previous NMP.</u> The NMP shall address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus loss to ground <u>waters</u> and surface waters. The terms of the NMP shall be enforceable through this <u>general</u> permit. The NMP shall contain at a minimum the following information:</p>	<p>Thank you for your comments and for your participation on the Technical Advisory Committee.</p> <p>The following changes address this comment.</p> <p>DEQ staff amended the regulatory language to require the submittal 30 days after the NMP is approved to make sure the timeframe to utilize the NMPs are not artificially shortened and address any issues with timing related to the development or approval of the NMP that are beyond the control of the permittee. The revised condition reads:</p> <p>“Within 30 days of the approval by the DCR, all revised NMPs shall be submitted to the department.”</p>

Commenter	Comment	Agency response
	<p>a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied;</p> <p>b. Site evaluation and assessment of soil types and potential productivities;</p> <p>c. Nutrient management sampling, including soil and waste monitoring;</p> <p>d. Storage and land area requirements;</p> <p>e. Calculation of waste application rates; and</p> <p>f. Waste application schedules.</p> <p>I attended each of the TAC meetings and do not recall the TAC ever being questioned about this proposed change, much less ever being provided an opportunity to discuss it with affected agencies, industry stakeholders and permittees. Virginia Farm Bureau does not support the proposed requirement to submit the nutrient management plan (NMP), specifically the part that states: <u>prior to the expiration of the previous NMP</u> that was added in 9VAC25-192-70. Farmers have no control over the completion of the NMP, or the approval process with DCR of their NMPs. Requiring the submittal of the NMP prior to the expiration date of the previous NMP will put an unnecessary burden on the farmers, the nutrient management plan writers, the one staff person with the Department of Conservation and Recreation that approves the NMPs and the DEQ staff. As you are aware, it is not uncommon for NMPs to be modified during a single growing season to accommodate cropping changes that result due to weather-related planting delays, sudden changes in farm crop prices, and supply chain disruptions impacting the availability of seed, pesticides, and other crop inputs, or changes in annual cropland rental or purchases. The agency should remove the specific timing of the submission from the proposal because the proposed language will be a paperwork nightmare for the farmers trying to maintain compliance and for the DEQ staff trying to determine compliance. Additionally, if this requirement is added to this regulation which currently covers 110 permitted operations (as reported in the agency background document) it will likely be added to the poultry regulation which will then affect around 900 permitted poultry growers. For years the DEQ staff have collected the NMP while onsite, this has worked well for the agency and the farmers since it allows the DEQ staff to go over the NMP with the farmer while onsite. DEQ staff can always</p>	

Commenter	Comment	Agency response
	<p>ask the farmer to send the NMP if they need it sooner than during the inspection. Virginia Farm Bureau appreciates the opportunity the TAC offers the regulated community and DEQ to review and discuss regulations and proposed changes. However, we were not given the opportunity to discuss this proposed change, if we had, I believe both the permittees and agencies staff would concur with my comments above. Thank you for this opportunity to comment.</p>	
<p>Southern Environmental Law Center</p>	<p>The Southern Environmental Law Center submits the following comments on the reissuance and amendment of the Virginia Pollution Abatement (VPA) regulation and general permit for animal feeding operations and animal waste management (9 VAC 25-192) by the Department of Environmental Quality (DEQ). Several key changes should be made to the proposed regulation and general permit to protect communities and the environment from the impacts of animal feeding operations and associated animal waste management activities. In addition to the recommendations below, we also support the comments submitted by the Environmental Integrity Project, Potomac Riverkeeper Network, Waterkeepers Chesapeake, Chesapeake Bay Foundation, and James River Association.</p>	<p>Thank you for your comments. DEQ responses are below.</p>
<p>Southern Environmental Law Center</p>	<p>I. Animal feeding operations pose significant threats to water quality and public health. Over the past few decades, the livestock industry has transitioned from small, family-owned farms to large, industrial operations confining thousands, hundreds of thousands, or even millions of animals. One of the most significant public health and environmental threats posed by animal feeding operations is the extraordinary amount of waste they produce. This waste ultimately pollutes surface waters and groundwater, which can be an important source of drinking water for rural residents, and leads to adverse public health outcomes. Contaminants in livestock waste include nutrients, such as phosphorus, nitrogen, and ammonia; pharmaceuticals, such as the antibiotics that facilities use to combat unsanitary living conditions and promote rapid growth; heavy metals, including zinc and copper; and disease-causing pathogens. These contaminants can pollute surface waters through “spills and other dry-weather discharges, overflows from storage ‘lagoons,’ and discharges to the air[,]” as well as through the “land application of manure, litter,</p>	<p>DEQ acknowledges your concerns about environmental threats posed by animal feeding operations. The Board’s authority to implement a program for animal feeding operations is set out in and limited by the authority granted to it by the legislature in § 62.1-44.17.1 of the Code of Virginia. The general permit and amendments to it that are part of this regulatory action are within the Board’s authority.</p>

Commenter	Comment	Agency response
	<p>and process water.” Stormwater runoff from production areas and land application sites is also a significant pathway for pollution from these facilities. Pollution from animal feeding operations leads to toxic algae blooms that kill fish, degrades recreational waterways, and contaminates drinking water. Animal waste also emits ammonia, which can deposit on soil or directly in water and contribute to algae blooms and fish kills. In addition, ammonia emissions are harmful to human health. Moreover, researchers recently found that residents living close to hog facilities in North Carolina are at higher risk for kidney disease, anemia, tuberculosis, and other serious diseases. Given their significant environmental and public health threats, Virginia needs a far stronger permitting framework to control pollution from animal feeding operations.</p>	
<p>Southern Environmental Law Center</p>	<p>II. DEQ should exclude animal feeding operations using covered lagoons or digesters from coverage under the general permit. The agricultural and energy industries are touting so-called biogas, or energy from animal waste, as a “renewable” energy resource and one solution to our climate crisis. These claims are dubious at best and false at worst. Operations that intend to generate biogas using digesters as part of their animal waste management practices pose specific and significant risks to groundwater and surface water resources and should not be permitted under the general permit. These facilities are more appropriately permitted under an individual permit. Digesters can fundamentally change animal waste management systems and the characteristics of the waste. Digester waste—the waste left over after the methane and other gases have been siphoned out of the digester—has more ammonium and a higher pH, emits more harmful ammonia, and contains more soluble phosphorus and nitrogen than waste in conventional lagoons. Digesters increase the total production of methane by creating an environment with less oxygen than a conventional lagoon and using management practices that enhance the methanogenic bacterial population in the waste. As more organic matter is destroyed and converted to methane, which is siphoned off, the digester waste is left with very little carbon and high concentrations of ammonium, soluble nitrogen, phosphorus, and other nutrients. The pH of digester waste also increases relative to conventional waste, driving an increase in</p>	<p>Responses to II A through D are below.</p>

Commenter	Comment	Agency response
	<p>ammonia and continued methane emissions during open-air storage. The remaining more-soluble nitrogen and phosphorus in digester waste increases the ability of pollutants to infiltrate soil and contaminate groundwater. As a result, a leak or overflow of digester waste from a lagoon can be even more devastating for the environment and human health than a leak or overflow from a conventional lagoon. For these reasons, operations using digesters should not be permitted under the general permit. If operations using digesters are allowed to obtain coverage under the general permit, DEQ should, at a minimum, incorporate the following requirements to protect water quality and state waters from discharges, and to reduce harm to neighboring communities:</p>	
<p>Southern Environmental Law Center</p>	<p>II A. Require gas-tight storage of digester waste. As discussed above, open-air storage of digester waste is a major source of methane, nitrous oxide, and ammonium emissions. Unless digester waste is stored in closed, gas-tight storage, these systems may worsen local air and water quality. DEQ should therefore prohibit storage of digester waste in open-air lagoons. Many scientists and policymakers have urged a ban on open-air storage of digester waste (digestate). Several countries—particularly in Europe where agricultural anaerobic digesters have been used for several decades—and international environmental agencies have adopted this approach. Since 2019, the European Environmental Agency has “strongly recommended that digestate is held in a covered store.” Even the European Biogas Association—an industry group—acknowledges that “[t]he most suitable way to handle residual biogas is to keep it in a gas-tight covered digestate storage tank that is connected to the gas system.” In addition, gas tight storage of digestate, when combined with secondary biogas capture, is economically preferable to open digestate storage.</p>	<p><i>II A. Require gas-tight storage of digester waste.</i> Section 70 Part I B 10 requires that the waste treatment process shall be approved by the department. Additionally, Part I B 6 requires that new waste storage facilities (including digesters) constructed after November 16, 2014 (the effective date of the addition of this condition) shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Virginia Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture and approved by the department. NRCS has a standard practice for anaerobic digesters.</p> <p>No changes are being proposed to address these comments.</p>
<p>Southern Environmental Law Center</p>	<p>II B. Prohibit the conversion of unlined lagoons to store digester waste. DEQ should prohibit the conversion of unlined lagoons—particularly those using clay soil liners—to store digestate. Digester waste contains more soluble forms of nutrients such as nitrogen and phosphorus, making groundwater contamination more likely. Even new lagoons with synthetic liners pose a risk of groundwater contamination. For this reason, in Europe, most digestate storage tanks are built using concrete.</p>	<p><i>II B. Prohibit the conversion of unlined lagoons to store digester waste.</i> Section 70 Part I B 3 requires that all earthen waste storage facilities include a properly designed and installed liner. This condition also stipulates the thickness and permeability rating of the liner. This permit condition requires that a Virginia licensed engineer or NRCS employee with engineering approval authority shall certify that the siting, design, and construction of the</p>

Commenter	Comment	Agency response
		<p>waste storage facility comply with the requirements of this permit. All waste storage facilities covered under this permit meet the requirements outlined in Section 70 Part I B 3.</p> <p>No changes are being proposed to address these comments.</p>
<p>Southern Environmental Law Center</p>	<p>II C. Prohibit animal mortality, food waste, human waste, and septage as feedstock for digesters. The current draft general permit allows the addition of off-site waste to digesters or other manure treatment technologies. DEQ should prohibit animal mortality, food waste, human waste, and septage as feedstock for digesters under the general permit. Co-digestion of waste presents a complex host of issues related to methane emissions and digester waste management. Failure to properly manage digesters that co-digest animal waste and other feedstock such as carcasses or food waste can have dire consequences. On May 30, 2022, a digester in Wayne County, North Carolina containing hog excrement, hog carcasses, and food waste exploded and released the waste into nearby wetlands. Over 3 million gallons of waste in the form of foam was expelled, and over 40,000 gallons reached the wetlands. The updated standard for anaerobic digesters issued by the National Resources Conservation Service (NRCS) provides that “food waste, wastewater from food processing operations, and other allowable organic substrates may be added as supplemental feedstock to a digester when the digester is designed to treat such wastes.” The specificity with which such digesters would need to be designed and managed should require individual permits. At a minimum, DEQ should require permittees to obtain express permission from DEQ prior to adding off-site waste to digesters.</p>	<p><i>II C. Prohibit animal mortality, food waste, human waste, and septage as feedstock for digesters.</i> The regulation prohibits the management of domestic sewage under this general permit. The regulation also prohibits the management of industrial waste under this general permit, except for wastes that have been approved by the department and are managed in accordance with 9VAC25-192-70. Animal mortality, food waste, human waste, and septage collectively fall within the definitions of “domestic sewage” and “industrial wastes” in the base regulation for this general permit, 9VAC25-32-10. As such, they are prohibited or have to be managed in accordance with 9VAC25-192-70. Additionally, all new waste storage facilities shall meet the design and siting criteria conditions outlined in Section 70 Part I B of the general permit. Specifically, Part I B 6 requires that new waste storage facilities (including digesters) constructed after November 16, 2014 (the effective date of the addition of this condition) shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Virginia Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture and approved by the department. NRCS has a standard practice for anaerobic digesters. Section 70 Part II F of the permit requires the permittee to notify the department of any planned changes to the operation prior to the change which includes the expansion or construction of new waste storage facilities.</p> <p>No changes are being proposed to address these comments.</p>

Commenter	Comment	Agency response
Southern Environmental Law Center	<p>II D. Require digester influent and effluent sampling. DEQ should require quarterly sampling and analysis of digester influent and effluent using a consistent protocol. There is broad consensus in the scientific literature that the use of digesters and the removal of organic matter from waste fundamentally alter the chemical makeup of digester waste relative to conventional waste lagoons. In particular, the more complete anaerobic digestion achieved by a digester leaves digester waste with less dry matter, increasing the rate of soil infiltration, and more soluble nitrogen, phosphorus, and other elements, making pollutants more likely to run off into surface waters or contaminate groundwater. Specifically, DEQ should ensure that samples are taken using the same tools, at the same time of day, and from the same location in the digester or lagoon, and that samples are stored and transported to the laboratory under controlled conditions. DEQ should expand environmentally protective provisions in the proposed regulation and general permit. The potential environmental impacts of animal feeding operations and associated animal waste management are well-documented. DEQ should ensure that the proposed regulation and draft general permit are as strong as possible to protect human health and the environment.</p>	<p><u>II D. Require digester influent and effluent sampling.</u> 9VAC25-192-10 defines “Animal waste” as “liquid, semi-solid, and solid animal manure and process wastewater, compost, or sludges associated with animal feeding operations including the final treated wastes generated by a digester or other manure treatment technologies.” The permit requires waste monitoring at least one every year. This requirement is consistent with subdivision D.5. of DCR’s NMP regulations, 4VAC50-85-140, and the DCR Special Conditions that are required in the NMP. Additionally, sampling protocols and requirements are outlined in the Special Conditions in the NMP. The additional requirements requested in the comment are inconsistent with state law.</p> <p>No changes are being proposed to address these comments.</p>
Southern Environmental Law Center	<p>III A. Require surface water monitoring. The general permit prohibits point source discharges of wastewater to surface waters of the state, except in certain circumstances. However, the proposed regulation and draft general permit contain no surface water monitoring requirements to ensure compliance with this provision. To the extent that DEQ has the legal authority to do so, it should require surface water quality monitoring at any operation within 500 feet of a state water. Samples should be analyzed for nitrogen, phosphorus, bacteria, dissolved oxygen, total suspended solids, and heavy metals and should be collected immediately upstream and immediately downstream of the operation to assess the operation’s impact—and potential discharge—to surface waters.</p>	<p><u>III. A. Require surface water monitoring.</u> The intent of a general permit regulation is to provide the regulated community with a streamlined, less burdensome approach to obtain coverage for conducting a specific regulated activity that is protective of the environment while reducing the administrative burdens on DEQ. This general permit covers facilities that do not have a point source discharge to State Waters. As such, there is generally no discernible location to sample surface waters that is not influenced by non-point source pollutants that may or may not have their origins at the permitted facility. The general permit requires the implementation of best management practices that preclude point source discharges. Operations that do not qualify for coverage under the general permit may be issued an individual VPA permit or an individual VPDES Concentrated Animal Feeding</p>

Commenter	Comment	Agency response
		<p>Operation (CAFO) permit if there is evidence of a point source discharge to surface waters. DEQ has a consistently required permittees covered by this VPA general permit to obtain an individual permit when non-compliance, including discharges to surface waters, is determined. Individual permits may require surface water monitoring if a clear compliance point can be discerned.</p> <p>No changes are being proposed to address these comments.</p>
<p>Southern Environmental Law Center</p>	<p>III B. Strengthen groundwater, soil, and waste monitoring requirements. Virginia Code § 62.1-44.17:1(E)(4) provides that DEQ “may include in the permit or nutrient monitoring plan more frequent or additional monitoring of waste, soils or groundwater as required to protect state waters.” DEQ should strengthen groundwater, soil, and waste monitoring requirements for operations permitted under this general permit.</p> <p>1. Require groundwater monitoring wells at all liquid waste storage facilities. Liquid waste storage facilities have the potential to leak and impact groundwater. To adequately protect state waters, DEQ should require that groundwater monitoring wells be constructed at all liquid waste storage facilities at adequately protect state waters, not just “earthen liquid waste storage facilities constructed after December 1, 1998, to an elevation below the seasonal high water table or within one foot thereof.” At a minimum, DEQ should require that groundwater wells be installed at operations with lagoons and/or sprayfields in the 100-year floodplain or located within 500 feet of drinking water wells, operations that use tile drains or subsurface drains, and operations that use digesters.</p> <p>2. Increase the frequency of groundwater monitoring, require monitoring for more groundwater parameters, and clarify the requirements for groundwater management action plans. In addition to the parameters listed in Table 1 in Parts I and III of the draft general permit, DEQ should expand groundwater monitoring requirements to include testing for all parameters with groundwater standards and criteria, as well as bacteria and heavy metals. This monitoring should occur annually rather than every three years. The proposed draft</p>	<p><u><i>III B. Strengthen groundwater, soil, and waste monitoring requirements.</i></u> Section 62.1-44.17:1.E.4. of the Code of Virginia specifies which waste storage facilities and under what conditions that groundwater monitoring will be required by the regulatory program (general permit). <i>E.4. The operation shall be monitored as follows: ... (iii) ground water shall be monitored at new earthen waste storage facilities constructed to an elevation below the seasonal high water table or within one foot thereof; and (iv) all facilities previously covered by a Virginia Pollution Abatement permit that required ground water monitoring shall continue such monitoring.</i></p> <p>Requiring groundwater monitoring wells at all liquid waste storage facilities and spray fields is inconsistent with the requirements established by the Code of Virginia. In cases where it is demonstrated that a facility or a permittee no longer qualifies for coverage under the general permit, an individual VPA permit or an individual VPDES CAFO permit may be issued. When a permittee is required to obtain an individual permit, additional requirements are included in the individual permits based on site specific factors. DEQ has a history of requiring permittees covered by this VPA general permit to obtain an individual permit when non-compliance is determined.</p>

Commenter	Comment	Agency response
	<p>permit also requires permittees to submit a groundwater monitoring action plan if groundwater monitoring shows potential noncompliance with the general permit related to waste storage. This language should make clear that groundwater monitoring showing any potential noncompliance with the State Water Control Law would trigger this requirement; that the action plan should be developed by a certified specialist; and that DEQ must approve the plan, as follows: If groundwater monitoring results for any monitored parameter demonstrate potential noncompliance with this general permit <u>or with any groundwater quality standards or criteria, including antidegradation requirements, under the State Water Control Law</u> related to the waste storage facility, then the permittee shall submit an approvable groundwater monitoring action plan <u>developed by a certified technical specialist</u> that outlines appropriate measures to be taken to address the noncompliance. The groundwater monitoring action plan shall be submitted to the department for approval within 30 days of obtaining the monitoring results.</p> <p>In addition, Table 1 in Parts I and III should be modified to list, or include specific reference to, the groundwater standards and criteria for the parameters that must be monitored under the general permit.</p> <p>3. Increase the frequency of soil monitoring and require monitoring for more soil parameters. DEQ should require monitoring for total Kjeldahl nitrogen, carbon, nitrates, nitrites, and bacteria as part of the soil monitoring requirements in Parts I and III of the draft general permit. This monitoring should occur annually rather than every three years. 4. Increase frequency of waste monitoring and specify sampling location. DEQ should require waste monitoring to occur every six months. The general permit should also specify when the waste is sampled (e.g., in the lagoon or before irrigation).</p>	<p>There are no state or federal certification programs related to developing groundwater monitoring action plans. Additionally, there are no state or federal rules that require a certified technical specialist to develop and certify groundwater monitoring action plans. The amendment requires the permittee to submit an approvable groundwater monitoring action plan.</p> <p>The current soils monitoring requirements are consistent with subdivision A.2.f. of 4VAC50-85-140 of the NMP regulations administered by DCR. The DCR Special Conditions that are required in the NMP are consistent with the NMP regulations. Nitrogen recommendations are developed by identifying the soil productivity group for the crop being grown based on the soil series. Environmentally sensitive sites and the management of the crops and soils are also factors considered when establishing the rate and timing in the NMP. Increasing the frequency of soils monitoring is not consistent with the requirements established by the Code of Virginia.</p> <p>The current waste monitoring requirements and sampling protocols are consistent with subdivision A.2.g. of 4VAC50-85-140 of the NMP regulations administered by DCR. The DCR Special Conditions that are required in the NMP are consistent with the NMP regulations. Included in these Special Conditions is a requirement that separate samples shall be taken from all manure sources to be used for application (i.e. liquid, solid, etc.) and that the sample be representative of the manure (waste) to be applied.</p> <p>No changes are being proposed to address these comments.</p>
<p>Southern Environmental Law Center</p>	<p>III C. Increase the size of buffers for land-applied animal waste. DEQ should require more substantial buffers and setbacks around wells, waterways, other environmentally sensitive features, and neighboring homes to protect them from land-applied waste. The draft general</p>	<p><u>III C. Increase the size of buffers for land-applied animal waste.</u> The buffer setbacks outlined in the regulation are protective of human health and the environment. The specific buffer setbacks for the VPA/VPDES permits</p>

Commenter	Comment	Agency response
	<p>permit requires permittees to maintain 200 feet between land-applied waste and occupied dwellings on other properties (unless the occupants waive the buffer requirement); 100 feet between land-applied waste and water-supply wells or springs; 35 to 100 feet between land-applied waste and surface waters; and 25 feet between land-applied waste and rock outcroppings, except for limestone outcroppings which require 50 feet of buffer. Additionally, waste may not be applied in a way that would result in discharge into sinkholes. Other states provide greater setbacks and DEQ should follow suit.</p>	<p>for animal feeding operations are consistent with the DCR Standards and Criteria (revised 2014) for VPA and VPDES permitted operations. Based on the DCR Standards and Criteria (revised 2014), the setbacks established by the VPA General Permit Regulations are already more conservative for some of the sensitive features and include features not typically added in NMPs for unpermitted operations. In addition, the buffer setbacks in this general permit are consistent with the buffers established by the EPA CAFO Rule.</p> <p>No changes are being proposed to address these comments.</p>
<p>Southern Environmental Law Center</p>	<p>III D. Refine the exception for severe-weather-related land application of animal waste. The provisions governing land application of animal waste when a waste storage facility is threatened by emergencies, such as fire or flood, should apply only to lagoons having a minimum of four feet of liquid above the sludge layer, with the measurement taken from the stop pump level, at the pump intake, prior to pumping below the stop pump level. Additionally, the general permit should require that land application of waste cease within twelve hours of the National Weather Service issuing a Hurricane Warning, Tropical Storm Warning, or Flood Watch/Flash Flood Watch for the county in which the permitted operation is located. The intent of this type of restriction is to end all land application of waste approximately 24 hours before the onset of a storm event.</p>	<p><u>III D. Refine the exemption for severe-weather related land application of animal waste.</u> Section 70 Part I B.1. requires that all liquid waste storage facilities are designed and operated to prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm. The new condition provides criteria for the land application of animal waste outside of the land application schedule found in the NMP, so long as land application information is documented, and the Department is notified. Both requirements are to be completed in accordance with specific conditions in the permit. This condition provides permittees with clear requirements related to waste storage and land application when the permittee is faced with an emergency. Additionally, DEQ staff conduct on-site inspections to ensure compliance with the permit requirements.</p> <p>No changes are being proposed to address these comments.</p>
<p>Southern Environmental Law Center</p>	<p>III E. Require animal waste sludge surveys. To the extent DEQ has the legal authority to do so, it should require permittees to submit sludge surveys to DEQ for approval. For example, North Carolina’s general permit for swine waste management requires “a survey of sludge accumulation in all lagoons every year.” The survey must “include a sketch showing the depth of sludge in the various locations within</p>	<p><u>III E. Require animal waste sludge surveys.</u> Requiring sludge surveys is not consistent with the requirements established by the Code of Virginia. The typical management and operation of most waste storage facilities is to agitate the waste prior to land application. The agitation of the waste will increase the suspension of solids</p>

Commenter	Comment	Agency response
	<p>each lagoon” and the permittee must submit a sludge removal or management plan if the survey shows the sludge accumulation does not satisfy certain criteria.</p>	<p>to facilitate the removal and build up of solids on the bottom of the storage facility. Additionally, it is an acceptable and expected practice to remove solids on a regular basis to manage the operating levels of the storage facilities. All solids are also stored and land applied in accordance with the permit conditions. In cases where it is demonstrated that a facility or a permittee no longer qualifies for coverage under the general permit, an individual VPA permit or an individual VPDES CAFO permit may be issued. When a permittee is required to obtain an individual permit, additional requirements are included in the individual permits based on site specific factors. DEQ has a history of requiring permittees covered by this VPA general permit to obtain an individual permit when non-compliance is determined.</p> <p>No changes are being proposed to address these comments.</p>
<p>Southern Environmental Law Center</p>	<p>IV. DEQ should make additional revisions to the proposed regulation and general permit to improve transparency and accountability. DEQ is required by statute to establish a 10-year permit term for VPA permits for confined animal feeding operations. This is twice the length of Virginia Pollutant Discharge Elimination System permits issued for animal feeding operations. Given this lengthy permit term, DEQ should adopt the following recommendations to increase the availability of important information that affects community health and the environment, to clarify ambiguous terms in the draft general permit, and to ensure compliance with the permit’s non-discharge mandate. Expanding reporting requirements under the general permit will provide DEQ with better oversight of operation practices and will support its enforcement and compliance efforts.</p>	<p>Responses to IV A through H are below.</p>
<p>Southern Environmental Law Center</p>	<p>IV A. Define “24-hour, 25-year storm.” Under the current and proposed regulation, point source discharges of wastewater to surface waters from animal feeding operations are not permitted except in the case of a storm event greater than the 25-year, 24-hour storm.”³⁵ The regulation should specifically provide that a “25-year, 24-hour storm” is defined by the National Oceanic and Atmospheric Administration Atlas, as updated and amended. At the very least,</p>	<p><u>IV A. Define “24-hour, 25-year storm”.</u> This definition of twenty-five-year, 24-hour storm event is included in 9VAC25-32, the base regulation and is incorporated by reference into 9VAC25-192. As stated in Chapter 32, “twenty-five-year, 24-hour storm event means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years</p>

Commenter	Comment	Agency response
	<p>DEQ should include a definition for this term that relies on the best available science and allows permittees to determine whether their operations are in compliance with the standard.</p>	<p>as established by the National Weather Service or appropriate regional or state rainfall probability information.”</p> <p>No changes are being proposed to address these comments.</p>
<p>Southern Environmental Law Center</p>	<p>IV B. Expand information required to be submitted with the registration statement. Since the registration statement serves as the application for the general permit, DEQ must ensure that it—and the public—has the necessary information to evaluate whether the operation should be covered by the general permit. In addition to the items already required to be included in or attached to the registration statement, DEQ should require applicants to include a description of the animal waste management system; disclosure of any drain tiles or subsurface drains on the property; identification of off-site locations where waste will be transferred (if applicable); identification of adjacent state waters and classifications; and identification of any drinking water supply wells or springs, residences, schools, and churches within 1,000 feet of the operation’s property line. The description of the animal waste system should include the number and size of any lagoons, lagoon lining material (if any), and the location and size of sprayfields.</p>	<p><i>IV B. Expand information required to be submitted with the registration statement.</i> Section 62.1-44.17:1.C. of the Code of Virginia specifies what is to be submitted with the registration statement.</p> <p><i>C. For coverage under the General Permit, the owner of the confined animal feeding operation shall file a registration statement with the Department of Environmental Quality providing the name and address of the owner of the operation, the name and address of the operator of the operation (if different than the owner), the mailing address and location of the operation, and a list of the types, maximum number and average weight of the animals that will be maintained at the facility. The owner shall attach to the registration statement:</i></p> <ol style="list-style-type: none"> <i>1. A copy of a letter of approval of the nutrient management plan for the operation from the Department of Conservation and Recreation;</i> <i>2. A copy of the approved nutrient management plan;</i> <i>3. A notification from the governing body of the locality where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2;</i> <i>4. A certification that the owner or operator meets all the requirements of the Board for the General Permit; and</i> <i>5. A certification that the owner has given notice of the registration statement to all owners or residents of property that adjoins the property on which the proposed operation will be located. Such notice shall include (i) the types and maximum number of animals that will be maintained at the facility and (ii) the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to</i>

Commenter	Comment	Agency response
		<p><i>the permit may be submitted. Such certification of notice shall be waived whenever the registration is for the purpose of renewing coverage under a permit for which no expansion is proposed and the Department of Environmental Quality has not issued any special or consent order relating to violations under the existing permit.</i></p> <p>A description of the waste storage system is typically provided in the narrative of the NMP or submitted plans and design specifications provided in cases where operations are being proposed. In cases where an application for a new operation or an operation that is proposing to expand is submitted, department staff perform a site visit and meet with the applicant to evaluate the proposal. In accordance with 9VAC25-192-70 B 12. (also known as Part I B 12 of the current effective general permit), <i>The permittee shall implement a nutrient management plan (NMP) developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia and approved by the Department of Conservation and Recreation and maintain the plan on site. The NMP shall address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus loss to ground and surface waters. The terms of the NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:</i></p> <ul style="list-style-type: none"> <i>a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied;</i> <i>b. Site evaluation and assessment of soil types and potential productivities;</i> <i>c. Nutrient management sampling including soil and waste monitoring;</i> <i>d. Storage and land area requirements;</i> <i>e. Calculation of waste application rates; and</i> <i>f. Waste application schedules.</i>

Commenter	Comment	Agency response
		<p>The certified plan writer must also indicate the presence of environmentally sensitive features such as subsurface drain and tiles, wells, springs, etc. on the maps. Additional requirements requested in the comment are inconsistent with state law.</p> <p>No changes are being proposed to address these comments.</p>
<p>Southern Environmental Law Center</p>	<p>IV C. Expand public notice requirements related to registration statements. Under the proposed regulations, applicants are required to provide notice of the registration statement for coverage under the general permit to “all owners or residents of property that adjoins the property on which the animal feeding operation will be located.” Given the potentially far-ranging impacts of animal feeding operations, this notice requirement should be expanded to include all owners and residents of property within a half-mile radius of the operation. Additionally, the notice should include the name, mailing address, and email address of the operation’s owner or other contact person and information about where complaints about the operation can be filed with DEQ. After the registration notice is filed, DEQ or the applicant should be required to provide notice of the 30-day comment period to these same landowners and residents.</p>	<p><u>IV C. Expand public notice requirements related to registration statements.</u> Section 62.1-44.17:1.C. of the Code of Virginia establishes the requirements of the registration statement to include the contents on the form, the attachments and to whom and in what circumstances the notification must be provided by the owner.</p> <p>Section 62.1-44.17:1.D. of the Code of Virginia establishes how comments will be accepted and the length of the comment period:</p> <p><i>D. Any person may submit written comments on the proposed operation to the Department within 30 days of the date of the filing of the registration statement. If, on the basis of such written comments or his review, the Director determines that the proposed operation will not be capable of complying with the provisions of this section, the Director shall require the owner to obtain an individual permit for the operation. Any such determination by the Director shall be made in writing and received by the owner not more than 45 days after the filing of the registration statement or, if in the Director's sole discretion additional time is necessary to evaluate comments received from the public, not more than 60 days after the filing of the registration statement.</i></p> <p>Additional requirements requested in the comment are inconsistent with state law.</p> <p>No changes are being proposed to address these comments.</p>
<p>Southern Environment</p>	<p>IV D. Require nutrient management plans to be updated and certified annually. We appreciate</p>	<p><u>IV D. Require nutrient management plans to be updated and certified</u></p>

Commenter	Comment	Agency response
al Law Center	that the draft general permit now requires permittees to have—and submit to DEQ—an unexpired and certified nutrient management plan (NMP) and that it continues to make clear that a violation of the NMP constitutes a violation of the permit. However, given the dynamic nature of waste management at these facilities, permittees should be required to update and certify nutrient management plans annually.	<p>Agency response</p> <p><u>annually</u>. The NMP regulations are under the jurisdiction of DCR. DEQ does not have authority to propose amendments to the NMP regulations.</p> <p>No changes are being proposed to address these comments.</p>
Southern Environmental Law Center	IV E. Require monitoring results to be submitted to DEQ, maintained by the permittee for the full permit term, and made publicly available. As currently drafted, the general permit requires that permittees maintain monitoring data collected under the general permit on-site for only five years, and it is not clear when permittees must report monitoring results to DEQ. Instead, permittees should be required to report all monitoring data to DEQ and to maintain all monitoring records on-site for the full permit term. Additionally, DEQ should make all monitoring data available to the public through an online platform.	<p><u>IV E. Require monitoring results to be submitted to DEQ, maintained by the permittee for the full permit term, and made publicly available</u>. The duration to maintain records by the general permit is derived from the VPA permit regulation (9VAC25-32-80), the base regulation of this general permit. General permit regulations are developed to be at least as restrictive as the base regulation but typically not more restrictive since the VPA regulation is the basis for the general permit regulation. Additionally, E.4. of section 62.1-44.17:1 further prescribes the requirements related to land application and monitoring records: “Such records shall be available for inspection by the Department of Environmental Quality and shall be maintained for a period of five years after recorded application is made”. The monitoring results are reviewed during inspections or at any time department staff request the data. Any data recorded during an inspection is recorded in the inspection report form. Any data received by the department is filed in the DEQ electronic filing system. All non-confidential records are available to the public through the Freedom of Information Act. Additional requirements requested in the comment are inconsistent with state law.</p> <p>No changes are being proposed to address these comments.</p>
Southern Environmental Law Center	IV F. Improve closure requirements for waste storage facilities. The general permit should require permittees to close waste storage facilities in compliance with all applicable NRCS standards, including NRCS Practice Standard 360. Permittees should also be required to have the closure certified by NRCS or DEQ.	<p><u>IV F. Improve closure requirements for waste storage facilities</u>. 9VAC25-192-70 B 11 contains closure requirements for the permittee: “When the waste storage facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further</p>

Commenter	Comment	Agency response
		<p>maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the groundwater, surface water, or the atmosphere.”</p> <p>DEQ staff complete on-site inspections to ensure compliance with all aspects of the permit. Staff provide information to permittees related to the closure of a waste storage facility prior to the closure to ensure it is completed properly. Additionally, site inspections are completed during phases of the closure of a storage facility.</p> <p>No changes are being proposed to address these comments.</p>
<p>Southern Environmental Law Center</p>	<p>IV G. Require records be maintained by permittees for the duration of the permit term. The general permit should require that all records associated with the permittee’s application for, operation under, and compliance with the general permit be maintained by the permittee for the full duration of the permit term.</p>	<p>See response to IV E. above.</p> <p>No changes are being proposed to address these comments.</p>
<p>Southern Environmental Law Center</p>	<p>IV H. Improve notification of unauthorized discharges. Permittees are required to notify DEQ in the case of unauthorized discharges. In addition to the information already required to be included in a written report submitted after such a discharge, DEQ should require permittees to include the name of any state waters affected by the unauthorized discharge and the most recent waste monitoring results. Permittees should also be required to issue a public press release within 48 hours of any discharge of 1,000 gallons or more of animal waste to surface waters and/or wetlands. The press release should include all information submitted to DEQ in the written report.</p>	<p><i>IV H. Improve notification of unauthorized discharges.</i> The basis of the language in Section 70 Part II is the VPA base regulation. A change in Part II of the general permit regulation would require a corresponding change in the language in the VPA base regulation, which is not a part of this regulatory action. Additionally, the regulation language (and permit) provides for department staff to request, at any time, records associated with the permit. The additional requirements requested in this comment are outside of the scope of this regulatory process.</p> <p>No changes are being proposed to address these comments.</p>
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers</p>	<p>Thank you for the opportunity to submit public comments on the draft Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (9 VAC 25-192) (“Draft AFO Permit”). These comments are submitted on behalf of the Environmental Integrity Project (EIP), Potomac Riverkeeper</p>	<p>DEQ acknowledges your concerns about environmental threats posed by animal feeding operations. The Board’s authority to implement a program for animal feeding operations is set out in and limited by the authority granted to it by the legislature in § 62.1-44.17.1 of the Code of Virginia.</p>

Commenter	Comment	Agency response
<p>Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>Network, Waterkeepers Chesapeake, the Chesapeake Bay Foundation, and the James River Association. Animal waste from Virginia’s animal feeding operations and animal waste management facilities (collectively, “AFOs”), if not managed and stored correctly, poses a significant threat to Virginia’s state waters. This waste is a significant source of nitrates and pathogens that can make groundwater dangerous to drink without treatment, potentially harming the many Virginians who depend upon private, untreated groundwater wells. The waste can also contribute to harmful algae blooms (HABs) and other nutrient-related problems in Virginia’s surface waters. The Draft AFO Permit, while an improvement from the existing permit, is still missing necessary measures to validate the “no discharge” assumption underlying the VPA permitting program as well as basic measures needed to protect these waters and Virginia communities, like more comprehensive groundwater monitoring, public transparency, and liner integrity inspections and tests. These needed revisions are summarized in the chart below, followed by a discussion of some of these revisions. Commenters also support the additional ground and surface water protections detailed in the Southern Environmental Law Center’s letter.</p>	<p>The general permit and amendments to it that are part of this regulatory action are within the Board’s authority.</p>
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>I. Commenter Information EIP is a nonprofit organization dedicated to protecting public health and our natural resources by holding polluters and government agencies accountable under the law, advocating for tough but fair environmental standards, and empowering communities fighting for clean air and clean water. EIP is headquartered in Washington, DC and has staff who live and recreate in Virginia and the Chesapeake Bay region. Potomac Riverkeeper Network’s mission is to protect the right to clean water for all communities and all those who live in and rely upon the Potomac and Shenandoah watersheds by stopping pollution, making drinking water safe, protecting healthy river habitats, and enhancing use and enjoyment for all. Waterkeepers Chesapeake fights for clean water and a healthy environment by supporting 17 Waterkeepers throughout the Chesapeake and coastal regions as they protect their communities, rivers, and streams from pollution, including the James, Shenandoah, and Potomac Riverkeepers and the Assateague Coastkeeper on the Eastern Shore. The Chesapeake Bay Foundation is a non-profit</p>	<p>Thank you for your comments.</p>

Commenter	Comment	Agency response
	<p>organization founded in 1967 and is devoted to the restoration and protection of the Chesapeake Bay. We are the largest independent conservation organization dedicated solely to the fight for effective, science-based solutions to the pollution degrading the Bay and its rivers and streams within the 64,000-square-mile-watershed. The Chesapeake Bay Foundation boasts more than 91,000 members in Virginia and conducts restoration activities through advocacy, education, and litigation. The James River Association is a member-supported nonprofit organization founded in 1976 to serve as a guardian and voice for the James River. Throughout the James River's 10,000-square mile watershed, the James River Association works toward its vision of a fully healthy James River supporting thriving communities. Our thousands of members and supporters have important economic, professional, and personal interests in the health of the James River, and we are pleased to offer a voice for the River and its stakeholders.</p>	
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>III. Additional Groundwater Protections for Earthen Liquid Waste Storage Facilities are Needed (Part I.A and Part III.A, Pollutant Management and Monitoring Requirements) There are at least 78 AFOs in Virginia with earthen lagoons. See Exhibit 1 (Inspection Report Review). Some have synthetic liners, some have compacted soil liners, and others have no additional liner. Because earthen lagoons can be permeable, they are more likely to leak than properly functioning synthetic lined lagoons. In 2018, the D.C. Circuit held that the EPA was not justified in treating coal ash impoundments with clay liners the same as those with synthetic liners because clay lined ponds posed higher risks to human health. <i>Utility Solid Waste Activities Group v. Environmental Protection Agency</i>, 901 F.3d 414, 429, 438 (D.C. Cir. 2018); see also <i>id.</i> at 431 (“Clay-lined surface impoundments have a 9.1 per cent chance of causing groundwater contamination at drinking water wells at a one-mile distance from the impoundment perimeter.”). The Draft AFO Permit recognizes the weakness of earthen lagoons in part by requiring groundwater monitoring wells at some earthen lagoons. But more needs to be done to ensure that no earthen lagoons are discharging animal waste to groundwater. More than 22% of Virginians depend upon private groundwater wells for their water supply.</p>	<p>Responses to III 1 through 6 are below.</p>

Commenter	Comment	Agency response
	<p>Animal waste contains numerous pollutants and pathogens that can pollute that groundwater and harm those who drink it, including nitrates and pathogens. In addition, animal waste can contaminate groundwater that then flows into surface waters, like the Chesapeake Bay, adding nutrient pollutants to an already-overburdened waterbody.</p> <p>Without groundwater monitoring, there is no way to know whether or not these earthen lagoons are discharging animal waste and contaminating groundwater. This is similar to the monitoring that the Ninth Circuit held was needed for CAFOs in 2021 - “[w]ithout a requirement that CAFOs monitor waste containment structures for underground discharges, there is no way to ensure that production areas comply with the Permit’s zero-discharge requirement.” Food & Water Watch v. U.S. Environmental Protection Agency, 20 F.4th 506, 517–18 (9th Cir. 2021). If the BMPs required by the Permit work correctly, the downgradient wells should not show any pollutant levels above the levels in the upgradient wells. See, e.g., Draft AFO Permit Part I.A.6 (high levels in well trigger groundwater monitoring action plan). If these downgradient wells show higher pollution levels, however, something has gone wrong and needs to be fixed at the earthen lagoon. Higher levels also mean that any drinking water wells downgradient of the earthen lagoon need to be tested and potentially treated before the water is safe to drink.</p> <p>The Draft AFO Permit’s monitoring well requirements are inadequate to protect Virginia’s groundwater for at least six reasons. First, the Draft AFO Permit does not require any groundwater monitoring wells at earthen liquid storage lagoons constructed before 1998 and those built less than one foot below the seasonal high water table. Only two AFOs are required to monitor groundwater based on recent inspection reports. At least 75 other AFOs have earthen storage lagoons with no monitoring requirements. Given the known weaknesses of earthen lagoons, all earthen lagoons, not just newer ones or those closest to groundwater, should have groundwater monitoring wells.</p> <p>Second, the Permit only requires one downgradient groundwater monitoring well, which is not adequate to monitor groundwater pollution.</p>	

Commenter	Comment	Agency response
	<p>Third, the Permit only requires annual monitoring (or even monitoring every three years), which is not frequent enough to detect groundwater contamination.</p> <p>Fourth, monitoring results are not easily available to the public.</p> <p>Fifth, the Draft AFO Permit's monitoring requirements do not include any the pathogens and indicator bacteria found in animal waste that pose a danger to drinking water supplies.</p> <p>Sixth, the Draft AFO Permit needs pollution limits, not just monitoring, in order to protect groundwater as a drinking water supply from critical human health pollutants like nitrates and pathogens.</p> <p>In order to protect groundwater and the Virginians who depend upon it, as well as the Chesapeake Bay and other Virginian surface waters, the Permit's monitoring well conditions should be improved as follows:</p>	
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>III 1. Require Groundwater Monitoring Wells for All Earthen Lagoons</p> <p>The Draft AFO Permit exempts from monitoring pre-1998 liquid waste storage facilities and those located less than one foot below the seasonal high water table, stating that “[a]t earthen liquid waste storage facilities constructed after December 1, 1998, to an elevation below the seasonal high water table or within one foot thereof, groundwater monitoring wells shall be installed. A minimum of one up gradient and one down gradient well shall be installed at each earthen waste storage facility that requires groundwater monitoring.” Draft AFO Permit Part I.A.2; Part III.A.2 (emphases added).</p> <p>In its response to the comments received during the public comment period following the publication of the NOIRA, VDEQ defended exempting the pre-1998 older liquid waste storage facilities from monitoring wells as follows:</p> <p>The date, December 1, 1998, found in permit special conditions related to waste storage is the effective date of amendments that were made to the regulation based on changes to the Code of VA § 62.1-44.17:1. The date was inserted into the regulation to make it clear when certain requirements became effective. The liner thickness and permeability specification requirements were in the regulation prior to the amendments that became effective on December 1, 1998, and therefore were in effect for waste storage structures constructed prior to December 1, 1998.</p>	<p><u>III 1. Require Groundwater Monitoring Wells for All Earthen Lagoons.</u> While the Acts of Assembly was enacted in 1994, further changes to the waste storage requirements and other requirements were made in 1998. Senate Bill 661, enacted by the 1998 General Assembly amended Section 62.1-44.17:1 (Chapters 805 and 863, 1998 Acts). The State Water Control Board, through a rulemaking modified the general permit regulation strictly for the purpose of making it conform to the requirements of state law. The rulemaking became effective December 1, 1998. The amendments to the regulation were made without agency discretion under §9-6.14:4.1 C 4 (a) of the Administrative Process Act. The General Assembly changed the law that mandates the general permit by adding requirements. Two specific additions were related to waste storage: (1) waste storage lagoons may no longer be located within a 100-year floodplain; and (2) the siting, design and construction of the waste storage lagoon must be certified as meeting the permit requirements. The date was added to the regulation to ensure the permitted community understood the requirements regarding waste storage and makes it clear that waste storage constructed prior to the effective date of the Acts of Assembly</p>

Commenter	Comment	Agency response
	<p>Town Hall Agency Background Document for 9VAC25-192 at 6 (Aug. 2023).</p> <p>This is not an adequate reason for exempting pre-1998 earthen lagoons from monitoring wells. While VDEQ is correct that the Code of Virginia, § 62.1-44.17:1, does not specifically require groundwater monitoring at pre-1998 lagoons, the law does not bar VDEQ from requiring groundwater monitoring wells at earthen lagoons constructed before 1998. Instead, the law provides VDEQ with the authority to include additional monitoring when required to protect state waters: “[t]he Department of Environmental Quality and the Department of Conservation and Recreation may include in the permit or nutrient management plan more frequent or additional monitoring of waste, soils or groundwater as required to protect state waters.” Va. St. § 62.1-44.17:1(E)(4) (emphasis added).</p> <p>Groundwater monitoring is needed to protect state waters at all earthen liquid waste storage facilities, including the pre-1998 facilities and those located less than one foot below the seasonal high water table. See Va. St. § 62.1-44.17:1(E)(4). As described above, earthen lagoons can be permeable and leak. Moreover, current liner and construction rules were only enacted in 1994, meaning facilities constructed before 1994 are not required to have “properly designed and installed liner[s],” like “a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour,” or required to be “constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture and approved by the department.” Current AFO Permit, Part I.B.3, 6; Va. St. § 62.1-44.17:1(E). Without even these basic construction requirements, these old waste lagoons are much more likely to be leaking animal waste to groundwater.</p> <p>Finally, without requiring monitoring DEQ is unable to ascertain whether these earthen lagoons even remain eligible for coverage under the Draft AFO permit, or whether, because they include a discharge to state waters, a Virginia Pollutant Discharge Elimination System (“VPDES”) permit is required. Without any monitoring for the waste lagoons most likely to be discharging to state water, DEQ cannot maintain the legal mirage that these are “no</p>	<p>are not required to meet the new requirements. The DEQ has authority to require that a new waste storage facility constructed after December 1, 1998, meet the new construction conditions but not a waste storage facility constructed prior to the new conditions becoming effective. DEQ cannot make restrictions retroactive. Prior to the promulgation of this general permit, the activities of the animal feeding operations were covered by an individual VPA permit. The individual permits contained the conditions related to waste storage facilities including requirements to install a liner and permeability requirements. Additionally, the NRCS requirements during that time also required compacted clay liners and related specifications for waste storage facilities. At the very least, the older waste storage facilities must have compacted clay liners in order to hold the materials being stored. The date was added to the regulation not to limit ground water monitoring but to note the changes to the requirements. Section 70 Part I A.3. of the permit requires that “All facilities previously covered under a VPA permit that required groundwater monitoring shall continue monitoring consistent with the requirements listed below regardless of where they are located relative to the seasonal high water table.” Adding the date to mark the effective date of the changes does not exempt but make it clear when the changes occurred.</p> <p>Section 62.1-44.17:1.E.4. of the Code of Virginia specifies which waste storage facilities and under what conditions that groundwater monitoring will be required by the regulatory program (general permit):</p> <p><i>E.4. The operation shall be monitored as follows: ... (iii) ground water shall be monitored at new earthen waste storage facilities constructed to an elevation below the seasonal high water table or within one foot thereof; and (iv) all facilities previously covered by a Virginia Pollution Abatement</i></p>

Commenter	Comment	Agency response
	<p>discharge” facilities. See, e.g., Food & Water Watch, 20 F.4th at 517 (without monitoring for underground discharges, “there is no way to ensure that production areas comply with the Permit’s zero-discharge requirement”).</p>	<p><i>permit that required ground water monitoring shall continue such monitoring.</i></p> <p>Requiring groundwater monitoring wells at all liquid waste storage facilities and spray fields is not consistent with the requirements established by the Code of Virginia. In cases where it is demonstrated that a facility or a permittee no longer qualifies for coverage under the general permit, an individual VPA permit or an individual VPDES CAFO permit may be issued. When a permittee is required to obtain an individual permit, additional requirements are included in the individual permits based on site specific factors. DEQ has a history of requiring permittees covered by this VPA general permit to obtain an individual permit when non-compliance is determined.</p> <p>No changes are being proposed to address these comments.</p>
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>III 2. Require at Least Two Downgradient Groundwater Monitoring Wells The Draft Permit requires only one downgradient monitoring well at every earthen lagoon, which is rarely enough to monitor groundwater on a large, multiacre property. For instance, Resource Conservation and Recovery Act, Subtitle C, requires the installation of at least three downgradient monitoring wells. 40 C.F.R. § 265.91. In order to ensure that the earthen lagoon is not leaking and contaminating groundwater, the Permit should require at least two, if not more, downgradient wells.</p>	<p><u>III 2. Require at Least Two Downgradient Groundwater Monitoring Wells.</u> Section 70 Part I A.2. states: “A minimum of one up gradient and one down gradient well shall be installed at each earthen waste storage facility that requires groundwater monitoring. Existing wells may be utilized to meet this requirement if properly located and constructed.” This language provides the minimum criteria. During the waste storage approval process, staff can require more monitoring wells to be installed.</p> <p>No changes are being proposed to address these comments.</p>
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac</p>	<p>III 3. Increase the Frequency of Monitoring to Monthly Every three year, or annual monitoring is insufficient to alert the facility, the state, or the neighbors as to groundwater contamination. With only this infrequent monitoring, if a well has high levels of a pollutant, a neighbor may be drinking contaminated groundwater from a private well for a whole year or more without knowing there is any risk, and the facility could be putting a groundwater monitoring action plan</p>	<p><u>III 3. Increase the Frequency of Monitoring to Monthly.</u> The reissuance of the general permit regulation maintains the frequency of groundwater monitoring required in general permit regulations that were adopted and effective for 10-year terms beginning in 2004 and 2014. When non-compliance or circumstances are discovered to necessitate additional monitoring, an individual permit may be required in</p>

Commenter	Comment	Agency response
River Keeper Network, James River Association	into place more than year after the pollution was present in the well. The frequency should be increased to monthly, or, at a minimum, every six months.	order to effect more restrictive requirements. Section 70 Part II.T. allows DEQ to require a permittee to obtain an individual VPA permit. No changes are being proposed to address these comments.
Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association	III 4. Make the Sampling Results Publicly Available by Requiring Electronic Reporting Because groundwater contaminated by animal waste can migrate to other properties and to drinking water wells, it is imperative that the AFO's neighbors and the public at large can view the AFO's monitoring data on a timely basis. The best and easiest way to do that is by requiring AFOs to electronically report their monitoring data on e-DMRs, like other water quality permittees.	<u>III 4. Make the Sampling Results Publicly Available by Requiring Electronic Reporting.</u> DEQ documents monitoring records during inspections. DEQ staff scan all submitted files for upload into the DEQ electronic filing system. Many of the permittees would not have the capability to submit any documents in an electronic format. All monitoring records that DEQ has in the electronic file system associated with the permits are available to the public through the Freedom of Information Act. No changes are being proposed to address these comments.
Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association	III 5. Add Monitoring for E. Coli, Cryptosporidium, and Giardia lamblia There are over 150 pathogens in animal manure that could impact human health, including E. coli, Bacillus anthracis, Leptospira Pomona, Listeria monocytogenes, Salmonella, Clostridium tetani, Histoplasma capsulatum, Microsporium, Trichophyton, Giardia lamblia, and Cryptosporidium. If that animal waste leaks into groundwater, these pathogens make groundwater dangerous for humans to drink, causing, among other impacts, severe diarrhea that can kill vulnerable populations like infants, young children, pregnant women, the elderly, and those who are immunosuppressed, HIV positive, or have had chemotherapy. These impacts can be widespread. For instance, in 1993, Cryptosporidium caused a waterborne illness outbreak in which over 400,000 persons were infected in Milwaukee, Wisconsin. A National Association of Local Boards of Health report, Understanding Concentrated Animal Feeding Operations and Their Impact on Communities, summarizes the threat from animal feeding-related pathogens to drinking water supplies as follows: When groundwater is contaminated by pathogenic organisms, a serious threat to drinking water can occur. Pathogens survive longer in groundwater than surface water due to lower temperatures and protection from the sun.	<u>III 5. Add Monitoring for E. Coli, Cryptosporidium, and Giardia lamblia.</u> As there are no groundwater standards for the suggested bacteria parameters, there is no scientific basis to establish compliance guidelines for the suggested parameters or set limits on these parameters. No changes are being proposed to address these comments.

Commenter	Comment	Agency response
	<p>Even if the contamination appears to be a single episode, viruses could become attached to sediment near groundwater and continue to leach slowly into groundwater. One pollution event by a CAFO could become a lingering source of viral contamination for groundwater (EPA, 2005).</p> <p>To ensure that neighboring drinking water wells are not contaminated with pathogens, the groundwater monitoring wells at earthen lagoons should be regularly monitored for the most easily tested pathogens commonly found in animal waste – E. Coli, which acts as a surrogate for many of these pathogens, the protozoan Cryptosporidium, and the parasite Giardia.</p>	
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>III 6. Add Limits for Nitrates, E. Coli, Cryptosporidium, and Giardia lamblia Limits, not just monitoring are needed for pollutants that pose acute risks to human health and drinking water supplies, like nitrates and pathogens.</p> <p>A. Limits for Ammonia Nitrogen and Nitrate Nitrogen</p> <p>Ammonia nitrogen, which is likely to become nitrate, and nitrate nitrogen pose a significant threat to groundwater. For public water systems, the U.S. Environmental Protection Agency (EPA) has set a primary drinking water limit (MCL) of 10 milligrams per liter (mg/L) for nitrogen when reported in the nitrate-nitrogen form (NO3-N), primarily because of the danger to babies from “blue baby syndrome,” where babies cannot adequately transport oxygen in their blood. High levels of nitrates in drinking water may also be linked to birth defects, miscarriages, increased heart rate, nausea, headaches, and abdominal cramps for adults. In addition, when groundwater high in nitrates migrates to surface water, those nitrates become a source of nutrients that can cause harmful algae blooms (HABs), which make waters dangerous for recreation and drinking water.</p> <p>Virginia sets the following groundwater standards for ammonia nitrogen and nitrate nitrogen in 9 VAC 25-280-50:</p> <p>Animal waste is a significant source of total nitrogen, including ammonia nitrogen and nitrate nitrogen.</p> <p>To protect groundwater, the Permit should include Virginia’s groundwater standards for ammonia nitrogen and nitrate nitrogen as limits in the downgradient wells. At a minimum, the</p>	<p><u>III 6.A. Limits for Ammonia Nitrogen and Nitrate Nitrogen.</u> The general permit requires monitoring for ammonia nitrogen and nitrate nitrogen where groundwater monitoring is required. If groundwater monitoring results demonstrate potential noncompliance, then the permittee shall submit an approvable groundwater monitoring action plan that outlines appropriate measures to be taken to address the noncompliance. Because nitrate and ammonia in groundwater may be present in agricultural settings unrelated to the permitted AFO, it is not appropriate to establish overarching limits in the general permit. The appropriate limit to demonstrate compliance may be established through comparison with background well data and detailed in the action plan.</p> <p>No changes are being proposed to address these comments.</p>

Commenter	Comment	Agency response
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>Permit should include nitrate limits in the downgradient wells to protect drinking water – the 10 mg/L MCL.</p> <p>III 6. B. Non-Detect Limit for E. Coli, Cryptosporidium, and Giardia Lamblia To ensure that neighboring drinking water wells are not contaminated with pathogens and pose a human health threat, the Permit should include non-detect limits in downgradient monitoring wells for E. Coli, Cryptosporidium, and Giardia Lamblia consistent with EPA’s Maximum Contaminant Level Goal (MCLG), the level of a contaminant in drinking water below which there is no known or expected risk to health. The MCLG for all three pathogens is zero.</p>	<p><u>III 6 B. Non-Detect Limits for E. Coli, Cryptosporidium, and Giardia lamblia.</u> As there are no groundwater standards for the suggested bacteria parameters, there is no scientific basis to establish compliance guidelines for the suggested parameters or set limits on these parameters.</p> <p>No changes are being proposed to address these comments.</p>
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>IV. Liner Integrity Requirements (Part I.B and Part III.A.2, Site design, Storage, and Operations Requirements)</p> <p>1. Require Liner Integrity Tests and Monthly Inspections Ensuring the integrity of liners for liquid waste storage facilities is key to protecting groundwater and surface water from animal waste. If the liner is leaking or broken and animal waste enters into groundwater, it can contaminate drinking water supplies for years. The National Association of Local Boards of Health note that “[o]ne pollution event by a CAFO could become a lingering source of viral contamination for groundwater.” Animal waste that leaks into groundwater can also contaminate nearby surface waters. Virginia law reflects the importance of well-engineered and well-maintained liners, requiring that an AFO “shall have a liquid manure collection and storage facility designed and operated to (i) prevent any discharge to state waters, except a discharge resulting from a storm event exceeding a 25-year, 24-hour storm.” Va. St. § 62.1-44.17:1(E)(1) (emphasis added). To ensure that liners are operated to prevent any discharge to state waters except a 25-year storm, the Permit’s liner requirements should be revised to include the following:</p> <ul style="list-style-type: none"> • Monthly inspections • Permeability testing to ensure that the facility meets a permeability rating of 0.0014 gal/hr <p>These low-cost, common-sense BMPs will help ensure that lined liquid manure collection and storage facilities are operated to prevent any</p>	<p><u>IV 1. Require Liner Integrity Tests and Monthly Inspections.</u> Section 70 Part I B 3 requires that all earthen waste storage facilities include a properly designed and installed liner. This condition also stipulates the thickness and permeability rating of the liner. This permit condition requires that a Virginia licensed engineer or NRCS employee with engineering approval authority shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. All waste storage facilities covered under this permit meet the requirements outlined in Section 70 Part I B 3. Liner testing is required during construction of new earthen storage facilities in order for the engineer to certify the structure. Testing is also completed while the structure is in use if a repair is made to the liner. Unless the integrity of the liner is compromised, further testing is not necessary. Section 70 Part I B.1. requires that <i>Any liquid manure collection and storage facility shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients</i></p>

Commenter	Comment	Agency response
	<p>discharge to state waters, as required by the Code of Virginia, § 62.1-44.17:1(E)(1), and ensure the protection of Virginia state waters.</p>	<p><i>should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.</i> Compliance with this condition can be reached in many ways including inspections. When non-compliance is determined, DEQ can require a permittee to obtain an individual permit. Individual permits include additional requirements such as inspections of the waste storage and handling systems.</p> <p>No changes are being proposed to address these comments.</p>
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>IV 2. Expand Basic Liner Requirements to All Earthen Lagoons Built Before 1994 The Permit should be revised to expand the Draft AFO Permit's current requirement that earthen waste storage facilities include either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour to lagoons built after 1994, rather than 1998. As VDEQ itself noted in its response to comments, these liner requirements were in statute before 1998. Town Hall Agency Background Document for 9 VAC 25-192 at 6 (Aug. 2023); VA ST § 62.1-44.17:1(E)(4). These requirements appear to have put in place in 1994 via legislation that did not include an enactment clause or delayed effective date or any other mechanism that would warrant delaying their effectiveness of this requirement for four years. See Exhibit 2, 1994 Virginia Laws Ch. 698, § 62.1-44.17:1(D)(5). The Permit should be revised to be consistent with Virginia law.</p>	<p><u>IV 2. Expand Basic Liner Requirements to All Earthen Lagoons Built Before 1994.</u> While the Acts of Assembly was enacted in 1994, further changes to the waste storage requirements and other requirements were made in 1998. Senate Bill 661, enacted by the 1998 General Assembly amended Section 62.1-44.17:1 (Chapters 805 and 863, 1998 Acts). The State Water Control Board through a rulemaking modified the general permit regulation strictly for the purpose of making it conform to the requirements of state law. The rulemaking became effective December 1, 1998. The amendments to the regulation were made without agency discretion under §9-6.14:4.1 C 4 (a) of the Administrative Process Act. The General Assembly changed the law that mandates the general permit by adding requirements. Two specific additions were related to waste storage: (1) waste storage lagoons may no longer be located within a 100-year floodplain; and (2) the siting, design and construction of the waste storage lagoon must be certified as meeting the permit requirements. The date was added to the regulation to ensure the permitted community understood the requirements regarding waste storage and makes it clear that waste storage constructed prior to the effective date of the Acts of Assembly are not required to meet the new requirements. The DEQ has authority to require that a new waste storage</p>

Commenter	Comment	Agency response
		<p>facility constructed after December 1, 1998, meet the new construction conditions but not a waste storage facility constructed prior to the new conditions becoming effective. DEQ cannot make restrictions retroactive. Prior to the promulgation of this general permit, the activities of the animal feeding operations were covered by an individual VPA permit. The individual permits contain the conditions related to waste storage facilities including requirements to install a liner and permeability requirements. Additionally, the NRCS requirements during that time also required compacted clay liners and related specifications for waste storage facilities. At the very least, the older waste storage facilities must have compacted clay liners in order to hold the materials being stored. The date was added to the regulation not to limit ground water monitoring but to note the changes to the requirements. Section 70 Part I A.3. of the permit requires that "All facilities previously covered under a VPA permit that required groundwater monitoring shall continue monitoring consistent with the requirements listed below regardless of where they are located relative to the seasonal high water table." Adding the date to mark the effective date of the changes does not exempt but make it clear when the changes occurred.</p> <p>In cases where it is demonstrated that a facility or a permittee no longer qualifies for coverage under the general permit, an individual VPA permit or an individual VPDES CAFO permit may be issued. When a permittee is required to obtain an individual permit, additional requirements are included in the individual permits based on site specific factors. DEQ has a history of requiring permittees covered by this VPA general permit to obtain an individual permit when non-compliance is determined.</p>

Commenter	Comment	Agency response
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>V. Environmental Justice (Part I.T, When an Individual VPA Permit May be Required) Many of these AFOs are located in vulnerable, already-polluted communities. These communities and groundwater are only protected by the Permit’s pollution controls if permitted facilities comply with the Permit’s terms. “It is the policy of the Commonwealth to promote environmental justice and ensure that it is carried out throughout the Commonwealth, with a focus on environmental justice communities and fenceline communities.” Furthering environmental justice and enhancing public participation in the permitting process is also a part of VDEQ’s mission. VDEQ can and should ramp up inspections and enforcement. VDEQ should also add protections against repeat violators into the Permit for areas at the 80th or higher national percentile for one or more of EPA’s environmental justice indices. We request new language that coverage under the Permit is not available to facilities who: 1) have violated the Permit for more than a year; and 2) are located in census tracts at the 80th or higher national percentile for one or more of EPA’s environmental justice indices. Given these facilities’ previous noncompliance, the AFOs in the most vulnerable areas would instead be required to apply for and obtain permits that would include more tailored water quality protections, public notice and comment requirements, and better community protection.</p>	<p>No changes are being proposed to address these comments.</p> <p><u>V. Environmental Justice.</u> Section 62.1-44.17:1.B. of the Code of Virginia requires that an animal feeding operation that meets the requirements of the Section be permitted under the general permit. <i>B. A confined animal feeding operation with 300 or more animal units utilizing a liquid manure collection and storage system, upon fulfillment of the requirements of this section, shall be permitted by a General Virginia Pollution Abatement permit (hereafter referred to as the "General Permit"), adopted by the Board.</i></p> <p>Section 62.1-44.17:1.H. of the Code of Virginia further specifies the circumstances under which the director may require the owner to obtain an individual permit. <i>H. The Director of the Department of Environmental Quality may require the owner of a confined animal feeding operation to obtain an individual permit for an operation subject to this section upon determining that the operation is in violation of the provisions of this section or if coverage under an individual permit is required to comply with federal law. New or reissued individual permits shall contain criteria for the design and operation of confined animal feeding operations including, but not limited to, those described in subsection E.</i></p> <p>Additionally, the condition found in <u>Part II T. When an individual VPA permit may be required.</u> further prescribes when an individual permit may be required. The general permit is derived from the VPA permit regulation (9VAC25-32-80), the base regulation of this general permit. General permit regulations are developed to be at least as restrictive as the base regulation but typically not more restrictive since the VPA regulation is the basis for the general permit regulation. The proposed change is outside of the scope of this regulatory process.</p>

Commenter	Comment	Agency response
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>VI. Corrective Action (Part I.A.6; Part III. A.6) Commenters support the concept in the Draft AFO Permit of corrective action when submitted monitoring data demonstrates noncompliance with the permit. However, the proposed language in the Draft AFO Permit is so vague as to be ineffectual. The Draft AFO Permit language for corrective action should be revised to set out additional steps (monitoring and/or operational changes) that must be made within a specific timeframe after noncompliance has been reported. Where such steps are not taken, or where monitoring data continues to show an actual discharge to state waters, the Draft AFO Permit should be revised to require the permittee to seek VPDES coverage as the facility is no longer eligible for VPA coverage given the reported discharge.</p>	<p>No changes are being proposed to address these comments.</p> <p><i>VI. Corrective Action (Part I.A.6; Part III. A.6).</i> The current language in the regulation provides for DEQ to require a permittee to obtain an individual VPA permit. Additionally, the State Water Control Law provides the DEQ with the ability to require a permittee to obtain a different permit to manage the operation.</p> <p>No changes are being proposed to address these comments.</p>
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>VII. Land Application Bypass and Nutrient Management Plans (Part I.C.2; Part III.C.2) As addressed in our summary changes chart in Section II above, concerning loopholes were added to the Draft AFO Permit in 9 VAC 25-192-70, Part I.C.5 and 9 VAC 25-192-90, Part III.C.4 that would allow land appliers to bypass the NMP application limitations in instances where the land applier, in his or her discretion, determined that the storage facility may be “threatened by emergencies” such as “fire or flood” or where such conditions are “imminent.” None of these terms is defined in the Draft AFO Permit and without clearer limitations this language could be abused. We suggest placing limitations on the use of this bypass and treating it as an actual bypass and clarifying what the key terms such as “flood” mean. Commenters support the Draft Permit’s new requirement that “All revised and Department of Conservation and Recreation approved NMPs shall be submitted to the department prior to the expiration of the previous NMP.” Part I.C.2; Part III.C.2. Ensuring that NMPs are unexpired and thereby reflect prior nutrient application and uptake will help prevent land appliers from overapplying animal waste. Thank you for your consideration of these comments!</p>	<p><i>VII. Land Application Bypass and Nutrient Management Plans (Part I.C.2; Part III.C.2).</i> Section 70 Part I B.1. requires that all liquid waste storage facilities are designed and operated to prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm. The new condition provides criteria for the land application of animal waste outside of the land application schedule found in the NMP, so long as land application information is documented, and the Department is notified. Both requirements are to be completed in accordance with specific conditions in the permit. This condition provides permittees with clear requirements related to waste storage and land application when the permittee is faced with an emergency. Additionally, DEQ staff complete on-site inspections to ensure compliance with the permit requirements.</p> <p>No changes are being proposed to address these comments.</p>

Details of Changes Made Since the Previous Stage

List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
<p>9VAC25-192-50 (Authorization to manage pollutants) Subsection C</p>	<p>N/A</p>	<p>The requirement allows for the continuation of the general permit coverage.</p>	<p>C. Continuation of <u>general permit coverage.</u> 1. <u>In any case where the board, through no fault of the owner or permittee, does not issue the next consecutive general permit with an effective date on or before the expiration date of the expiring general permit, [the following applies.</u> Any any] owner that was authorized to manage pollutants under the this general permit issued in 2004 and that submits a complete registration statement on or before November 15, 2014, is authorized to continue to manage pollutants under the terms of the 2004 general permit in accordance with 9VAC25-192-60 on or before the expiration date of the expiring general permit coverage, is authorized to continue to manage pollutants under the terms of the previously issued general permit. The conditions of the</p>	<p>Removed unnecessary language “the following applies”. Amended language based on the authority of the State Water Control Board (deleted “board” - replaced with “department” where appropriate) in accordance with Senate Bill 657 as enacted by the 2022 General Assembly.</p>

			<p><u>expiring general permit and any requirements of coverage granted under it shall continue in force until the effective date of the next consecutive general permit and until such time as the [board department] either:</u></p> <p>a. Issues coverage to the <u>owner or permittee under this the next consecutive general permit</u>; or</p> <p>b. <u>Notifies the owner or permittee that coverage under this the next consecutive general permit is denied.</u></p>	
9VAC25-192-70 (Contents of the general permit) Part I C 2	N/A	The permittee is required to provide a copy of the current DCR approved NMP to the department.	<p>[All <u>Within 30 days of the approval by the Department of Conservation and Recreation, all</u>] <u>revised [and Department of Conservation and Recreation approved] NMPs shall be submitted to the department [prior to the expiration of the previous NMP]</u>.</p>	Amended the language to require the submittal 30 days after the NMP is approved to make sure the timeframe to utilize the NMPs are not artificially shortened and address any issues with timing related to the development or approval of the NMP that are beyond the control of the permittee. The revised condition reads: "Within 30 days of the approval by the DCR, all revised NMPs shall be submitted to the department." This change was in response to public comment.
9VAC25-192-70 (Contents of the general permit) Part III C 2	N/A	The permittee is required to provide a copy of the current DCR approved NMP to the department.	<p>[All <u>Within 30 days of the approval by the Department of Conservation and Recreation, all</u>] <u>revised [and Department of Conservation and Recreation approved] NMPs shall be submitted to</u></p>	Amended the language to require the submittal 30 days after the NMP is approved to make sure the timeframe to utilize the NMPs are not artificially shortened and address any issues with timing related to the development or approval of the NMP

			the department [prior to the expiration of the previous NMP] .	that are beyond the control of the permittee. The revised condition reads: "Within 30 days of the approval by the DCR, all revised NMPs shall be submitted to the department." This change was in response to public comment.
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Details of All Changes Proposed in this Regulatory Action

List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-192-10 (Definitions)	N/A	Introduction to definition section that explains when definitions are pertinent to the regulation.	Amended the introductory language to read: "The following words and terms when used in this regulation shall have the meanings defined in the State Water Control Law and the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32) unless the context clearly indicates otherwise, except that for the purposes of this chapter:" Removed citation for State Water Control Law (since the definition along with the citation are being added to the definition Section); and added the name "Virginia Pollution Abatement (VPA)" to the permit reg regulation. Amended the introduction language for clarification. Made minor changes based on the Style Manual developed by the Registrar's Office.
9VAC25-192-10 (Definitions)	N/A	This definition is currently contained in section 9VAC25-192-10.	Amended "Agricultural stormwater discharge" to add the word "land" to clarify the definition. This addition to the definition section will facilitate a better understanding of the term used throughout the regulation sections.
9VAC25-192-10 (Definitions)	N/A	This definition is currently contained in section 9VAC25-192-10.	Amended "Animal feeding operation" for consistency with the definition in the Code of Virginia § 62.1-44.17:1.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			Permits for confined animal feeding operations.
9VAC25-192-10 (Definitions)	N/A	This definition is currently contained in section 9VAC25-192-10.	Amended “Confined animal feeding operation” for consistency with the other definitions.
9VAC25-192-10 (Definitions)	N/A	This definition is currently contained in section 9VAC25-192-10.	Amended “Director” for consistency with other regulations.
9VAC25-192-10 (Definitions)	N/A	N/A	Added a definition for “General permit” to clarify the meaning when the term is used throughout the regulation. This addition to the definition section will facilitate a better understanding of the term used throughout the regulation sections.
9VAC25-192-10 (Definitions)	N/A	N/A	Added a definition for “Land application” to clarify the meaning when the term is used throughout the regulation. This addition to the definition section will facilitate a better understanding of the term used throughout the regulation sections.
9VAC25-192-10 (Definitions)	N/A	This definition is currently contained in the conditions located throughout the regulation.	Added a definition for “Local government ordinance form”. Definition was stated in numerous subdivisions within the regulation; it was removed from conditions and moved to the definition section. This addition to the definition section will facilitate a better understanding of the term used throughout the regulation sections.
9VAC25-192-10 (Definitions)	N/A	N/A	Amended definition of Nutrient management plan. Amended “the” to “this” in front of “general permit” for consistency with the rest of the regulation.
9VAC25-192-10 (Definitions)	N/A	N/A	Added a definition for “Permittee” to clarify the meaning when the term is used throughout the regulation. This addition to the definition section will facilitate a better understanding of the term used throughout the regulation sections.
9VAC25-192-10 (Definitions)	N/A	This definition is currently contained in the conditions located in the contents of the general permit (9VAC25-192-70 and 90).	Added “Seasonal high water table” definition. Definition was stated in numerous subdivisions within the regulation; it was removed from conditions and moved to the definition section. This addition to the definition section will facilitate a better

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			understanding of the term used throughout the regulation sections.
9VAC25-192-10 (Definitions)	N/A	N/A	Added a definition for “State Water Control Law” to clarify the meaning when the term is used throughout the regulation. This addition to the definition section will facilitate a better understanding of the term used throughout the regulation sections.
9VAC25-192-10 (Definitions)	N/A	N/A	Added a definition for “Treatment works” to clarify when the term is used in the definition of an animal feeding operation and throughout the regulation. This addition to the definition section will facilitate a better understanding of the term used throughout the regulation sections.
9VAC25-192-10 (Definitions)	N/A	This definition is currently contained in section 9VAC25-192-10.	Moved the definition for “Vegetated buffer” to get the definition in alphabetical order within the Section.
N/A	9VAC25-192-15 (Applicability of incorporated references based on the dates that they became effective)	N/A	Added this section to make it clear which version of the Code of Federal Regulations is effective. The addition of this section will ensure that those subject to this regulation will know which version of the Code of Federal Regulations is pertinent to the cited condition in the regulation.
9VAC25-192-20 (Purpose; effective date of permit)	N/A	The current language outlines what is governed by this regulation. The current regulation became effective on November 16, 2014, and will expire on November 15, 2024.	<p>Amended Section title: Purpose; effective date of the general permit.</p> <p>Amended subsection A: added the title of the regulation and parentheses around the term “general permit” to allow for the use of “general permit” throughout the regulation to mean the VPA regulation and general permit for animal feeding operations and animal waste management. Made additional amendments to clarify who is subject to this regulation.</p> <p>Added “The owners of” and replaced “operate” with “run”. Made changes to language to clarify who is authorized to manage pollutants.</p> <p>Amended subsection B: to read: “This general permit will become effective on November 16, 2024. This general</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>permit will expire on November 15, 2034.” Amended dates to allow for continuation of coverage under the General Permit and allow for the reissuance of the regulation and thereby extend the ability to provide coverage under the general permit for another 10 years.</p>
<p>9VAC25-192-25 (Duty to comply)</p>	<p>N/A</p>	<p>The current language outlines the duty to comply with the regulation.</p>	<p>Amended subsections A and B: A. No person shall operate an animal feeding operation with 300 or more animal units utilizing a liquid manure collection and storage system after July 1, 2000, without having submitted a registration statement as provided in 9VAC25-192-60 or being covered by a Virginia Pollutant Discharge Elimination System (VPDES) permit or an individual Virginia Pollution Abatement (VPA) permit. B. The owner shall comply with all conditions of the general permit and the requirements of this regulation.</p> <p>Amended subsections A and B to be consistent with the language subsection I of the Code of Virginia § 62.1-44.17:1. Permits for confined animal feeding operations.</p>
<p>9VAC25-192-50 (Authorization to manage pollutants)</p>	<p>N/A</p>	<p>The current language outlines who and under what circumstances is subject to the regulation and what is authorized by the permit. The current section refers to the water quality standards regulation but does not cite the regulation.</p> <p>The current regulation allows for the continuation of the general permit coverage.</p>	<p>Amended subsections A, B and C. Made changes to language in subsection A to make it clear who is authorized to manage pollutants. Spelled out acronyms (VPA and VPDES). Added the citation for the specific water quality standards regulation and amended condition language to make it consistent with other regulations. Made the term industrial wastes consistent with term defined in Chapter 32. Deleted the language describing the Local Government Ordinance Form (moved to definition section). Moved subdivision 5 a of subsection A to make the formatting consistent with the other subdivisions in this section. Made minor changes based on the Style Manual developed by the Registrar’s Office. Added “VPA” to places where individual permit is stated. Removed citation in</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>subdivision A 6 and B 2 d related to the training requirements. Subsection C. Added “general” to the tagline. Removed the dates and revised the language for consistency with language in other general permits including the other VPA general permit regulation - VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-30). Removed unnecessary language “the following applies”. Amended language based on the authority of the State Water Control Board (deleted “board” - replaced with “department” where appropriate) in accordance with Senate Bill 657 as enacted by the 2022 General Assembly.</p>
<p>9VAC25-192-60. (Registration statement)</p>	<p>N/A</p>	<p>The current language outlines the requirements to become covered under the general permit and the information that must be submitted to be considered a complete registration statement (permit application).</p>	<p>Amended language in this section to bring consistency to the terms in the regulation. Replaced “VPA General Permit” with “general permit” (as defined). This language change allows for the use of “general permit” throughout this section to mean the VPA regulation and general permit for animal feeding operations and animal waste management. In subsection A, deleted “facility” throughout section and replaced with “animal feeding operation.” Deleted the language describing the Local Government Ordinance Form (moved to definition section). In subsection B, deleted “facility” and replaced with “animal waste end-user.” Corrected citation in subsection C. Made minor changes based on the Style Manual developed by the Registrar’s Office. Amended language to provide clarity throughout this section.</p>
<p>9VAC25-192-70. (Contents of the general permit)</p>	<p>N/A</p>	<p>The current language contains the requirements of the general permit. The current regulation will expire on November 15, 2024.</p>	<p>Made minor changes based on the Style Manual developed by the Registrar’s Office. Amended language based on the authority of the State Water Control Board (deleted “board” - replaced with “department” where appropriate) in accordance with Senate Bill 657 as enacted by the 2022 General Assembly.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>Amended effective date for General Permit to read “November 16, 2024” and expiration date to read “November 15, 2034.” Amended date for reissuance of General Permit. Amending this date will allow for the reissuance of the regulation and thereby extend the ability to provide coverage under the general permit for another 10 years.</p> <p>Amended the name of Part II in the authorization language.</p>
9VAC25-192-70 (Contents of the general permit) Parts I, II and III	N/A	There is inconsistent language in the current regulation.	<p>Replaced “VPA General Permit” with “general permit” (as defined). This language change allows for the use of “general permit” throughout this section to mean the VPA regulation and general permit for animal feeding operations and animal waste management.</p> <p>Replaced “facility” throughout section and replaced with “animal feeding operation.” Amended language to provide clarity throughout this section. Added the word “individual” to VPA permit to clarify the permit type.</p>
9VAC25-192-70 (Contents of the general permit) Part I	N/A	<p>The current section did not have Part I labeled.</p> <p>The tables are in the regulation but not labeled.</p>	<p>Labeled Part I and the name above subsection A. Added this label to facilitate the reader of the contents of the general permit.</p> <p>Added labels and references to the three tables in subsection A of Part I. Added the labels to facilitate the reader of the contents of the general permit.</p>
9VAC25-192-70 (Contents of the general permit) Part I A 6, 7 and Table 1	N/A	The current regulation requires groundwater monitoring at earthen liquid waste storage facilities constructed to a bottom elevation that is below the seasonal high water table.	<p>*Added two conditions related to groundwater monitoring. One permit condition describes when a permittee is required to submit a groundwater monitoring action plan. This process is already required by the department; adding it to the permit makes it clear to the permittee in what cases that the action plan is expected.</p> <p>The other condition outlines which parameters must be analyzed by a laboratory accredited under the Virginia Environmental Laboratory Accreditation Program (VELAP) in accordance with 1VAC30-46-20. This requirement is already in place;</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			adding it to the permit conditions makes it clear to the permittee.
9VAC25-192-70 (Contents of the general permit) Part I subsection B	N/A	The overall requirements for storage exist in the current regulation.	Amended subsection tagline to assist with reorganizing the conditions into specific subject matters. New tagline: "Site design, storage, and operation requirements". The conditions have been separated from the animal waste transfer and utilization and other general conditions to facilitate a clearer understanding of the requirements. Adding the tagline helps distinguish the subsections. This addition also makes this regulation consistent with the other VPA general permit regulation - VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).
9VAC25-192-70 (Contents of the general permit) Part I subsection B	N/A	The special conditions exist but are not organized into specific subject areas.	Made the following changes to the subdivisions: B 1 through B 10 were not renumbered Original B 17 is now B 11 Original B 11 is now C 1 Original B 12 is now C 2 Original B 13 is now C 3 Original B 14 is now C 4 New Condition C 5 Original B 15 is now C 6 Original B 16 is now C 7 Original B 18 is now D Conditions are being kept, some were amended, and many were moved to a specific subsection and renumbered. The site conditions have been separated from the animal waste transfer and utilization conditions and the condition related to training to facilitate a clearer understanding of the requirements. These amendments also make this regulation consistent with the other VPA general permit regulation - VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).
9VAC25-192-70 (Contents of the general permit) Part I B 2	N/A	The specifics for determining the 100-year floodplain are not contained in the regulation.	*Added clarification as to which tools are to be used to determine the floodplain when siting animal waste storage facilities. Adding the language ensures that the permittee will know what tools must be used to make this determination. This addition also

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			makes this regulation consistent with the other VPA general permit regulation- VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).
9VAC25-192-70 (Contents of the general permit) Part I B 8	N/A	A minimum of 2-ft separation distance to the seasonal high water table required.	No change to the requirement; moved definition of “seasonal high water table” in this section because it was added to the definition section of the regulation.
9VAC25-192-70 (Contents of the general permit) Part I B 8	N/A	Storage requirements are in the existing regulation.	*Added language related to the storage of semi-solid and solid waste to clarify what is considered adequate storage.
9VAC25-192-70 (Contents of the general permit) Part I B 11	N/A	Waste storage closure requirements are in the existing regulation.	*Moved closure requirements from B.17 and added a notification to the department prior to the closure of a liquid waste storage facility. This notification is an addition to an existing permit condition related to the closure of a waste storage facility. Adding this notification will facilitate the ability for department staff to provide compliance assistance and proper closure procedures to the permittee.
9VAC25-192-70 (Contents of the general permit) Part I (new) subsection C	N/A	The subsection and tagline do not exist. The overall requirements for animal waste use and transfer exist in the current regulation.	Added a new subsection. New tagline: “Animal waste use and transfer requirements”. The conditions have been separated from the site design, storage, and operations related to waste storage and the condition related to training to facilitate a clearer understanding of the requirements. Adding the tagline helps distinguish the subsections. This addition also makes this regulation consistent with the other VPA general permit regulation - VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).
9VAC25-192-70 (Contents of the general permit) Part I (new) C 2	N/A	The permittee shall implement an NMP.	Amended new condition (C 2) to require the submittal 30 days after the NMP is approved to make sure the timeframe to utilize the NMPs are not artificially shortened and address any issues with timing related to the development or approval of the NMP that are beyond the control of the permittee. The revised condition reads: “Within 30 days of the approval

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			by the DCR, all revised NMPs shall be submitted to the department.” The permittee is currently required to provide a copy of the current DCR approved NMP; adding this requirement makes it clear to the permittee of the expectation.
9VAC25-192-70 (Contents of the general permit) Part I (new) C 3	N/A	Waste shall not be land applied with buffer zones. Buffer zone maintenance requirements are specified.	Amended new condition (C 3) to remove the word “permanent” from the condition. “Permanent” is in the definition of the term “vegetated buffer” found in Section 10. This improves clarity and understanding for the permittees.
9VAC25-192-70 (Contents of the general permit) Part I (new) C 5	N/A	The requirement to report unusual or extraordinary discharges is required by the permit.	*Added a new condition (new C 5) to clarify requirements in cases of waste storage emergencies such as fire or flood. The new condition provides criteria for the land application of animal waste outside of the land application schedule found in the NMP, so long as land application information is documented, and the Department is notified. This condition provides permittees with clear requirements related to waste storage and land application when the permittee is faced with an emergency. Added this condition to be consistent with the other VPA general permit regulation - VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).
9VAC25-192-70 (Contents of the general permit) Part I (new) subsection D	N/A	The permittee training requirement is in the existing regulation.	New subsection D. This amendment makes this condition consistent with the rest of the conditions in Section 70.
9VAC25-192-70 (Contents of the general permit) Part II	N/A	Part II of Section 70 contains conditions applicable to VPA permits.	<p>Part II was amended, re-organized and renumbered to be consistent with the other VPA general permit regulation - VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).</p> <p>There are no substantive changes to the conditions that are applicable to the general permit.</p> <p>Made the following changes to Part II: A and B were amended</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>Original C is now B 2 Original D is now A 4 and C 3 & 4 Original E is now F Original F is now H Original G is now F 1 Original H now covered by G Original I is now covered by Q Original J is now covered by Q and R Original K now covered by G Original L is now O Original M is now covered by N Original N is now W Original O is now J Original P is now M Original Q is now V Original R is now covered by S Original S is amended to cover all permit actions Original T was only slightly amended Original U was only slightly amended Original V is now O Original W is now P Original X is now E</p> <p>New D, I, K, L, and M are conditions that are in 9VAC25-32 which are applicable to all VPA permits.</p> <p>To provide clarity and convenience for owners of animal feeding operations and animal waste end-users who have a general permit, all of the applicable conditions are compiled in Part II.</p>
9VAC25-192-70 (Contents of the general permit) Part III subsection A	N/A	The tables are in the regulation but not labeled.	Added labels and references to the three tables in subsection A of Part III. Added the labels to facilitate the reader of the contents of the general permit.
9VAC25-192-70 (Contents of the general permit) Part III A 6, 7, and Table 1	N/A	The current regulation requires groundwater monitoring at earthen liquid waste storage facilities constructed to a bottom elevation that is below the seasonal high water table.	<p>*Added two conditions related to groundwater monitoring. One permit condition describes when a permittee is required to submit a groundwater monitoring action plan. This process is already required by the department; adding it to the permit makes it clear to the permittee in what cases that the action plan is expected.</p> <p>The other condition outlines which parameters must be analyzed by a laboratory accredited under the Virginia Environmental Laboratory</p>

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			Accreditation Program (VELAP) in accordance with 1VAC30-46-20. This requirement is already in place; adding it to the permit conditions makes it clear to the permittee.
9VAC25-192-70 (Contents of the general permit) Part III subsection B	N/A	The overall requirements for storage exist in the current regulation.	Amended subsection tagline to assist with reorganizing the conditions into specific subject matters. New tagline: "Site design, storage, and operation requirements". The conditions have been separated from the animal waste transfer and utilization and other general conditions to facilitate a clearer understanding of the requirements. Adding the tagline helps distinguish the subsections. This addition also makes this regulation consistent with the other VPA general permit regulation - VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).
9VAC25-192-70 (Contents of the general permit) Part III subsection B	N/A	The special conditions exist but are not organized into specific subject areas.	Made the following changes to the subdivisions: B 1 through B 10 were not renumbered Original B 17 is now B 11 Original B 11 is now C 1 Original B 12 is now C 2 Original B 13 is now C 3 Original B 14 is now C 4 New Condition C 5 Original B 15 is now C 6 Original B 16 is now C 7 Original B 18 is now D Conditions are being kept, some were amended, and many were moved to a specific subsection and renumbered. The site conditions have been separated from the animal waste transfer and utilization conditions and other special conditions to facilitate a clearer understanding of the requirements. These amendments also make this regulation consistent with the other VPA general permit regulation - VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).
9VAC25-192-70 (Contents of the general	N/A	The specifics for determining the 100-year floodplain are not contained in the regulation.	*Added clarification as to which tools are to be used to determine the floodplain when siting animal waste storage facilities. Adding the language

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permit) Part III B 2			ensures that the permittee will know what tools must be used to make this determination. This addition also makes this regulation consistent with the other VPA general permit regulation- VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).
9VAC25-192-70 (Contents of the general permit) Part III B 8	N/A	A minimum of 2-ft separation distance to the seasonal high water table required.	No change to the requirement; moved definition of “seasonal high water table” from this section because it was added to the definition section of the regulation.
9VAC25-192-70 (Contents of the general permit) Part III B 8	N/A	Storage requirements are in the existing regulation.	*Added permit language related to the storage of semi-solid and solid waste to clarify what is considered adequate storage.
9VAC25-192-70 (Contents of the general permit) Part III B 11	N/A	Waste storage closure requirements are in the existing regulation.	Moved closure requirements from B.17 and added a notification to the department when the permittee closes a liquid waste storage facility. This notification is an addition to an existing permit condition related to the closure of a waste storage facility. Adding this notification will facilitate the ability for department staff to provide compliance assistance and proper closure procedures to the permittee.
9VAC25-192-70 (Contents of the general permit) Part III subsection B	N/A	Waste storage closure requirements are in the existing regulation.	*Added a notification to the department prior to the closure of a liquid waste storage facility. This notification is an addition to an existing permit condition related to the closure of a waste storage facility. Adding this notification will facilitate the ability for department staff to provide compliance assistance and proper closure procedures to the permittee.
9VAC25-192-70 (Contents of the general permit) Part III (new) subsection C	N/A	The subsection and tagline do not exist. The overall requirements for animal waste use and transfer exist in the current regulation.	Added a new subsection. New tagline: “Animal waste use and transfer requirements”. The conditions have been separated from the site design, storage, and operations related to waste storage and the condition related to training to facilitate a clearer understanding of the requirements. Adding the tagline helps distinguish the subsections. This addition also makes this regulation consistent with

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			the other VPA general permit regulation - VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).
9VAC25-192-70 (Contents of the general permit) Part III (new) C 2	N/A	The permittee shall implement an NMP.	Amended new condition (C 2) to require the submittal 30 days after the NMP is approved to make sure the timeframe to utilize the NMPs are not artificially shortened and address any issues with timing related to the development or approval of the NMP that are beyond the control of the permittee. The revised condition reads: "Within 30 days of the approval by the DCR, all revised NMPs shall be submitted to the department." The permittee is currently required to provide a copy of the current DCR approved NMP; adding this requirement makes it clear to the permittee of the expectation.
9VAC25-192-70 (Contents of the general permit) Part III (new) C 5	N/A	The requirement to report unusual or extraordinary discharges is required by the permit.	*Added a new condition to clarify requirements in cases of waste storage emergencies such as fire or flood. The new condition provides criteria for the land application of animal waste outside of the land application schedule found in the NMP, so long as land application information is documented, and the Department is notified. This condition provides permittees with clear requirements related to waste storage and land application when the permittee is faced with an emergency. Added this condition to be consistent with the other VPA general permit regulation - VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).
9VAC25-192-70 (Contents of the general permit) Part III (new) C 5	N/A	Waste shall not be land applied within buffer zones. Buffer zone maintenance requirements are specified.	Amended new condition (C 3) to remove the word "permanent" from the condition. Permanent is in the definition of the term "vegetated buffer" found in Section 10. This improves clarity and understanding for permittees.
9VAC25-192-70 (Contents of the general permit) Part	N/A	The permittee training requirement is in the existing regulation.	New subsection. This amendment makes this condition consistent with the rest of the conditions in Section 70.

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III (new) subsection D			
9VAC25-192-80 (Tracking and accounting requirements for animal waste end-users)	N/A	The regulation contains the recordkeeping requirements for animal waste end-users.	Amended language in this section to bring consistency to the terms in the regulation. Added the different permit types to subsection A. Made the entity plural in subdivisions A 1 a and A 2 a. Made minor changes based on the Style Manual developed by the Registrar’s Office. Amended language based on the authority of the State Water Control Board (deleted “board”- replaced with “department”, where appropriate) in accordance with Senate Bill 657 enacted by the 2022 General Assembly.
9VAC25-192-90 (Utilization and storage requirements)	N/A	The regulation contains the utilization and storage requirements for animal waste end-users.	Amended Section title to: Storage and land application requirements for transferred animal waste. Added the different permit types to subsections A, B, and C. Amended language in this section to bring consistency to the terms in the regulation.
9VAC25-192-90 (Utilization and storage requirements)	N/A	The regulation currently contains conditions for waste storage.	Changed animal waste to semi-solid and solid waste in subdivision in B 1 to clarify the storage requirements and make it consistent with the requirements in Section 70.
9VAC25-192-90 (Utilization and storage requirements)	N/A	The definition exists in the current regulation.	Removed definition of “seasonal high water table” from this section because it was added to the definition section of the regulation.
9VAC25-192-90 (Utilization and storage requirements)	N/A	The regulation currently contains conditions for waste storage.	*Added language related to the storage of semi-solid and solid waste to clarify what is considered adequate storage.
9VAC25-192-90 (Utilization and storage requirements)	N/A	The specifics for determining the 100-year floodplain are not contained in the regulation.	*Added clarification as to which tools are to be used to determine the floodplain when siting animal waste storage facilities. Adding the language ensures that the regulated end-user will know what tools must be used to make this determination. This addition also makes this regulation consistent with Section 70 of this regulation and the other VPA general permit regulation- VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).

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9VAC25-192-90 (Utilization and storage requirements)	N/A	The table in Section 90 does not have a label	Added a label and reference to the table in subsection C. Added the label to facilitate the reader of this Section.
9VAC25-192-90 (Utilization and storage requirements)	N/A	The requirements for buffer zones exist in Section 90.	Amended new condition (C 3) to remove the word “permanent” from the condition. “Permanent” is in the definition of the term “vegetated buffer” found in Section 10.
9VAC25-192-90 (Utilization and storage requirements)	N/A	The current language in Section 90 does not provide options during an emergency.	*Added a new condition (new C 4) to clarify requirements in cases of waste storage emergencies, such as fire or flood. The new condition provides criteria for the land application of animal waste outside of the land application schedule found in the NMP, so long as land application information is documented and the Department is notified. This condition provides permittees with clear requirements related to waste storage and land application when the regulated end-user is faced with an emergency. Added this condition to be consistent with Section 70 of this regulation and the other VPA general permit regulation - VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).
9VAC25-192-90 (Utilization and storage requirements)	N/A	The current section refers to the water quality standards regulation but does not cite the regulation. The current section refers to the State Water Control Law and includes the specific citation.	Subsection E: Added the citation for the specific water quality standards regulation and amended condition language for consistency with the rest of this regulation and other regulations. Removed citation for State Water Control Law (since the definition along with the citation are being added to the definition Section) and to make it consistent with the rest of this regulation.
9VAC25-192-90 (Utilization and storage requirements)	N/A	The requirement refers to the Board instead of the department.	Subsection F: Amended language based on the authority of the State Water Control Board (deleted “board”- replaced with “department”, where appropriate) Board Bill consistent with Senate Bill 657 enacted by the General Assembly in 2022.
FORMS	N/A	The current effective forms are consistent with the current regulation.	Revised forms and Animal Waste Fact Sheet for consistency with the changes made to 9VAC25-192-60, 9VAC25-192-80 and 9VAC25-192-90.

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			Revising the registration statements and the Animal Waste Fact Sheet will provide forms consistent with the changes made to sections previously mentioned.

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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

Currently, 108 animal feeding operations are covered under this general permit. One alternative to the reissuance of the VPA Regulation and General Permit for Animal Feeding Operations and Animal Waste Management is to issue an individual VPA permit to each animal feeding operation which confines 300 or more animal units utilizing a liquid manure collection and storage system. However, due to the number of animal feeding operations currently required to obtain a VPA permit, it is not practical to issue an individual VPA permit to each animal feeding operation. Operations that do not qualify for coverage under the general permit will be issued an individual VPA permit. This general permit regulation provides the regulated community with a streamlined, less burdensome approach to obtain coverage for conducting a specific regulated activity.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed 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.

It is not anticipated that an amendment to this regulation will have any impacts on the family and family stability.