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Exempt Action: Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-115
VAC Chapter title(s)	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities
Action title	Ch 115 – 2026 Amend and Reissuance for the Existing Regulation
Date this document prepared	November 8, 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.

This general permit regulation establishes limitations, monitoring requirements and other special conditions for point source discharge of seafood processing wastewater from seafood processing facilities to surface waters to maintain surface water quality. The general permit also regulates stormwater associated with industrial activity from seafood processing sites operating under SIC codes 2091 (Canned and Cured Fish and Seafood) and 2092 (Prepared Fish or Frozen Fish and Seafoods) to maintain surface water quality.

This regulatory action is proposed to amend and reissue the existing general permit which expires on June 30, 2026. The proposed changes to the regulation are being made in response to Technical Advisory Committee suggestions and staff requests to revise, update, and clarify the permit conditions.

In addition, a periodic and small business impact review of this regulation will be conducted as part of this regulatory action.

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 this 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 the Virginia Pollution Discharge Elimination System permit shall not exceed five years." This general permit expires on June 30, 2026, and must be reissued in order to make coverage available for seafood processing facilities that will discharge to surface water after June 30, 2026.

The periodic review of this regulation is mandated by the ORM procedures and § 2.2-4007.1 of the Code of Virginia.

Acronyms and Definitions

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

- Board: State Water Control Board
- EPA (U.S. EPA): United States Environmental Protection Agency
- DEQ (or department): Department of Environmental Quality
- ISWGP: Industrial Stormwater General Permit
- NOIRA: Notice of Intended Regulatory Action
- NPDES: National Pollutant Discharge Elimination System
- SIC: Standard Industrial Classification
- TMDL: Total Maximum Daily Load
- USC: United States Code
- VAC: Virginia Administrative Code
- VPDES: Virginia Pollutant Discharge Elimination System

Legal Basis

Please 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.

The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the Board to issue permits for the discharge of treated sewage, industrial wastes, or other waste into or adjacent to state waters and § 62.1-44.15(7) authorizes the Board to adopt rules governing the procedures of the Board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the Board to adopt such regulations as it deems necessary to enforce the general water quality management program, § 62.1-44.15(14) authorizes the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes, § 62.1-44.16 specifies the Board's authority to regulate

discharges of industrial wastes, § 62.1-44.20 provides that agents of the Board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys and investigations, and § 62.1-44.21 authorizes the Board to require owners to furnish information necessary to determine the effect of the wastes from discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC 1342) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991, to authorize the Commonwealth to administer a VPDES General Permit Program.

40 CFR parts 122, 123, and 124 implement the NPDES permit program under § 402 of the federal Clean Water Act. These provisions cover basic EPA permitting requirements, what a State must do to obtain approval to operate its program in lieu of a federal program and minimum requirements for administering the approved State program, and procedures for EPA processing of permit applications and appeals. Section 122.1 requires permits for the discharge of “pollutants” from any “point source” into “waters of the United States”. Section 122.3 specifically states that seafood processing facilities are not excluded from NPDES requirements.

The general permit also regulates stormwater associated with industrial activity from seafood processing sites operating under SIC codes 2091 (Canned and Cured Fish and Seafood) and 2092 (Prepared Fish or Frozen Fish and Seafoods) to maintain surface water quality.

Changes to this chapter of the Virginia Administrative Code are exempt from Article 2 of the Administrative Process Act (2.2-4006 A 8).

Purpose

Please 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 is intended to solve.

This proposed regulatory action is needed to establish permitting requirements for discharges from seafood processing facilities to protect the health, safety, and welfare of Virginia’s citizens. The existing general permit expires on June 30, 2026, and must be reissued to cover existing and new seafood processing discharges.

Other issues that needed consideration were updating the stormwater management requirements and addressing the frequency of monitoring requirements.

Issuing a general permit as opposed to an individual permit is the less intrusive and less costly alternative for small businesses. General permits also require fewer DEQ staff resources to issue.

Substance

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

This general permit establishes limitations and monitoring requirements for point source discharge from seafood processing facilities. The effluent limits, special conditions, and stormwater management requirements in the general permit will be reviewed to ensure that the permit is still protective of water quality. The primary issue that needs to be addressed is that the existing general permit expires on June

30, 2026, and must be reissued to continue making it available after this date. Some issues that may need to be addressed include updating the stormwater management requirements and addressing the frequency of monitoring requirements.

Proposed changes to the general permit regulation include:

- Revise the term of the general permit regulation to July 1, 2026 – June 30, 2031.
- Update regulatory language to ensure consistency with changes in Virginia statutory law (Chapter 365 of the 2022 Acts of Assembly) regarding Board authority, clarifying that regulatory actions fall under the State Water Control Board (SWCB), while permitting actions fall under the Department of Environmental Quality (DEQ);
- Define “Director”;
- Updated published date of Federal Regulations.
- Clarify language for annual and semi-annual reporting requirements.
- Reduce monitoring frequency from quarterly to semi-annual.
- Align the list of authorized non-stormwater discharges with the ISWGP; and
- Update compliance reporting requirements (Part III, Conditions Applicable to All Permits, I) including revising provisions to address online reporting.

Issues

Please 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 advantages to the public, permittees, and the agency of reissuing this general permit are that a Virginia Pollutant Discharge Elimination System (VPDES) General Permit will continue to be available to facilities with eligible discharges enabling them to discharge to surface waters in a manner that is protective of those waters. In addition, the continued availability of this general permit avoids the increased cost and more complicated application process for permittees associated with issuing an individual permit and makes permit administration more reasonable for DEQ. There are no known disadvantages to the public, agency, or regulated community.

Requirements More Restrictive than Federal

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

There are no requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the

regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected:

There are no state agencies particularly affected by the proposed regulation.

Localities Particularly Affected:

There are no localities that bear a disproportionate material impact as the general permit is available and applies statewide. The proposed amendments to the regulation apply statewide.

Other Entities Particularly Affected:

In scope operations that conduct seafood processing operations must do so in a manner consistent with this general permit. No other entities are particularly affected by the proposed regulation.

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.

This general permit applies to seafood processing facilities, most of which are small businesses. The reissuance of this VPDES general permit meets the objectives of applicable law while minimizing implementation costs for affected small business owners. Without this general permit, a small business owner would need to obtain an individual permit, which would increase the complexity of the application process, permit requirements, and compliance costs.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

State Water Control Law, § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the Board to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters and § 62.1-44.15(7) authorizes the Board to adopt rules governing the procedures of the Board with respect to the issuance of permits; thus, the regulation continues to be needed to regulate these discharges through a general permit.

No comments were received during the NOIRA comment period.

Minimal revisions are being proposed to the general permit regulation; therefore, it is anticipated there will be limited impact to small businesses. This regulation is clearly written and easily understandable and accomplishes the objectives of applicable law. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation as the State Water Control Board is the delegated authority to regulate point source discharges to surface water.

The State Water Control Board last re-issued this regulation in 2021. As part of the reissuance process this regulation has been reviewed for consistency with other general permits and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9 VAC 25 - 31) as part of the reissuance process.

General permits provide the regulated community with a streamlined, less burdensome approach to obtain coverage for conducting a specific regulated activity. Without this general permit regulation, an individual permit would be required to conduct the regulated activity.

Public Comment Received

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response. Ensure to include all comments submitted: including those 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.

Public comment period was held from April 8, 2024, through May 8, 2024. No public comments were received.

Public Participation

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

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts of this regulatory proposal and any impacts of the regulation on farm and forest land preservation. The agency/board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail or email to Morgan Emanuel, Regulatory and Guidance Analyst, DEQ Office of Water Planning, P.O. Box 1105, Richmond, Virginia 23218, phone: 804-494-9635 and morgan.emanuel@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at (<http://www.townhall.virginia.gov>). Written comments must include the name and address of the

commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

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

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. If the regulatory change will be a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory change. Please include citations to the specific section(s) of the regulation that are changing.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-115-10		Definitions.	<p>Minor changes were made to terms throughout this section to ensure consistent use of terminology and improve readability. These minor changes did not alter, narrow, or expand the meaning of terms.</p> <p>A new definition was added as follows for “Director” since this term is referenced in the regulation but not previously defined: <u>"Director" means the Director of the Department of Environmental Quality or an authorized representative.</u></p>
9VAC25-115-15		Applicability of incorporated references based on the dates that they became effective.	<p>Revised date of incorporation by reference of 40 CFR from July 1, 2020 to July 1, 2024 to maintain consistency with federal regulations.</p> <p>This section will be updated to the most recent version prior to reissuing the general permit regulation.</p>
9VAC25-115-20		Purpose; effective date of permit.	Revised to reflect the new permit term.
9VAC25-115-30, 9VAC25-115-40,		Authorization to discharge., Registration statement., General permit.	The term “board” was changed to “department” throughout the regulation in response to

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-115-50			Chapter 356 of the 2022 Acts of Assembly.
9VAC25-115-50		General permit.	Revised to reflect the new permit term.
9VAC25-115-50 General permit. Part I A		<p>Effluent Limitations and Monitoring Requirements</p> <p>Permittees are required to collect samples on a quarterly basis (by March 31st, June 30th, September 30th, and December 31st) and report on the facility's Discharge Monitoring Report (DMR) by the 10th of the month following the monitoring period.</p>	<p>Clarified language throughout Part I A that defines annual and semi-annual monitoring.</p> <p>In addition, in subsections Part I A 2 through Part I A 27 the required sampling frequency was revised from once per quarter to once per six months based on the recommendations of the Technical Advisory Committee (TAC) and results from discharge monitoring reports (DMR) from the last five years. Seafood processing facilities typically operate on a seasonal basis. DMR data indicated that 54% of DMRs were "no-discharge" and that only 2% of DMRs indicated effluent violations. EPA was consulted on the change and did not oppose the revision.</p> <p><u>I-Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). 1/6 - Months - Samples shall be collected once each semi-annual period with the following schedule: January 1 - June 30, to be reported on the DMR due July 10th following each applicable semi-annual period; July 1 - December 31, to be reported on the DMR due January 10th following each applicable semi-annual period. All calculations shall be submitted with the DMR.</u></p> <p>The change better reflects the seasonal nature of seafood harvesting and processing and reduces annual monitoring costs</p>

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			for permittees. Semi-annual monitoring continues to provide sufficient information to ensure compliance with effluent limitations in the general permit and protect water quality.
9VAC25-115-50 General permit. Part I B 4		B. Special Conditions Applying to Part I A 1 through Part I A 27. 4. The permittee shall comply with the following solids management plan:	4 The permittee shall comply with the following solids management plan <u>requirement</u> . This change is intended to clarify permit requirements.
9VAC25-115-50 General permit. Part II A 3 c (1)		Nonstormwater Discharges (1) Discharges from emergency firefighting activities;	Part II.A.3.c.1 Discharges from emergency firefighting activities <u>or firefighting training activities managed in a manner to avoid an instream impact in accordance with § 9.1-207.1 of the Code of Virginia</u> ; This change makes the list of authorized nonstormwater discharges consistent with

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			Virginia law and other VPDES general permits, including the Industrial Stormwater General Permit (ISWGP) 9VAC25-151.
9VAC25-115-50 General permit. Part II A 3 c (8)		Nonstormwater discharges (8) Routine external building washdown that does not use detergents or hazardous cleaning products;	<p>(8) Routine external building washdown that does not use provided no soaps, solvents or detergents or are used, external surfaces do not contain hazardous cleaning products substances, and the wash water is filtered, settled, or similarly treated prior to discharge;</p> <p>Stormwater associated with industrial activity from seafood processing is a subset of activities covered under the U.S. EPA's 2021 multi-sector general permit. This change keeps the Board's regulations for industrial stormwater from seafood processing consistent with federal requirements and makes the list of authorized nonstormwater discharges the same as other VPDES general permits, including the ISWGP.</p>
	9VAC25-115-50 General permit. Part II.A..3.c.(9)	None	<p>Added pavement waste waters as a category of permitted nonstormwater discharges.</p> <p>(9) <u>Pavement wash waters provided no soaps, solvents, detergents or hazardous cleaning products are used, and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled or leaked materials is removed prior to washing), and the wash water is filtered, settled, or similarly treated prior to discharge;</u></p> <p>This change keeps the Board's regulations for industrial stormwater from seafood processing consistent with federal requirements and makes the list of authorized</p>

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			nonstormwater discharges the same as other VPDES general permits, including the ISWGP.
9VAC25-115-50 General permit. Part II C 2		<p>Stormwater pollution prevention plans (SWPPPs).</p> <p>Establishes requirements for SWPPPs including deadlines, content, signatures, and review and amendment.</p>	<p>Minor changes were made to terms throughout this subsection to ensure consistent use of terminology, correct grammar, and use plain language, consistent with the Registrar's <i>Form, Style and Procedure Manual for Publication of Virginia Regulations</i>. These minor changes did not alter, narrow, or expand the meaning or requirements in this section.</p>
9VAC25-115-50 General permit. Part II C 3 b		<p>Signature and SWPP review-Availability</p> <p>Requires the permittee to retain a copy of the current SWPPP at the facility.</p>	<p>Added language to clarify that the copy of the current SWPPP may be a hard copy or an electronic copy.</p> <p>b. Availability. The permittee shall retain a copy of the current SWPPP (<u>hard copy or electronic</u>) required by this permit at the facility, and it shall be immediately available to the department, EPA, or the operator of an MS4 receiving discharges from the site at the time of an on-site inspection or upon request.</p> <p>The change provides clarity and flexibility for permittees. It also makes the existing requirement consistent with other VPDES general permits and the ISWGP.</p>
9VAC25-115-50 General permit. Part III I 1		<p>Reports of noncompliance:</p> <p>The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.</p>	<p>Revised language to clarify reporting requirements by replacing the requirement to provide "an oral" report within 24 hours with "A" to allow the option of electronic reporting.</p> <p>1.a An oral A report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The</p>

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			<p>following shall be included as information that shall be reported within 24 hours under this subdivision:</p> <p>Other changes clarify who a permittee reports to, the department's regional office, and how to report outside normal working hours (via the online portal).</p> <p>The changes clarify existing mandatory reporting requirements for permittees and allows electronic reporting. They also make the existing requirements consistent with other VPDES general permits and the ISWGP.</p>
<p>9VAC25-115-50 General permit. Part III I 3</p>		<p>Reports of noncompliance:</p> <p>The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.</p>	<p>Revised language to specify that reports shall be made to the regional office (earlier requirement was to report, but the regulation did not specify to whom to make the report) and, for reports outside of normal working hours, reporting should be done using the online portal (instead of leaving a message). The changes clarify and simplify the reporting requirements.</p> <p>3. The immediate (within 24 hours) reports required in Part III G, H, and I may shall be made to the department's regional office. Reports may be made by telephone, or online at https://www.deq.virginia.gov/our-programs/pollution-response.</p> <p>For reports outside normal working hours, <u>the online portal shall be used.</u> leave a message and this shall fulfill the immediate reporting requirement. For emergencies, <u>call the Virginia Department of</u></p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>Emergency Management maintains a 24-hour telephone service <u>Management's Emergency Operations Center (24-hours)</u> at 1-800-468-8892.</p>

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.

This general permit applies to point source discharges of wastewater from seafood processing facilities and stormwater associated with industrial activity from seafood processing facilities classified under SIC Codes 2091 and 2092 to surface waters and has been designed to minimize burden while achieving a level of water quality protection consistent with state and federal requirements. This regulatory action does not address and will have no direct impact on 1) the authority and rights of parents, 2) economic self-sufficient, self-pride, or assumption of familial responsibilities, 3) marital commitments, or 4) disposable family income.