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Exempt Action: Final Regulation Agency Background Document

Agency name	Department of Environmental Quality
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-71
VAC Chapter title(s)	Regulations Governing the Discharge of Sewage and Other Wastes from Boats
Action title	Amendment to add 30 No-Discharge Zone (NDZ) designations in the Northern Neck region; and make technical corrections to an existing NDZ
Final agency action date	June 23, 2026
Date this document prepared	May 12, 2026

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 (1VAC7-10), 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 amendments to 9VAC25-71, Regulations Governing the Discharge of Sewage and Other Wastes from Boats, add No Discharge Zone (NDZ) designations to 30 specific estuarine waters in the Northern Neck region of Virginia (9VAC25-71-70. Listing of designated no discharge zones in the Commonwealth of Virginia). The waters include: Rosier Creek, Mattox Creek and Monroe Bay, Nomini Creek and Currioman Bay, Lower Machodoc Creek, Ragged Point, Gardner Creek, Jackson Creek, Bonum Creek, Yeocomico River, Judith Sound, Coan River and the Glebe, Cod Creek, Little Wicomico River, Great Wicomico River and Ingram Bay, Cloverdale Creek, Dividing Creek, Indian Creek, Dymmer Creek, Tabbs

Creek, Antipoison Creek, Windmill Point Resort, Little Oyster and Windmill Point Creek, Mosquito Creek, Carter Creek, Corrotoman River, Greenvale Creek, Deep Creek, Mulberry Creek, Lancaster Creek (inc. Morattico), and Farnham Creek.

The amendment also provides technical corrections to an existing NDZ to remove a redundant “-“ in the longitude degrees and correct nomenclature to use consistent terminology within the section.

An NDZ creates an area in a waterbody where discharge of both treated and untreated vessel sewage is prohibited; vessels would instead use pump-out facilities (often located at marinas) or travel outside of the NDZ to discharge treated sewage. See the Purpose section below for more details.

The NDZs were developed in accordance with Clean Water Act Section 312 and § 62.1-44.33 of the Code of Virginia and are exempt from the provisions of Article II of the Virginia Administrative Process Act. This regulatory action is a final exempt action under the Administrative Process Act since the amendments are either necessary to conform to changes in the federal regulations (§2.2-4006 A 4 c) or make a technical correction (§2.2-4006 A 3).

The NDZ application was subject to public participation during its development, as described in the Board Memo and in the Purpose section below. Specifically, DEQ convened public meetings and sought public comment during the application development. Additionally, the Environmental Protection Agency (EPA) requested public comment during its review for affirmative determination.

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.”

Section [62.1-44.33](#) establishes the tidal creeks of the Commonwealth as no discharge zones pending the receipt of an affirmative determination from the EPA that there are adequate facilities for the removal of sewage from vessels and where federal approval has been received allowing a complete prohibition of all treated or untreated discharges of sewage from all vessels.

On May 7, 2026, EPA published its affirmative determination to establish the NDZ in the Federal Register (see 91 FR 24863; available in Attachment III.B.). The EPA affirmative determination is a formal, final decision that adequate, safe, and sanitary pump-out facilities for sewage are reasonably available. Having obtained the final determination, DEQ is requesting the addition of these NDZs into Virginia administrative code 9VAC25-71-70 to conform with federal regulations. This regulatory action is a final exempt action under the Administrative Process Act since the amendments are either necessary to conform to changes in the federal regulations (§2.2-4006 A 4 c) or make a technical correction (§2.2-4006 A 3).

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.

“No Discharge Zone” (NDZ) means a waterbody or an area of a waterbody into which the discharge of treated and untreated sewage from all vessels is completely prohibited. It is illegal to discharge untreated

sewage from vessels in all waterbodies of the Commonwealth. In a designated No Discharge Zone, it is also illegal to discharge any treated waste from vessels equipped with Marine Sanitation Devices (MSDs) that grind, treat and discharge human sewage.

"Pump-out facilities" means any device, equipment or method of removing sewage from a marine sanitation device. Also, "pump-out facilities" shall include any holding tanks either portable, movable or permanently installed, and any sewage treatment method or disposable equipment used to treat, or ultimately dispose of, sewage removed from boats.

"Sewage" means human body wastes, the wastes from toilets and other receptacles intended to receive or retain human wastes, and liquid-carried human wastes together with such industrial wastes and other liquid as may be present.

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) that the agency has "adopted final amendments" to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, "On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)]."

At its meeting on June 23, 2026, the State Water Control Board adopted final amendments to Section 70 of the Regulations Governing the Discharge of Sewage and Other Wastes from Boats (9VAC25-71).

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.

[Clean Water Act Section 312](#) (33 U.S.C. § 1322) regulates sewage discharges from vessels into U.S. navigable waters and provides for reviews and approval of NDZ applications submitted by states. Section [62.1-44.33](#) of the Virginia State Water Control Law authorizes the State Water Control Board to promulgate regulations controlling sewage discharge from boats and vessels in state waters. Changes to this chapter of the Virginia Administrative Code are exempt from provisions of Article II of the Virginia Administrative Process Act (§2.2-4006 A 4 c and 2.2-4006 A 3).

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 regulatory changes are needed to meet requirements in the federal Clean Water Act and the State Water Control Law to protect public health and welfare by prohibiting the discharge of treated sewage in designated waters by establishing NDZs. These regulatory changes are needed to improve and protect water quality for the culturally and economically important shellfish industry in these waters and for recreational activities such as boating, fishing, and swimming. An NDZ creates an area in a waterbody where no discharge of sewage is permitted; vessels would instead use pump-out facilities (often located at marinas) or travel outside of the NDZ to discharge properly treated sewage. The discharge of untreated

sewage is already prohibited in all waters in accordance with § 62.1-44.33 of the Virginia State Water Control Law. Prohibiting treated sewage discharge will improve water quality by reducing the amount of bacteria, along with preventing discharges of nutrients and treatment chemicals from boats, which will benefit commercial fishing and shellfishing, recreation, and other uses.

The purpose of this regulatory action is to amend 9VAC25-71 to incorporate new No Discharge Zones into 30 specific estuarine waters in the Northern Neck region of Virginia. On May 7, 2026, EPA published its affirmative determination to establish the NDZs in the Federal Register (see 91 FR 24863; available in Attachment III.B.). Following EPA’s approval, this regulatory action adds these NDZs into 9VAC25-71-70. This regulatory action to incorporate new NDZs is a final exempt action under the Administrative Process Act (§2.2-4006 A 4 c).

The Code of Virginia at § 62.1-44.33 grants the State Water Control Board the power to promulgate regulations necessary to designate NDZs, provided the Commonwealth has received an affirmative determination from EPA in accordance with federal regulation. An application for the NDZs was developed in accordance with EPA Guidance 842-F-23-001 (Guidance for Vessel Sewage No-Discharge Zone Applications (Clean Water Act Section 312(f))). The application was also subject to the public participation process contained in DEQ’s Guidance Memo 08-2003 (Procedure for Designation of Vessel No Discharge Zones), issued in February 2008. Accordingly, DEQ presented the application during public meetings and sought public comments. The application was then submitted to EPA for formal review and an additional public comment period posted in the Federal Register. EPA then established the new NDZs by publishing its affirmative determination in the Federal Register (91 FR 24863; available in Attachment III.B). Attachment III also contains other background information on the application, including maps of the NDZs and a summary of public comments on the 2025 application.

The purpose is also to make technical corrections to an existing NDZ to remove a redundant “-“ in the longitude degrees as the degrees already contain a directional indicator and correct nomenclature to use consistent terminology within the section.

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 regulatory action amends 9VAC 25-71 to add the new NDZs for 30 specific state waters to Virginia’s list of designated NDZs so that they conform with federal regulations and to make a technical correction to an existing NDZ to remove a redundant “-“ in the longitude degrees and correct nomenclature to use consistent terminology within the section.

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.

Public: The regulatory change broadly benefits the public by improving the water quality of impaired waters by designating NDZ’s which prohibit the discharge of all vessel sewage, treated and untreated. The primary advantage is a reduction in the discharge of bacteria and treatment chemicals to state waters, which will benefit commercial fishing, recreation, and overall water quality. Improved water quality will protect human health and aquatic life, resulting in healthier fisheries, safer and reliable public water

supplies, and contribute to economic benefits from tourism, economic development, commercial and recreational fishing industries. Establishment of an NDZ may disadvantage some vessels who could incur costs, such as installing new equipment or changing operational procedures (e.g., use pump-out stations). The application examined these scenarios and concluded that adequate facilities are available to vessels.

Agency or Commonwealth: The agency and Commonwealth will benefit because the change to the regulation meets legal mandates in state and federal law to improve water quality and meet Water Quality Standards (9VAC25-260), to support all designated uses of waters, and ultimately remove waters from Virginia’s 303(d) list of impaired waters

Requirements More Restrictive than Federal

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.

This is a change to align Virginia’s NDZs (as specified in Section 70 of 9VAC 25-71) with EPA’s approved NDZs for Virginia. This regulatory amendment is not more restrictive than applicable federal requirements.

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.

During the development of the NDZ application in 2025, DEQ held public meetings and had a public comment period. DEQ received 6 public comments pertaining to the 2025 application. All of the comments received were in support of designating the Northern Neck NDZs. During EPA’s Tentative Affirmative Determination Public Comment, two comments were received. One was supportive and the other related to offshore wind facilities impact on data.

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.*

The amendments would adopt new No Discharge Zones, adding to the five already in the regulation (9VAC25-71-70.) The action is necessary to agree with EPA’s final affirmative determination for these NDZs.

The action is also necessary to make a technical correction to an existing NDZ to remove a redundant “-“ in the longitude degrees and correct nomenclature to use consistent terminology within the section.

Current section number	New section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
70	NA	<p>9VAC25-71-70. Listing of designated no discharge zones in the Commonwealth of Virginia currently only lists waters with designated NDZs in the Commonwealth of Virginia. The 30 proposed waters are currently not included in this section as NDZs.</p> <p>3. Broad Creek, Jackson Creek, and Fishing Bay Watersheds coordinates for longitude include a “-“ in front of the degree values. Includes redundant phrase “No Discharge Zone”</p>	<p>Adopting 30 new NDZs in specific waters of the Northern Neck including: Rosier Creek, Mattox Creek and Monroe Bay, Nomini Creek and Currioman Bay, Lower Machodoc Creek, Ragged Point, Gardner Creek, Jackson Creek, Bonum Creek, Yeocomico River, Judith Sound, Coan River and the Glebe, Cod Creek, Little Wicomico River, Great Wicomico River and Ingram Bay, Cloverdale Creek, Dividing Creek, Indian Creek, Dyer Creek, Tabbs Creek, Antipoison Creek, Windmill Point Resort, Little Oyster and Windmill Point Creek, Mosquito Creek, Carter Creek, Corrotoman River, Greenvale Creek, Deep Creek, Mulberry Creek, Lancaster Creek (inc. Morattico), Farnham Creek.</p> <p>Removing unnecessary “-“ from Broad Creek, Jackson Creek, and Fishing Bay Watersheds NDZ longitude degrees and removing the redundant phrase “No Discharge Zone”.</p>

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.

These amendments meet the requirements of federal and state law and regulation. The regulations under 9VAC25-71 apply to all persons, including small business owners, who discharge treated vessel sewage in Virginia waters. As part of the application process, EPA's review determined that existing pump-out infrastructure is adequate to support vessel sewage disposal needs. The regulatory amendment does not establish any reporting requirement or performance standard that could be lessened or substituted for small business. Any delays in adopting the standards or exemption of small businesses from these requirements will not meet the minimum requirements of federal law and regulation to prohibit the discharge of treated and untreated sewage in an NDZ. No alternative approach to establishing an NDZ was considered because [Clean Water Act Section 312](#) (33 U.S.C. § 1322) regulates sewage discharges

from vessels into U.S. navigable waters and reviews and approves NDZ applications submitted by states. State Water Control Law § 62.1-44.33 grants the State Water Control Board the power to promulgate regulations necessary to designate NDZs, provided the designations receive the necessary approvals from EPA. EPA approved the NDZ application, thereby establishing 30 NDZs. Following EPA's approval, this regulatory action is required to add these NDZs into 9VAC25-71-70. This regulatory action is a final exempt action under the Administrative Process Act (§2.2-4006 A 4 c). As a result, vessels can no longer discharge treated sewage in these waters.

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.

The amendment of the Regulations Governing the Discharge of Sewage and Other Wastes from Boats is for the protection of public health, safety, and welfare and the Board does not anticipate any direct impact on the institution of the family and family stability.