



Exempt Action Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-630
Regulation title	Virginia Pollution Abatement (VPA) General Permit Regulation for Poultry Waste Management
Action title	Reissue and amend, if necessary, the Virginia Pollution Abatement General Permit for Poultry Waste Management.
Final agency action date	
Document preparation date	08/12/10

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 14 (2010) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The State Water Control Board is amending the existing Virginia Pollution Abatement (VPA) General Permit Regulation for Poultry Waste Management in order to reissue the permit regulation. The VPA General Permit Regulation for Poultry Waste Management governs the management of poultry feeding operations which confine 200 or more animal units (20,000 chickens or 11,000 turkeys), and establishes utilization, storage, tracking and accounting requirements related to poultry waste, including that transferred from poultry feeding operations. The general permit first became effective on December 1, 2000. The permit term was ten years and is due to expire on November 30, 2010.

Statement of final agency action

Please 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.

The State Water Control Board during their regular meeting on September 27, 2010, voted to adopt the final amendments to the Virginia Pollution Abatement General Permit for Poultry Waste Management as presented and recommended by Department of Environmental Quality staff.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Written comments were submitted by 14 citizens and organizations: A summary of comments and agency responses are provided in the preceding pages.

SUMMARY OF COMMENTS RECEIVED & RESPONSES TO COMMENTS

GENERAL COMMENTS

GC-1 SUBJECT: SUPPORT

COMMENT: The proposed permit action embodies important protections for Virginia's waters and people. We have supported the implementation of the VPA permit to control poultry waste management and the amendments adopted in 2009, which extended coverage of the regulation to wastes transported away from the farm of origin and land-applied to other properties. We appreciate the Department of Environmental Quality (DEQ) staff's continued efforts to improve the regulation of poultry wastes and their cooperation with us and other interested parties.

COMMENTER: David W. Sligh, Upper James Riverkeeper

COMMENT: As a member of the regulatory advisory panel (RAP) who reviewed the proposed modifications to this regulation, we are generally in support of the changes contained herein. Changes to the regulation that were discussed by the RAP appear to be minimally burdensome to farmers and in general, do not cause us concern.

COMMENTER: Katie K. Frazier, Vice President - Public Affairs

COMMENT: Virginia Poultry Federation supports a 10 year renewal of the VPA General Permit Regulation for Poultry Waste Management without substantive changes.

COMMENTER: Hobey Bauhan, President - Virginia Poultry Federation

COMMENT: I think this is very good that you brought this discussion up. I only wish that I could be a writer to tell you more precisely what I think. It's really good.

COMMENTER: Elelin Geersy

COMMENT: As a Virginia Citizen, I support this proposed regulation to reinsure regulations for the disposal of poultry waste in state water systems. The disposal of the poultry waste is a state program so it is the state that needs to reiterate the regulation and keep the state waters clean. I hope that by supporting this regulation, the poultry operations will soon be covered under the general permit. By having no disadvantages and with minimum agency resources, this proposed regulation should be approved again and reissued without any lapse in time.

COMMENTER: Town Hall Commenter - "Mcintoshl"

COMMENT: Virginia Farm Bureau Federation supports reissuing the general permit program in its current form without any additional requirements being imposed on poultry growers, poultry waste brokers and poultry waste end-users.

COMMENTER: Wayne F. Pryor, President - Virginia Farm Bureau Federation

COMMENT: The Virginia Department of Conservation and Recreation (DCR) supports re-issuance of the Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management as amended in the April 12, 2010 publication of *The Virginia Register of Regulations* (Volume 26, Issue 16).

COMMENTER: Jack Frye, Director - Division of Soil and Water Conservation, Department of Conservation and Recreation

COMMENT: As a Virginia Citizen, I also support this proposed regulation to reinsure regulations for the disposal of poultry waste in state water systems. It's important we keep the state waters clean.

COMMENTER: Doug Ahearn

RESPONSE: DEQ acknowledges the support. ***No changes are being proposed to address these comments.***

GC-2 SUBJECT: INSPECTIONS PROCEDURES

COMMENT:

1. An additional recommended enforcement change is that an improved inspection scheme be incorporated into the management the VPA permit. Currently, inspections are performed annually and at a similar time each year for each individual operation. This has created an ineffectual deterrent to poor litter handling practices and sloppy litter storage, the result of which is not infrequent outdoor storage of litter by growers, at times in places where it can discharge into state waters. Naturally, we believe that a randomized approach to inspections is necessary to break the cycle of inspections, and create a year round expectation of compliance.
2. This is not to say that more than a minority of growers handle litter in any manner other than responsibly and according to the regulation. However, evidence demonstrates that there are farms that operate outside of the limitations of the permits, and enforcement strategies should be designed to maximize the potential to eliminate these rogue operations. Randomized, and where necessary, repeated inspections of farms should be spelled out in terms of the permit and applied with avarice to eliminate all of these problems on the ground. We believe that Poultry Integrators would support this position, and we believe that the Virginia Poultry Federation would support provisions of a permit that improve the compliance rate of their members. We also believe that the majority of poultry growers who are in compliance with their permit, would prefer an inspection regime that reforms "bad actors". Failure to address these bad actors creates an unfair competitive disadvantage to those farmers operating with sustainable, responsible practices. The continuation of predictable inspection schedules creates a financial incentive for farmers to operate irresponsibly. While it is reasonable to expect that only a minority of farmers will act on that incentive, it is inexcusable for the State to fail to close this loophole. We also believe that the majority of poultry growers would support the elimination of the types of practices which color public opinion of the industry in general.

COMMENTERS: Jeff Kelble, Shenandoah Riverkeeper
Ed Merrifield, Potomac Riverkeeper
David Burden, Virginia Eastern Shorekeeper

RESPONSE: DEQ Inspection procedures are outlined in the agency wide adopted Inspection Strategy. While a random schedule for inspecting facilities is preferred, the regional office must consider inspection resources, the locations of the facilities as well as biosecurity concerns when developing the annual regional inspections schedule.

COMMENT: CBF supports the reissuance of this general permit with amendments proposed by the Virginia Department of Environmental Quality and with modification to the program outlined below.

1. We recognize that the federal regulation of CAFOs has been undergoing changes, including the 2008 CAFO Rule, which has given clarity to the definition of point source. We encourage DEQ, to revisit their inspection program for VPA permitted facilities to ensure that potential point discharges are identified and appropriate action to protect state waters is taken. DEQ inspection staff needs to be briefed on this information so that they can identify problems during the annual inspections, including the identification of areas on the farm where point source discharges are likely to occur in wet weather, regardless of the climatic conditions at the time of the inspection.
2. We strongly recommend the institution of a random, rather than regular, schedule for enforcement visits. Currently, producers can expect an inspection around the same time of the year they were inspected the previous year. This twelve month cycle allows for long stretches where there is little risk of inspection. Randomized inspections could provide a strong disincentive for stockpiling of poultry litter and manure in a manner likely to cause a point source discharge.
3. We also recommend DEQ consider a risk-based enforcement strategy -perhaps increasing the inspection frequency on VPA permitted facilities at high risk for noncompliance, while reducing the amount of time spent on facilities that have a strong record of environmental stewardship.

COMMENTER: Kristen J. Hughes Evans, Virginia Staff Scientist -
Chesapeake Bay Foundation

RESPONSE: DEQ Inspection procedures are outlined in the agency wide adopted Inspection Strategy. While a random schedule for inspecting facilities is preferred, the regional office must consider inspection resources, the locations of the facilities as well as biosecurity concerns when developing the annual regional inspections schedule.

In addition, DEQ has established and implemented criteria for Risk-Based inspections which include criteria for poultry and livestock operations which are covered under the animal feeding operations permit program, including any concentrated animal feeding operations. The criteria for increased and decreased inspections are outlined in this document. ***No changes are being proposed to address this comment.***

GC-3 SUBJECT: WATER QUALITY

COMMENT: That [end-user amendments] action created a scientifically based and even handed end-user regulation that will likely have immense positive impact on local streams, the Shenandoah and Potomac Rivers as well as the Chesapeake Bay. In this permit action, we commend Governor Bob McDonnell's administration for maintaining the provisions of the overall Poultry VPA permit which deal with nutrient (N&P) and Bacteria pollution.

COMMENTERS: Jeff Kelble, Shenandoah Riverkeeper
Ed Merrifield, Potomac Riverkeeper

COMMENT: The State Water Control Board, after working with a diverse group of stakeholders recently approved amendments to this same regulation adding requirements for poultry growers, brokers of poultry litter, and in particular, end-users of poultry litter. Based upon these recent amendments, and additional provisions incorporated into this proposed regulation, we believe the VPA General Permit for Poultry Waste Management is significantly protective of water quality.

COMMENTER: Katie K. Frazier, Vice President - Public Affairs

COMMENT: The board recently completed amendments to the regulation that added new requirements for poultry growers, poultry litter brokers, and end-users of poultry litter. The regulation is adequately stringent and protective of water quality, and should not at this time be changed in a manner that will increase its burden upon impacted farmers. We are agreeable to one substantive change in the proposal that creates a buffer zone with regard to the location of a litter pile. This is a reasonable provision that is already part of the nutrient management plan.

COMMENTER: Hobey Bauhan, President - Virginia Poultry Federation

COMMENT: The Virginia VPA Permit Regulation for Poultry Waste Management is an important tool for protecting water quality in the Commonwealth. Many Virginia farmers have embraced this permit program and as a result, have made significant strides in protecting water quality.

COMMENTER: Kristen J. Hughes Evans, Virginia Staff Scientist - Chesapeake Bay Foundation

RESPONSE: DEQ acknowledges the support as the proposed amendments intend to protect and support water quality. ***No changes are being proposed to address this comment.***

GC-4 SUBJECT: ARSENIC AND OTHER CONTAMINANTS

COMMENT: We believe that the proposed regulations and General Permit make important improvements to the management and land application of poultry waste and protecting Virginia's waters from nutrient pollution. However a recent review and analysis of water quality and fish tissue data and pollution information has raised new concerns regarding the risks that other constituents contained in poultry waste may pose a threat to the environment and human health and cause or contribute to violations of State and Federal Law. We are anxious to share these data and analyses with DEQ and to have all parties fully review this information before this permitting process is completed. As always, DEQ seeks to fulfill its obligation to address known and possible pollutants that may cause or contribute to water quality and human health risks or impairments, in the permit Fact Sheet or other documents presented as part of the official record. Given the fact that a number of pollutants, other than the nutrients regulated in this permit, are present in poultry waste, including arsenic which is a known carcinogen, we believe that DEQ must incorporate available data and perform analyses to justify this permit's adequacy to regulate these substances. We believe that DEQ must incorporate such information in the permit record and make it available for public review and comment. Consequently, at this time, we reserve the right to raise additional concerns where and when these constituents cause or contribute to the violation of mandates under State and Federal law. We also reserve the right to call for additional measures in the proposed regulations and General Permit before the State Water Control Board in order to ensure "reasonable assurance" that point source discharges will not occur, that water quality standards will be upheld, and that State waters, both surface and ground water, will be protected.

COMMENTER: David W. Sligh, Upper James Riverkeeper

COMMENT:

1. Concerns with the efficacy, scope, and legality of the permit as proposed. There are serious deficiencies and problems in the proposed regulation and General Permit that cause these proposals to violate mandates, under both State and

Federal law, which the State of Virginia is required to meet, and to pose substantial risks.

2. Address the long overdue issue of dangerous and environmentally poisonous contaminants found in poultry litter including but not limited to excessive phosphorous, arsenic, pesticides, other dangerous metals and high levels of estrogen and estrogen-related compounds that are being applied to Virginia soils year after year and which are reaching Virginia Rivers and the Chesapeake Bay.
3. We assert that there are serious deficiencies and problems in the proposed regulation and General Permit that cause these proposals to violate mandates, under both State and Federal law, which the State of Virginia is required to meet, and to pose substantial risks. We ask that, before it issues a renewed VPA permit, the Board direct DEQ to create a new Technical Advisory Committee to develop recommendations to solve the problems we identify.
4. The VPA permit is based upon two broad assumptions:
The first is that the requirements of the permit will ensure that discharges of pollutants to State waters will not occur from covered activities and the second is that pollutants from these activities will be applied at rates and under circumstances whereby they are agronomically useful, being taken up by crops and pastures on land-application sites.
5. The land-application of types or amounts of materials that are not useful as fertilizers constitutes a disposal of wastes rather than a beneficial use and cannot be authorized under the VPA. The provisions of the VPA requiring that nitrogen and phosphorous be applied in accordance with a nutrient management plan or other method are intended to ensure that the assumptions listed are valid. However, there are no provisions in the VPA addressing other pollutants known or suspected to be present in poultry litter. Elements such as arsenic and selenium are proven to be present in some poultry waste and compounds such as drug residues may also occur in these wastes.
6. The permit ignores all other known or suspected pollutants in the waste and in the soils, either before or after land-application or storage on the land occurs. The State fails in its duty to provide a "reasonable assurance" that point source discharges will not occur, that water quality standards will be upheld, and that State waters, both surface and ground water, will be protected.
7. The presence of arsenic in chicken and turkey manure and the litter that contains it is of greatest concern to us at present. However, we believe that all other pollutants potentially contained in the litter must be given equal attention in the regulation and general permit.
8. Potential human health threats associated with consuming fish with arsenic in their meat and these contaminants are known fish toxins and estrogens (which interfere with reproduction in fish and shellfish) and many populations of which are in decline. We conclude that it is completely inappropriate for these contaminants to be permitted in poultry litter, it is unjustifiable for these contaminants to be applied to our land and that this permit process should not be allowing these contaminants to be accumulating in the fish in our public waters.
9. We also submit that most landowners who receive litter for fertilizer and many growers themselves have not been made aware of these contaminants and may be applying litter and are thereby unknowingly and unwillingly creating pollution issues on their property and health risks to themselves, their families and their neighbors. That makes this a property rights issue in addition to a public health and environmental issue. This VPA permit authorizes the application of poultry waste with complete disregard for the threats of these hazardous contaminants within the waste, and for the health and wellbeing of the landowners who are unable to manage their land and application operations safely due to the lack of information they are given.

10. This regulation and its related permit are designed to eliminate discharges of pollutants to state waters. It does this by limiting the use of poultry waste as a fertilizer to agronomic rates of application. This is good policy. However there are large amounts of non-agronomic contaminants in poultry waste and bedding and these contaminants serve no agricultural or agronomic benefit. We believe that the application of these contaminants constitutes an illegal dumping which are not covered by either this regulation, the VPA permit or by the Clean Water Act, FIFRA, RCRA, EPCRA and CERCLA environmental laws.
11. We find no evidence in the record to show the benefit of arsenic as a soil amendment, and no record to show that plants use arsenic agronomically. Therefore, the disposal of these contaminants constitutes solid waste disposal at the very minimum, and under certain circumstances may constitute hazardous waste disposal.
12. We believe this puts Virginia in the position of regulating these contaminants out of litter entirely and applying a moratorium on the application of litter containing these contaminants, or that enforcement action be taken to remove the contaminants from litter and hold integrators accountable for the introduction of these contaminants into poultry feed, litter and the waste stream.

**COMMENTERS: Jeff Kelble, Shenandoah Riverkeeper
Ed Merrifield, Potomac Riverkeeper
David Burden, Virginia Eastern Shorekeeper**

RESPONSE: Arsenic is commonly found in soil and water environments due to natural geological processes as well as human activity. While research is ongoing, there is not an abundance of evidence to indicate that poultry litter applications made using appropriate BMPs (as included in the proposed regulation) will raise arsenic concentrations in soil sufficiently over background levels to pose water quality problems. Further, the efforts of the Virginia Fish Kill Task Force focused specifically on arsenic as a possible cause of recent fish kills in the Shenandoah Valley, an area with a high frequency of poultry litter applications. No definitive evidence linking arsenic (or poultry litter) to the fish kills could be found. Research has shown that misapplied poultry litter can result in water quality problems, primarily related to nutrients and pathogens, thus those are the focus of the regulatory requirements. Further, many poultry companies have ceased using arsenical compounds in the feed. The storage requirements included in the proposed regulation will protect surface and ground water from leaching and runoff.

Multiple restrictions included in the proposed regulation serve to protect state waters from nutrient and pathogen impairments. These restrictions include application rates, application timing, land application buffers, storage location, storage surface and storage covers.

Wastes (such as poultry litter) generated by the growing and harvesting of agricultural crops or the raising of animals, are not considered hazardous waste in Virginia Waste Regulations provided it is returned to soil as fertilizer. Studies by scientists with the Agricultural Research Service have found that management practices such as proper litter storage and litter spill management outside of storage facilities can control migration of arsenic and other agricultural pollutants. ***No changes are being proposed to address this comment.***

COMMENT: We call on Virginia to begin transitioning from the use of the P-Index in dictating phosphorus application rates from animal manure, to more protective crop removal and soil test P methods which are designed to stabilize and reduce soil phosphorus saturation, and reduce phosphorus runoff.

COMMENTERS: Jeff Kelble, Shenandoah Riverkeeper

Ed Merrifield, Potomac Riverkeeper

RESPONSE: The Department of Conservation and Recreation has the authority to make changes to the Nutrient Management Regulation and requirements. The requirements related to the use of the P-Index are not within the scope of § [62.1-44.17:1.1](#) of the Code of Virginia. ***No changes are being proposed to address this comment.***

COMMENT: The estrogenic and androgenic compounds in litter must be accounted for in the VPA permit.

RESPONSE: DEQ is aware that the Environmental Protection Agency (EPA) is studying the effects of endocrine disrupters. If EPA establishes criteria, the department will adopt the criteria once established. ***No changes are being proposed to address this comment.***

COMMENT: Has Virginia examined the pesticides used in poultry bedding material and applied to land? We find no evidence of it in the permit fact sheet.

COMMENTERS: Jeff Kelble, Shenandoah Riverkeeper
Ed Merrifield, Potomac Riverkeeper

RESPONSE: Federal pesticide laws and regulations govern the use of these products based on where they are used. The impact of pesticide residuals is controlled by use according to the instructions on the mandatory label. ***No changes are being proposed to address this comment.***

GC-5 SUBJECT: MISCELLANEOUS COMMENTS

COMMENT: We recommend that the Board consider including language in the VPA General Permit for Animal Feeding Operations that specifically prohibits cattle access to streams in confinement areas, as well as other scenarios that could lead to a point source discharge (for example uncovered manure piles stored near streams).

COMMENTER: Kristen J. Hughes Evans, Virginia Staff Scientist - Chesapeake Bay Foundation

RESPONSE: Amendments to the VPA General Permit for Animal Feeding Operations is not within the scope of § [62.1-44.17:1.1](#) of the Code of Virginia or this regulatory action. Comments are unrelated to this regulatory action or these proposed amendments. ***No changes are being proposed to address this comment.***

COMMENT: As a farmer, broker and applicator, I would ask that you keep the requirements as least restrictive as possible on the farmers, growers and end-users.

COMMENTER: Reid Mackey - Farmer, Poultry Waste Broker and Applicator

RESPONSE: DEQ acknowledges your concern and is not proposing to amend the existing language to add more restrictions during this regulatory action. The amendments that are being proposed are to clarify the existing language and allow for the general permit to be reissued. ***No changes are being proposed to address this comment.***

SPECIFIC SECTION COMMENTS

SC-1 SUBJECT: TECHNICAL REQUIREMENTS - SECTION 80

COMMENT: We generally support the proposed regulation, but would draw your attention to one provision in the proposal that we feel may be a substantive change that

would go against the principle of not adding new burdens. This provision is at 9VAC25-630-80 (Utilization and storage requirements for transferred poultry waste), in C. (Land Application Requirements) at subsection 1. Establishing options for land application rates; at (c.) setting forth requirements when the application rates are set via soil test recommendations. The existing language at (c.) 3 requires that land application rates be in accordance with the soil test recommendation. The agency proposes to strike the reference to soil test recommendation and insert that land application rates be in accordance with 4VAC5-15-150 A2. This refers to the DCR nutrient management regulations' provisions for nutrient application. The DCR regulatory section is broad and prescriptive. The intent of the Regulatory Advisory Committee and the agency draft prior to review by the Attorney General's office was to provide a range of options. One of these options was a soils test. Another option was an NMP in accordance with the DCR regulations. Our concern is that the proposed language is taking away the simple soil test option. At worst it creates a de facto requirement for a NMP and at the very least refers to prescriptive NMP regulations that are a whole lot broader than determining application rates based on a soil test. We respectfully ask that the language be kept in its existing form, and that the agency not go forward with the proposed change.

COMMENTER: Hobey Bauhan, President - Virginia Poultry Federation

COMMENT: The Farm Bureau Federation has concern regarding the changes to the soil test option language in 9VAC25-630-80 and asks that the agency not change the language.

COMMENTER: Tony Banks, Assistant Director, Commodity/Marketing Department - Virginia Farm Bureau Federation

COMMENT: We oppose any proposal to limit, directly or indirectly, the number of alternative methods end-users may use to determine poultry waste land application rates. It is our understanding at the conclusion of the Regulatory Advisory Panel meeting, that no substantive amendments were being considered then, only amendments intended to clarify for consistency and to remove outdated and unnecessary references. We are concerned that the proposed amendments to 9VAC25-630-80C. Land application requirements. are, if not a proposal to make a substantive amendment, likely to create confusion among poultry waste end-users and could in fact result in poultry waste being stranded in areas of concentration in response to decreased end-user demand or poultry waste. The current regulation provides four optional methods, including nutrient management plan, for end-users to use in determining their land application rates of poultry waste. There is much concern that the proposed specific references to certain subsections within 4VAC5-15-150A.2. could imply or be interpreted as to require nutrient management plan implementation by the end-user in 9VAC25-630-80C.1.c. and thus limit the end-user to only two methods in determining their land application rates of poultry waste. If proposed amendments to 9VAC25-630-80 C are intended to clarify the rule, we recommend the following:

1. In 9VAC25-630-80 C.1.c.3. after "accordance with 4VAC5-15-150A.2." insert "however, this application rate method does not require a nutrient management plan."
2. When discussing nutrient application rates replace references to "in accordance with §10.1-104.2 of the Code of Virginia" to "in accordance with 4VAC5-15-150A.2." at 9VAC25-630-50 Part I.8, 9VAC25-630-50 Part I.9, at 9VAC25-630-50 Part III.12, 9VAC25-630-50 Part III.13, and 9VAC25-630-80 C.1.a.(2).

COMMENTER: Wayne F. Pryor, President - Virginia Farm Bureau Federation

RESPONSE: After the review of the language by staff of the Office of the Attorney General (OAG), DEQ added the following citation of 4VAC5-15-150A.2 to this subdivision to clarify the requirements regarding nutrient recommendations. DEQ staff

has determined that by citing the more specific subdivision A.2.a. of 4VAC5-15-150 of the DCR regulation will address the concern related to this requirement while also maintaining the soil test recommendation option as originally intended and drafted. ***The citation 4VAC5-15-150A.2. found in subdivision C.1.c.(3) will be replaced with 4VAC5-15-150A.2.a. in the final amendments. The citation 10.1-104.2 of the Code of Virginia will be replaced with 4VAC5-15-150A.2. in the final amendments for the following subdivisions: Part I.B.8 of 9VAC25-630-50, Part I.B.9 of 9VAC25-630-50 at Part III.B.12 of 9VAC25-630-50, Part III.B.13 of 9VAC25-630-50, and C.1.a.(2) of 9VAC25-630-80.***

COMMENT: DCR also strongly advises the current language be retained concerning nutrient recommendations in 9VAC25-630-80C.1.c.(3)

COMMENTER: Jack Frye, Director - Division of Soil and Water Conservation, Department of Conservation and Recreation

RESPONSE: DEQ staff has determined that by citing the more specific subdivision A.2.a. of 4VAC5-15-150 of the DCR regulation will address the concern related to this requirement while also maintaining the soil test recommendation option as originally intended and drafted. ***The citation 4VAC5-15-150A.2. found in subdivision C.1.c.(3) will be replaced with 4VAC5-15-150A.2.a. in the final amendments.***

COMMENT: DCR also strongly advises the current language be retained concerning soil analysis results and timing of application in sections 9VAC25-6[3]0-80C.1.c.(2) and 9VAC25-6[3]0-80C.2.

COMMENTER: Jack Frye, Director - Division of Soil and Water Conservation, Department of Conservation and Recreation

RESPONSE: DEQ acknowledges the support as the proposed amendments. ***No changes are being proposed to address this comment.***

COMMENT: There is one provision that has been changed after the RAP concluded its discussion which we believe to be substantive and raises concerns for us.

1. c. Soil test recommendations can be used when:

(3) Nutrients from the waste application do not exceed the nitrogen or phosphorus recommendations for the proposed crop or double crops ~~listed on the soil test recommendation in accordance with 4VAC5-15-150A.2.~~

Subsection c. of 9VAC25-630-80 (Utilization and Storage Requirement for Transferred Poultry Waste) provides end-users of poultry litter with four different options for determining the application rates utilized in applying litter. The suggested amendment to section c.(3) (soil test method), would now require that nutrient applications do not exceed recommendations in 4VAC5-15-150A.2. This section of DCR's Nutrient Management Regulations refers to the establishment of nutrient application rates within a nutrient management plan. This regulatory section is very broad and prescriptive. The intent of the original draft language was to provide end-users of poultry litter with an option of utilizing the results of a soil test if appropriate. By referring back to DCR's nutrient management plan requirements, this essentially removes the option of utilizing soil test results and leaves only three options for end-users to determine their application rates. In addition, it creates greater uncertainty for end-users of poultry litter as to exactly how to determine their application rates when utilizing the "soil test method". If there is a concern about the soil test laboratories utilized by farmers not meeting the procedural and application rate recommendation standards set by DCR, this should be addressed in subsection c.2. by requiring that laboratories issue recommendations that meet DCR specifications. In order to maintain the previously approved regulatory program for end-users of poultry litter, which was reached after many months of negotiating between the

environmental and agricultural communities, we respectfully ask that the language in subsection c.(3) be kept in its existing form, and that the Board not approve this proposed change.

COMMENTER: Katie K. Frazier, Vice President - Public Affairs

RESPONSE: After the review of the language by staff of the Office of the Attorney General (OAG), DEQ added the following citation of 4VAC5-15-150A.2 to this subdivision to clarify the requirements regarding nutrient recommendations. DEQ staff has determined that by citing the more specific subdivision A.2.a. of 4VAC5-15-150 of the DCR regulation will address the concern related to this requirement while also maintaining the soil test recommendation option as originally intended and drafted. ***4VAC5-15-150A.2. will be replaced with 4VAC5-15-150 A.2.a. in the final amendments.***

SC-2 SUBJECT: CERTIFIED NUTRIENT MANAGEMENT PLANNER AND DCR APPROVAL

COMMENT: The Department is strongly in favor of retaining the language pertaining to the writing of nutrient management plans for permitted poultry operations by certified nutrient management planners and the approval of such plans by DCR.

COMMENTER: Jack Frye, Director - Division of Soil and Water Conservation, Department of Conservation and Recreation

RESPONSE: DEQ is not proposing to amend the existing language to remove this requirement. ***No changes are being proposed to address this comment.***

COMMENT: During the Regulatory Advisory Panel proceedings and here, we propose eliminating all requirements with 9VAC25-630 et. seq. that stipulate a nutrient management plan be developed by a "certified nutrient management planner" and replacing the reference with "[a plan] developed or approved by the Department of Conservation and Recreation". We believe requiring the plan be developed by a "certified nutrient management planner" is an outdated requirement in this instance and one that will inhibit implementation of cost-effective alternative planning methods. The following reasons support our position:

1. The legislative authority for this regulatory program does not require a nutrient management plan be developed by a "certified nutrient management planner". §62.1-44.17:1.1 A defines nutrient management plan as "a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment and management of poultry waste, including dry litter, and limits accumulation of excess of nutrients in soils and leaching or discharge of nutrients into state waters."
2. The "certified nutrient management planner" requirement is based on a policy decision 1) to address the anticipated workload increase for state nutrient management planning personnel by automatically recognizing plans developed by other public sector and private sector planners certified by the Department of Conservation and Recreation (DCR), 2) to recognize the limited number of qualified nutrient management planners operating in Virginia, and 3) to encourage additional public and private sector individuals to seek DCR certification as a nutrient management planner.
3. It is our understanding that DCR reviews each nutrient management plan developed for compliance with this and other VPA permit programs for approval even though the plan is written by a certified planner. This seems duplicative since DCR's nutrient management certification program stipulates how a certified planner must develop a plan as well as the plan's minimum content which is equivalent to the VPA requirements here. As long as the recommendations and

content of a nutrient management plan comply with all other VPA statutory and regulatory requirements and DCR reviews the submitted plan for approval, any person capable of developing a nutrient management should be allowed to do so.

4. We anticipate the demand for nutrient management plans will increase in response to the broker and end-user requirements approved in 2009, anticipated ratcheting of federal requirements on all confined animal feeding operations, and anticipated state and federal requirements aimed at benefiting the Chesapeake Bay. Permitted poultry growers already have to wait weeks or sometimes months for nutrient management plan revisions for changes as simple as adding a field or switching a crop within the rotation on one field. Nutrient management planning software may be available now that was not available when this policy decision was made over ten years ago to require "certified" planners. The state budget shortfall recently resulted in the reduction of the DCR's capacity to provide nutrient management planning assistance. The level of participation in DCR nutrient management certification program appears stagnant and may not generate enough additional "certified" planners to meet technical assistance needs over the next 10 years.

COMMENTER: Wayne F. Pryor, President - Virginia Farm Bureau Federation

RESPONSE: The proposed regulation retained this requirement because the DCR regulations specify that a "nutrient management plan" means a plan prepared by a Virginia certified nutrient management planner. DEQ has concerns, if this language is removed, it could be interpreted by the permittee that the requirement no longer exists and they no longer must comply with the requirement. DEQ prefers to provide clear and concise language in the regulation regarding these requirements. This requirement is also consistent with other DEQ regulations which require that nutrient management plans be written by certified planners. DEQ is not proposing to amend the existing language to remove this requirement. ***No changes are being proposed to address this comment.***

SC-3 SUBJECT: NITROGEN AND PHOPHORUS APPLICATION RATES LANGUAGE

COMMENT: DCR also strongly advises the current language be retained concerning nitrogen and phosphorus application rates in sections 9VAC25-630-50.[Part]I.B.8-9, 9VAC25-630-50 [Part] III.B.12-13

COMMENTER: Jack Frye, Director - Division of Soil and Water Conservation, Department of Conservation and Recreation

RESPONSE: After the review of the language by staff of the Office of the Attorney General (OAG), DEQ added the following citation of 4VAC5-15-150A.2 to these subdivisions to clarify where the requirements can be found regarding nutrient application rates. ***The citation 10.1-104.2 of the Code of Virginia will be replaced with 4VAC5-15-150A.2. in the final amendments for the following subdivisions: Part I.B.8 of 9VAC25-630-50, Part I.B.9 of 9VAC25-630-50 at Part III.B.12 of 9VAC25-630-50, Part III.B.13 of 9VAC25-630-50, and C.1.a.(2) of 9VAC25-630-80.***

SC-4 SUBJECT: FACT SHEET

COMMENT: We assert that DEQ's Fact sheet and supporting materials for this permit must include analysis of the potential effects of toxic substances and amendments to

poultry waste before it is applied to our land. Then DEQ needs to ensure that all water quality standards are met as prescribed in the permit.

**COMMENTERS: Jeff Kelble, Shenandoah Riverkeeper
Ed Merrifield, Potomac Riverkeeper**

RESPONSE: The purpose of the DEQ Fact Sheet is to summarize, for poultry litter end-users, the requirements set forth in Chapter 9VAC25-630. The agency believes that the general permit and the regulation including technical requirements contained in section 9VAC25-630-80 will adequately address concerns regarding appropriate storage and agronomic land application of poultry waste. Compliance with these conditions will ensure water quality standards will be met. ***No changes are being proposed to address this comment.***

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

The following pages contain all changes made to the Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management during this action.

Regulation Section	Action	Changes at Proposed Stage	Rationale	Changes since Proposed Stage	Rationale for Change
9VAC25-630 (Chapter Title)	Amended Title of Chapter	Amended to read: VIRGINIA POLLUTION ABATEMENT REGULATION AND GENERAL PERMIT FOR POULTRY WASTE MANAGEMENT	Amended Title to clarify that this Chapter includes both the general permit and technical requirements outside of the general permit.	None	Not Applicable
9VAC25-630-10. (Definitions)	Amended definition	None	Not Applicable	Amended agricultural storm water definition to read: "Agricultural storm water discharge " means a precipitation-related discharge of manure, litter, or process wastewater which has been applied on land areas under the control of an animal feeding operation or under the control of a poultry waste end-user or poultry waste broker in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater.	Clarify the definition
	Amended definition	None	Not Applicable	Amended confined poultry feeding operation definition to read: "Confined poultry feeding operation" means any confined animal feeding operation with 200 or more animal units of poultry. This equates to 20,000 chickens or 11,000 turkeys regardless of animal age or sex.	Clarify the definition
	Amended definition	None	Not Applicable	Amended fact sheet definition to read: "Fact sheet" means the document prepared by the department that summarizes the requirements set forth in this chapter regarding utilization, storage, and management of poultry waste by poultry waste end-users and poultry waste brokers.	Clarify the definition

Regulation Section	Action	Changes at Proposed Stage	Rationale	Changes since Proposed Stage	Rationale for Change
9VAC25-630-10. (Definitions)	Added definition	None	Not Applicable	"General permit" means section 50 of this regulation, 9VAC25-630-50.	Clarify the meaning of the text in the regulation
	Amended definition	Amended nutrient management plan definition to read: "Nutrient management plan" or "NMP" means a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment and management of poultry waste, including dry litter, and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters; <u>except that for a poultry waste end-user or poultry waste broker who is not subject to the general permit the requirements of 9VAC25-630-80 constitute the NMP.</u>	Added language to clarify the ability to use section 9VAC25-630-80 as a nutrient management plan so as to comply with § 62.1-44.17:1.1 which states the regulatory program must ensure proper storage of waste consistent with the terms and provisions of a nutrient management plan. The waste storage provisions contained in section 80 of 9VAC25-630 are consistent with the terms and provisions of a nutrient management plan.	Added a comma after general permit.	Corrected grammatical error
	Amended definition	Amended poultry waste broker definition: Removed "their" and replaced with "his"	Replaced pronoun for clarity	None	Not Applicable
9VAC25-630-20. (Purpose, delegation of authority)	Amended subsection A.	Removed "general permit" from subsection A	Removed language since this is not just a general permit regulation.	None	Not Applicable
		Removed "Pollution", replaced with " <u>Pollutant</u> "	Substituted correct term	None	Not Applicable
	Amended subsection C.	Amended effective date of the permit	Amended date for reissuance	None	Not Applicable

Regulation Section	Action	Changes at Proposed Stage	Rationale	Changes since Proposed Stage	Rationale for Change	
9VAC25-630-25. (Duty to comply)	Added new section	Added new section which includes language regarding the duty to comply with the regulation and general permit by the poultry grower, poultry waste broker and poultry waste end-user.	Added new section to clarify the duty to comply with the regulation and general permit	None	Not Applicable	
9VAC25-630-30. (Authorization to manage pollutants)	Amended subsection A.	Removed "provided that"	Language was redundant in subsection	None	Not Applicable	
	Amended subsection A.1.	Removed "Pollution", replaced with " <u>Pollutant</u> "	Substituted correct term	None	Not Applicable	
	Amended subsection A.3.	Removed "considered"	Clarify the prohibition	None	Not Applicable	
	Amended subdivision A.4.	Amended language regarding requirement to obtain NMP.	Amended to clarify that the poultry grower is to obtain the approval of the NMP from the Department of Conservation and Recreation	Amended to clarify that the poultry grower is to obtain the approval of the NMP from the Department of Conservation and Recreation	None	Not Applicable
		Amended to remove language regarding an obsolete date	Date is obsolete and no longer necessary	Date is obsolete and no longer necessary	None	Not Applicable
	Amended subdivision A.5.	Added language to clarify the timing of the adjoining property notification " <u>Prior to filing</u> " Removed "When a poultry grower files"	Amended to clarify when the adjoining property notification must be completed	Amended to clarify when the adjoining property notification must be completed	None	Not Applicable
	Amended subdivision A.6.	Added " <u>permitted</u> " to clarify that the permitted grower is required to complete a training program	Clarifies who is required to complete the training program	Clarifies who is required to complete the training program	None	Not Applicable

Regulation Section	Action	Changes at Proposed Stage	Rationale	Changes since Proposed Stage	Rationale for Change	
9VAC25-630-30. (Authorization to manage pollutants)	Amended subsection B.	Removed language: "who receives transferred poultry waste" and "regarding utilization, storage, and tracking, and accounting of poultry waste in his possession or under his control"	Removed redundant language - the language is in the poultry waste end-user and broker definitions	None	Not Applicable	
	Amended subsection B.	Added " <u>or the general permit as applicable</u> "	Added for further clarification of requirements	None	Not Applicable	
	Amended subsection B.2.	Removed "provided that"	Language was redundant in subsection	None	Not Applicable	
	Amended subdivision B.2.c.	Amended language regarding requirement to obtain NMP.	Amended to clarify that the poultry grower is to obtain the approval of the NMP from the Department of Conservation and Recreation	None	None	Not Applicable
		Amended to remove language regarding an obsolete date	Date is obsolete and no longer necessary	None	None	Not Applicable
	Amended subdivision B.2.d.	None	Not Applicable	Added poultry waste to end-users and brokers.	Added language to make this subdivision consistent with language throughout the regulation	
	Added subsection D. Continuation of permit coverage	None	Not Applicable	Added language regarding continuation of permit coverage with conditions	Added language to allow for consistency with other general permit regulations	

Regulation Section	Action	Changes at Proposed Stage	Rationale	Changes since Proposed Stage	Rationale for Change
9VAC25-630-40 (Registration statement)	Amended subsection A.	None	Not Applicable	Added the following items to the contents of the registration statement: e-mail addresses (if available), Farm Name (if applicable), whether the poultry are grown under a contract and the name of the poultry integrator (if applicable)	Added to enable more efficient communication & improve the agencies database of information regarding the facility
	Amended subsection A.	None	Not Applicable	Amended the neighbor notification portion of the certification statement to read: "I certify that [notice of the registration statement] for any confined poultry feeding operation that proposes construction of [<u>new</u>] poultry growing houses [after December 1, 2000 , <u>notice of the registration statement</u>] has been given to all owners or residents of property that adjoins the property on which the confined poultry feeding operation will be located. This notice included the types and numbers of poultry which will be grown at the facility and the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted.	Clarified the language regarding adjacent neighbor notification and removed obsolete date
	Amended subsection B.	None	Not Applicable	Added the e-mail addresses (if available) to the contents of the registration statement.	Added to enable more efficient communication with the permittee
9VAC25-630-50 (Contents of the general permit)	Amended General Permit Dates	Revised effective and expiration dates Removed modification dates	Amended dates for reissuance	None	Not Applicable
	Amended first paragraph	None	Not Applicable	Removed "or policies"	Removed unnecessary language
	Amended Part I.A. soils monitoring table	None	Not Applicable	Added footnote regarding sampling requirements	Added to clarify where to find the specific requirements

Regulation Section	Action	Changes at Proposed Stage	Rationale	Changes since Proposed Stage	Rationale for Change
9VAC25-630-50 (Contents of the general permit)	Amended Part I.B.2.	Added language to clarify adequate storage " <u>or at a site</u> " Added language: <u>d. For poultry waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.</u>	Clarify the language Added requirement to permit language for consistency of the storage requirements found in section 80 of 9VAC25-630. This is not a new requirement since the requirement is already in the special conditions of the permitted grower's nutrient management plan.	None	Not Applicable
	Amended Part I.B.5	Removed "considered"	Clarify the prohibition	None	Not Applicable
	Amended Part I.B.6.	Amended and removed language regarding an obsolete date	Date is obsolete and no longer necessary	Added "terms of the" to the last sentence	Clarify the language
	Amended Part I.B.8.	Amended language regarding the nutrient management plan requirements.	Clarify the language	Replaced §10.1-104.2 Code of Virginia citation with the Department of Conservation and Recreation regulation citation (4VAC5-15-150 A2)	Clarify the specific requirements that must be followed
	Amended Part I.B.9.	Amended language regarding the nutrient management plan requirements including removing obsolete dates.	Clarify the language	Replaced §10.1-104.2 Code of Virginia citation with the Department of Conservation and Recreation regulation citation (4VAC5-15-150 A2)	Clarify the specific requirements that must be followed
	Amended Part I.B.10.	None	Not Applicable	Added "covered" after ice	Added language to make this subdivision consistent with similar language throughout the regulation

Regulation Section	Action	Changes at Proposed Stage	Rationale	Changes since Proposed Stage	Rationale for Change
9VAC25-630-50 (Contents of the general permit)	Amended Part I.B.11.	Added " <u>Poultry waste shall not be land applied within buffer zones</u> " to clarify restriction	Clarify the prohibition	None	Not Applicable
	Amended Part I.B.13.	None	Not Applicable	Added "permitted" to the last sentence	Clarify who must comply with the requirement
	Amended Part II.C.	None	Not Applicable	Added sentence to subsection: If reporting is required by Part I or Part III of this general permit, the permittee shall follow the requirements of this subsection.	Added sentence to clarify the requirements for reporting monitoring results
	Amended Part II.D.	None	Not Applicable	Replaced board with Director	Substituted correct term
	Amended Part II.L.	None	Not Applicable	Amended language: added general permit and regulation citation	Clarify the duty to comply with the permit and regulation
	Amended Part II.M.	None	Not Applicable	Amended timeframe to reapply for the permit: reduced from 180 days to 30 days	This timeframe allows for completion of the reissuance of the regulation
	Amended Part II.Y.	None	Not Applicable	Amended language regarding transfer of permits	Clarify the requirements of transferring the permit
	Amended Part III.A. soils monitoring table	None	Not Applicable	Added footnote regarding sampling requirements	Added to clarify where to find the specific requirements

Regulation Section	Action	Changes at Proposed Stage	Rationale	Changes since Proposed Stage	Rationale for Change
9VAC25-630-50 (Contents of the general permit)	Amended Part III.B.2.	Added language to clarify adequate storage " <u>or at a site</u> " Added language: <u>d. For poultry waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.</u>	Clarify the language Added requirement to permit language for consistency of the storage requirements found in section 80 of 9VAC25-630.	None	Not Applicable
	Amended Part III.B.9.	Removed "considered"	Clarify the prohibition	None	Not Applicable
	Amended Part III.B.10.	Amended and removed language regarding an obsolete date	Date is obsolete and no longer necessary	Added "terms of the" to the last sentence	Clarify the language
	Amended Part III.B.12.	Amended language regarding the nutrient management plan requirements.	Clarify the language	Replaced §10.1-104.2 Code of Virginia citation with the Department of Conservation and Recreation regulation citation (4VAC5-15-150 A2)	Clarify the specific requirements that must be followed
	Amended Part III.B.13.	Amended language regarding the nutrient management plan requirements including removing obsolete dates.	Clarify the language	Replaced §10.1-104.2 Code of Virginia citation with the Department of Conservation and Recreation regulation citation (4VAC5-15-150 A2)	Clarify the specific requirements that must be followed
	Amended Part III.B.14.	None	Not Applicable	Added "covered" after ice, removed hyphenation	Added language to make this subdivision consistent with similar language throughout the regulation
	Amended Part III.B.15.	Added " <u>Poultry waste shall not be land applied within buffer zones</u> " to clarify restriction	Clarify the prohibition		

Regulation Section	Action	Changes at Proposed Stage	Rationale	Changes since Proposed Stage	Rationale for Change
9VAC25-630-50 (Contents of the general permit)	Amended Part III.B.17.	None	Not Applicable	Added "permitted" to the last sentence	Clarify who must comply with the requirement
9VAC25-630-80 (Utilization and storage requirements for transferred poultry waste)	Amended subsection C.1.(c)(2) and C.1.(c)(3)	Amended language to clarify the specific subdivision of the regulation promulgated by the Department of Conservation and Recreation	Clarify the language	Amended citation in C.1.(c)(3): replaced 4VAC5-15-150A.2. with 4VAC5-15-150A.2.a.	Amended to further clarify the subdivision where to find the requirements regarding nutrient recommendations.
9VAC25-630-80 (Utilization and storage requirements for transferred poultry waste)	Amended subsection C.2.	Amended language to clarify the specific subdivision of the regulation promulgated by the Department of Conservation and Recreation	Clarify the language	Added "covered" after ice, removed hyphenation	Added language to make this subdivision consistent with similar language throughout the regulation
	Amended subsection C.3.	Added " <u>Poultry waste shall not be land applied within buffer zones</u> " to clarify restriction	Clarify the prohibition	None	Not Applicable
	Amended subsection D.	Removed "or", replaced with " <u>and</u> "	Corrected typographical error	None	Not Applicable
FORMS (9VAC25-630)	Amended section to add the revised forms	None	Not Applicable	Amended: <i>Registration Statement, VPA General Permit for Poultry Waste Management for Poultry Growers, RS VPG2 (rev. 07/10)</i> Amended: <i>Registration Statement, VPA General Permit for Poultry Waste Management for Poultry Waste End-Users and Brokers, RS VPG2 (rev. 07/10)</i> Amended and Added Poultry Litter "Fact Sheet": <i>Fact Sheet, Poultry Litter, Requirements for Poultry Litter Use and Storage, VA DEQ (rev. 12/10)</i>	Amended the registration statements to reflect the changes made in 9VAC25-630-40 Amended the revised Fact Sheet to reflect the changes made in 9VAC25-630-80 and added the revised Fact Sheet to this section of the

Regulation Section	Action	Changes at Proposed Stage	Rationale	Changes since Proposed Stage	Rationale for Change
					regulation

Regulatory flexibility analysis

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

The regulation includes authorization for coverage under the general permit as well as establishes the utilization, storage, tracking and accounting requirements related to poultry waste. The use of the general permit is the alternative to issuing coverage under an individual Virginia Pollution Abatement (VPA) permit. Compliance with the technical requirements is an alternative for poultry waste brokers and end-users to requiring coverage under the general permit or an individual VPA permit.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

It is not anticipated the final amendments to this regulation will have any direct impacts on the family and family stability. However; there may be a minor impact where a farming family whom receives poultry waste must keep records regarding the poultry waste utilization.