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Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-191
VAC Chapter title(s)	Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations
Date this document prepared	October 15, 2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), 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**.

Acronyms and Definitions

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

AFO(s)- Animal Feeding Operation(s)
CAFO(s)- Concentrated Animal Feeding Operation(s)
VPA- Virginia Pollution Abatement

Legal Basis

Identify (1) the promulgating agency, 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 agency to regulate this specific subject or program, as well as a reference to the agency'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, § 62.1-44.17 specifies the Board's authority to regulate

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

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

The general permit associated with this regulation is expired and no longer achieves the purpose of this regulation. This regulation will be repealed.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

An informal advisory group was not formed to assist with the periodic review.

Commenter	Comment	Agency response
Patrick J. Fanning, Chesapeake Bay Foundation (CBF)	This General Permit for CAFOs has languished on the books for many years since its expiration in 2010 and we believe removing this General Permit from DEQ's regulations is both necessary and appropriate.	The agency agrees. This regulation will be repealed.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This general permit expired December 31, 2010 and has not been re-issued. This general permit regulation does not allow the Board to provide the public notice opportunities as required by the Federal CAFO Rule. Concentrated Animal Feeding Operations (CAFOs) instead are now regulated under the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31). A VPDES individual permit is issued to livestock and poultry CAFOs that meet the discharge criteria; the individual permit process provides the public notice opportunities as required by the Federal CAFO Rule. This general permit regulation is no longer need and will be repealed.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The regulation is no longer needed and will be repealed. CAFOs are regulated under the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31); an individual Permit is issued to cover livestock and poultry CAFOs that meet the discharge criteria. Animal Feeding Operations (AFOs) and CAFOs that do not discharge are also regulated under the Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (9VAC25-192) and the Virginia Pollution Abatement (VPA) Regulation and General Permit for Poultry Waste Management (9VAC25-630). Both the VPA general permits and VPDES individual permits are currently used to permit livestock and poultry AFOs and CAFOs.

Small Business Impact

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.

The regulation is no longer needed and will be repealed. Public comment was received during the public comment period supporting the repeal of this regulation. The general permit associated with this regulation expired December 31, 2010. Continuing to list this regulation as an active regulation leads to confusion concerning regulatory requirements to be complied with.

CAFOs that meet the discharge criteria are regulated under the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31); an individual VPDES permit is issued to cover poultry and livestock CAFOs that meet the discharge criteria. AFOs and CAFOs that do not discharge are regulated under the Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (9VAC25-192) and the Virginia Pollution Abatement (VPA) Regulation and General Permit for Poultry Waste Management (9VAC25-630). Both the VPA general permits and VPDES individual permits are currently used to permit livestock and poultry AFOs and CAFOs and do not conflict with federal laws.

Family Impact

Please assess the potential impact of the regulation's impact on the institution of the family and family stability.

The regulation does not impact the institution of the family or family stability.