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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Approving authority name</b>	Virginia Water Control Board
<b>Virginia Administrative Code (VAC) citation</b>	_9_ VAC_25_- _120-10 et seq.
<b>Regulation title</b>	GENERAL VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) PERMIT REGULATION FOR DISCHARGES FROM PETROLEUM CONTAMINATED SITES AND HYDROSTATIC TESTS
<b>Action title</b>	The above regulation expires on February 26, 2008. The purpose of this action is to re-issue the regulation.
<b>Document preparation date</b>	October 2, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Discharges from Petroleum Contaminated Sites and Hydrostatic Tests expires on February 26, 2008. The purpose of this regulatory action is to re-issue the regulation.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15.(5) provides the State Water Control Board with the authority to issue certificates for the discharge of

sewage, industrial wastes and other wastes 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 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.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) 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 General VPDES Permit Program.

**Need**

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

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Persons causing or permitting a discharge of pollutants to Virginia waters are required to have a permit from the State Water Control Board for the discharge. Discharges of petroleum contaminated water are common during petroleum cleanups and construction de-watering operations. Discharges of hydrostatic test waters are common during the hydrostatic testing of pipelines. This general permit regulation allows the State Water Control Board to issue coverage for these types of discharges in a quick and efficient manner while protecting the waters of the Commonwealth.

The existing general permit expires on February 26, 2008. The proposed regulatory action is needed in order to re-issue this general permit.

**Substance**

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

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The general permit establishes limitations and monitoring requirements for discharges of petroleum-contaminated wastewater and wastewater from hydrostatic tests. As with an individual VPDES permit, the effluent limits in the general permit are set to protect the quality of the waters receiving the discharges. No specific changes to the existing general permit have been identified at this time. Amendments may be identified following the submittal of public comments on this Notice.

## Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

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Discharges of petroleum-contaminated wastewater and wastewater from hydrostatic tests are considered point source discharges of pollutants and thus are subject to regulation under the VPDES permit program. There are two alternatives for compliance with Federal and State requirements to permit point source discharges. The first option is to re-issue this general VPDES permit to cover discharges of petroleum contaminated wastewater and hydrostatic test wastewater. The second option is termination of this general permit regulation upon its expiration and the issuance of individual VPDES permits for each treatment works.

## Public Participation

*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments on this notice.*

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The Board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) impacts of the regulation on farm and forest land preservation. The 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, email or fax to James Barnett, Virginia Department of Environmental Quality, P.O. Box 1105, Richmond, VA. 23218, telephone (804) 698-4289, fax (804) 698-4266, email [jsbarnett@deq.virginia.gov](mailto:jsbarnett@deq.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered comments must be received by 5:00 p.m. on December 13, 2006.

## Participatory Approach

*Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

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The Board will use a participatory approach by forming a Technical Advisory Committee of relevant stakeholders to assist in developing the regulation. Persons interested in assisting in the regulation's development should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and the organization they represent (if any). Any persons who want to be on the Technical Advisory Committee are encouraged to attend the public meeting mentioned above. The primary function of the Technical Advisory Committee is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multiple applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the Technical Advisory Committee will be sent to all applicants.

### Family impact

*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.*

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The regulation deals with discharges of petroleum-contaminated water and water from hydrostatic tests and is expected to have no impact on the institution of family. This regulation has existed since 1992 and the DEQ has received no complaints that this regulation adversely affects the institution of family.