



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9 VAC25-196
<b>Regulation title</b>	General VPDES Permit For Non-contact Cooling Water Discharges of 50,000 Gallons Per Day or Less
<b>Action title</b>	Amend and Reissue Existing Regulation
<b>Final agency action date</b>	September 27, 2012
<b>Document preparation date</b>	August 29, 2012

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 General Virginia Pollutant Discharge Elimination System (VPDES) Permit For Non-contact Cooling Water Discharges of 50,000 Gallons Per Day or Less has existed since 1998. This regulation amendment will reissue the existing general permit which expires on March 1, 2013. This general permit establishes effluent limitations and monitoring requirements for point source discharges of 50,000 gallons per day or less of non-contact cooling water and cooling equipment blow down to surface waters. The effluent limits in the general permit are set to protect the quality of the waters receiving the discharges. The general permit regulation is being reissued in order to continue making it available as a permitting option for this type of discharger. The changes to the regulation were made to make this general permit similar to other general permits issued recently and in response to Technical Advisory Committee suggestions and staff requests to clarify and update permit limits and conditions.

The substantive changes to the regulation are: (1) added two reasons why a facility's discharge would not be eligible for coverage under the permit; (2) added language to allow for 'administrative continuation' of coverage under the general permit; (3) added effluent limitations for copper, zinc and silver for both freshwater and saltwater receiving streams; (4) added permit special conditions for: (a) the required

number of significant digits for reporting monitoring results; (b) a requirement to implement measures and controls consistent with a total maximum daily load (TMDL) requirement when the permitted facility is subject to an approved TMDL; (c) the general permit notice of termination requirements; (d) a requirement to control discharges as necessary to meet water quality standards; and (e) the permittee's responsibility to comply with any other federal, state or local statute, ordinance or regulation; and (5) modified the municipal separate storm sewer system (MS4) notification special condition to require the permittee to submit discharge monitoring reports to the owner of the MS4 if the permittee discharges to the MS4.

The only substantive changes to the regulation since the proposed staged is the modification of 9VAC25-196-60 B to clarify the late registration statement provision and more clearly define when an owner qualifies for "administrative continuance" of general permit coverage.

**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.*

On September 27, 2012 the State Water Control Board adopted amendments to the regulation 9VAC25-196, General Virginia Pollutant Discharge Elimination System (VPDES) Permit For Non-contact Cooling Water Discharges of 50,000 Gallons Per Day or Less.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
60	B. Late registration statements. Late registration statements will be accepted, but authorization to discharge will not be retroactive. Owners described in subdivision A 2 b of this section that submit late registration statements are authorized to discharge under the provisions of 9VAC25-196-50 G if a complete registration statement is submitted on or before March 2, 2013.	B. Late registration statements. <del>Late</del> Registration statements will be accepted <u>after March 2, 2013</u> , but authorization to discharge will not be retroactive. Owners described in subdivision A 2 b of this section that submit <del>late</del> registration statements <u>after February 1, 2013</u> are authorized to discharge under the provisions of 9VAC25-196-50 G if a complete registration statement is submitted on or before March 2, 2013.	Modification to clarify the late registration statement provision and to more clearly define when an owner qualifies for "administrative continuance" of the general permit coverage.

**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.*

Commenter	Comment	Agency response
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No public comments were received.

**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.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
10		Definitions	Added a definition for "Total Maximum Daily Load (TMDL)" - used in section 50 B 4, and in section 60, Part I B 9. Added "or DEQ" to the definition of "Department".
	15	none	Added a section on "Applicability of incorporated references based on the dates that they became effective" to define the applicable date of EPA 40 CFR references used in the regulation.
40		Effective date of the permit	Changed the effective date to 3/2/2013 and the expiration date to 3/1/2018 to correspond to the new general permit dates (see section 70). Deleted "and receipt of a this general permit" because the owner does not need to receive a copy of the permit for the terms to be effective.
50 A & B	50 B, C, D & E	Authorization to discharge	Reformatted this section to match the structure of other general permits being issued by the Board at this time.
	50 B 3 & 4	none	Added two additional reasons an owner would not be eligible for coverage under the general permit, per EPA comments on other general permits issued recently. An owner will not be eligible for coverage when the discharge would violate the Water Quality Standards antidegradation policy, or if the discharge is not consistent with the assumptions and requirements of an approved TMDL.
	50 F	Compliance with other statutes, ordinances or regulations	Added the statement: "Compliance with this general permit constitutes compliance with the federal Clean Water Act, the State Water Control Law, and applicable regulations under either, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation.", per comments from the Attorney General's Office (AGO) on other recent general permits, in order to recognize that there are some exceptions to compliance with the CWA as stated in the permit regulation.
	50 G	none	Added a provision to allow for "administrative continuance" of coverage under the old expired general permit until the Board either issues coverage under the new permit, or denies coverage to the owner, provided the owner has submitted a timely registration and is in

			compliance with the expiring permit.
60	60 A, B, C & D	Registration statement	Reformatted this section to match the structure of other general permits being issued by the Board at this time.
60	60 A 2 a	Registration statement deadlines	Revised the deadline for existing individually permitted facilities to notify the DEQ and submit a registration for general permit coverage to 210 days prior to expiration of the individual permit. This time period allows DEQ time to determine if the owner is eligible for general permit coverage, and if they are not eligible, the permittee still has sufficient time to submit an individual permit application within the required 180 day period before the individual permit expires (AGO comment).
	60 B	none	Added subsection on "Late registration statements" to allow for late registrations, but stated that authorization to discharge will not be retroactive. While the Board will allow late registrations, the permittee needs to know that they could be subject to enforcement action for discharging without a permit.
60	60 C	Registration statement contents	C 1 & 2 - added "email address (if available)" to both the owner's and operator's required information. C 6 a - reworded the question slightly for clarity. C 9 - removed the qualifier "For cooling waters with a direct discharge to surface waters", because we want the required map from all dischargers. Specified that the map be a USGS 7.5 minute topographic map or equivalent computer generated map. C 11 - added the question as to whether the discharge will be through an MS4, and if so, specified that the owner must notify the MS4 owner and describe the discharge.
70		General permit	Changed the permit effective date to 3/2/2013 and the permit expiration date to 3/1/2018 to correspond to the new reissuance dates.
70, General Permit, 1st paragraph		"or policies"	Deleted "or policies" per comment from AGO because it would be difficult to enforce a prohibition created by policy.
70, Part I A	70, Part I A 1	Effluent limits table	Two more effluent limits tables have been added, so numbered this one as "1", and specified that it is the "Effluent limitations and monitoring requirements for the first four years of the permit term (March 2, 2013, through March 1, 2017)". Changed the pH limits to 2 significant digits. Changed the copper, zinc and silver parameters from "total dissolved" to "total recoverable" to assist the permittee in determining if their discharge will meet the effluent limits in the last year of the permit cycle. Modified footnote (3) to specify that the monitoring applies to outfalls where either a treatment additive that contains chlorine or chlorine compounds is used, or the source of cooling water

			<p>is chlorinated. Specified that all data below the QL of 0.1 mg/L be reported as "&lt;QL.</p> <p>Modified footnote (4) changing the "target level" for metals analysis to "maximum quantification level", allowing any approved 40 CFR 136 method to be used for the analysis, and setting the Max QL of copper to 1.0 µg/l, zinc to 50.0 µg/l, and silver to 1.0 µg/l.</p> <p>Added footnote (7) stating that hardness monitoring is only required for discharges to freshwater streams, perennial streams, or dry ditches.</p>
	70, Part 1 A 2	none	<p>Added an effluent limitations and monitoring page for the last year of the permit term (March 2, 2017, through March 1, 2018) for discharges to freshwater receiving streams. Added effluent limits for copper, zinc and silver to the permit based on a reasonable potential for these type of facilities to have discharges that will exceed water quality standards if not controlled. The limits go into effect the last year of the permit to allow the permittee time to adjust operations to meet the permit limits.</p>
	70, Part 1 A 3	none	<p>Added an effluent limitations and monitoring page for the last year of the permit term (March 2, 2017, through March 1, 2018) for discharges to saltwater receiving streams. Added effluent limits for copper, zinc and silver to the permit based on a reasonable potential for these type of facilities to have discharges that will exceed water quality standards if not controlled. The limits go into effect the last year of the permit to allow the permittee time to adjust operations to meet the permit limits.</p>
70, Part 1 B 4		MS4 Notification Special Condition	<p>Added that the required notification be in writing, and that it include the VPDES general permit number. Also added the requirement that any DMRs required by the permit be submitted to both the Department and the MS4 owner. This will assist the MS4 owner with tracking who is discharging to the MS4, and what is being discharged.</p>
	70, Part I B 8	none	<p>Added this special condition to specify the number of significant digits to be used to report monitoring results to be consistent with the requirement of other general permits issued by the Board.</p>
	70, Part I B 9	none	<p>Added this special condition to require the permittee to implement measures and controls consistent with a TMDL requirement when the facility is subject to an approved TMDL.</p>
	70, Part I B 10	none	<p>Added this special condition to specify the procedure that must be followed if the permittee decides to terminate the general permit coverage.</p>
	70, Part I B 11	none	<p>Added this special condition requiring discharges authorized by this permit to meet water quality standards. While it is not expected that these facilities will discharge parameters other than those that are limited in the permit, it is a good</p>

			reminder to the permittee that other pollutants should not be discharged.
	70, Part I B 12	none	Added this special condition that states that approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other federal, state, or local statute, ordinance, or regulation.
70, Part II A	70, Part II A 4	Monitoring	Added clarification that samples taken as required by the permit must be analyzed in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.
70, Part II I, NOTE		Reports of noncompliance	Added that reports may be made online and listed the web address for reporting.
70, Part II M		Duty to reapply	Modified the time period prior to permit expiration that a permittee has to submit a new registration statement to reapply for permit coverage from 90 days to 30 days to be consistent with the requirement in Section 60 A (Registration statement).
70, Part II Y		Transfer of permits	Modified the condition to state that the permit may be automatically transferred to a new permittee if the current permittee notifies the Department within 30 days of the transfer of title to the property. Previously it was "at least 30 days in advance of the proposed transfer".

**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 reissuance of the general VPDES permit accomplishes the objectives of applicable law and minimizes the costs to a small business owner and simplifies the application process. Without the general permit, a small business owner would be required to obtain an individual permit which would increase the complexity of a permit application and permit costs.

The amended regulation includes an allowance for continuation of permit coverage in instances where an owner has submitted a timely registration and is in compliance with their existing permit. This will allow the permittee to legally and safely discharge if permit coverage is not granted by the Board prior to the existing permit's expiration date.

The amended regulation includes effluent limitations for metals, but does not implement this requirement until the last year of the permit. This will allow facilities time to implement measures to meet the new limits before they go into effect.

## Family impact

*Assess the impact of this 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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It is not anticipated that this regulation will have a direct impact on the institution of the family or family stability.

## Acronyms and Definitions

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

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AGO - Attorney General's Office  
CFR - Code of Federal Regulations  
CWA - Clean Water Act  
DEQ - Department of Environmental Quality  
DMR - discharge monitoring report  
EPA - Environmental Protection Agency  
MS4 - municipal separate storm sewer system  
QL - quantification level  
TMDL - total maximum daily load  
USGS - United States Geological Survey  
VPDES - Virginia Pollutant Discharge Elimination System