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

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC25-120
Regulation title	General VPDES Permit Regulation for Discharges from Petroleum Contaminated Sites, Groundwater Remediation and Hydrostatic Tests
Action title	Amend and Reissue Existing Regulation
Date this document prepared	March 10, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) 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.

This rulemaking is proposed in order to amend and reissue the existing general permit which expires on February 25, 2013. The general permit covers point source discharges of wastewaters from sites contaminated by petroleum products and chlorinated hydrocarbon solvents and also the point source discharges of hydrostatic test wastewaters resulting from the testing of petroleum and natural gas storage tanks and pipelines.

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) 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, § 62.1-44.16 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.

This proposed regulatory action is needed in order to establish appropriate and necessary permitting requirements for discharges of wastewater from sites contaminated by petroleum products and chlorinated hydrocarbon solvents and also the point source discharges of hydrostatic test wastewaters resulting from the testing of petroleum and natural gas storage tanks and pipelines. These discharges are considered to be point sources of pollutants and thus are subject to regulation under the VPDES permit program. The primary issue that needs to be addressed is that the existing general permit expires on February 25, 2013 and must be reissued in order to continue making it available after that date. Other issues that need consideration are: if additional requirements are needed when wastewater from sites contaminated by petroleum products and chlorinated hydrocarbon solvents and hydrostatic tests discharges to impaired waters (e.g. waters with total maximum daily loads), waters with special standards (9VAC 35-260-310) or high quality or exceptional waters (e.g. per antidegradation requirements in 9VAC25-260-30). In addition, the permit must be analyzed for conformance with any changes to the water quality criteria (e.g. bacteria) which may necessitate changes in the effluent limits.

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.

No specific changes to the existing general permit regulation have been identified at this time. Amendments may be identified following the submittal of public comments on this notice, by the technical advisory committee during deliberations of this general permit regulation or as the issues identified in "Need" are considered.

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.

There are two alternatives for compliance with federal and state requirements to permit discharges from sites contaminated by petroleum products and chlorinated hydrocarbon solvents and also the point source discharges of hydrostatic test wastewaters resulting from the testing of petroleum and natural gas storage tanks and pipelines. One is to issue individual VPDES permits to each establishment. The other is to reissue the general VPDES permit to cover this category of discharger.

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 hearing is to be held to receive comments on this notice.

The agency 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, 3) potential impacts of the regulation and 4) impacts of the regulation on farm and forest land preservation. The agency 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 may do so by mail, email or fax to George Cosby, DEQ, P.O. Box 1105, Richmond, VA 23218; telephone no. 804/698-4067; fax no. 804/698-4032; email george.cosby@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by 11:59 p.m. on Wednesday, May 11, 2011, the last day of the public comment period.

A public meeting will not be held. A public hearing will be held on the proposal at a later time.

Technical Advisory Committee

A technical advisory committee will be involved in the development of the proposed regulation.

The Board is using a technical advisory committee to develop a proposal. Persons interested in assisting in the development of a proposal 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 you represent (if any). The primary function of the advisory committee is to develop recommended regulation

amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-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 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.

This regulation will have no direct impact on the institution of the family or family stability.