



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| Agency name | State Water Control Board |
| Virginia Administrative Code (VAC) citation | 9VAC25-193 |
| Regulation title | General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Concrete Products Facilities |
| Action title | Amend and Reissue the Existing Regulation |
| Date this document prepared | December 1, 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 reissue the existing VPDES general permit which expires on September 30, 2013. The general permit establishes limitations and monitoring requirements for point source discharges to state waters from concrete products facilities.

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(14) authorizes the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes. § 62.1-44.15:5.2 specifies any general permit issued for discharges from ready-mixed concrete plants shall apply to both permanent and portable plants, and it requires all settling basins constructed on or after February 2, 1998 to be lined with concrete or any other impermeable materials. Further, § 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.

The proposed regulatory action is needed in order to establish permitting requirements for discharges from concrete products facilities to protect the quality of state waters. The existing permit expires on September 30, 2013, and the regulatory action is necessary in order to reissue the permit for another five-year term.

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.

The general permit establishes limitations and monitoring requirements for point source discharges from concrete products facilities. 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. The primary issue that needs to be addressed is that the existing general permit expires on September 30, 2013 and must be reissued in order to continue making it available after that date. Currently the agency is trying to make all general permits have the same look and use similar wording when possible. Some of these changes may be: adding some new definitions to help clarify the requirements of the permit, adding two reasons authorization to discharge cannot be granted, adding language to allow for 'administrative continuances' of coverage, changing the registration statement due dates, better explaining what chemicals need to be listed on the registration statement, better defining when total petroleum hydrocarbon monitoring is required, better defining and regulating facilities that usually have no discharge to surface waters, updating the storm water pollution prevention plan section, adding new special conditions as needed (e.g. water quality standards must be maintained and submittal of clean up plans when product or sedimentation is noted in the stream during visual monitoring) and modifying due dates for ownership transfer notifications. Also, more amendments may be identified following the submittal of public comments on this Notice and during technical advisory committee meetings.

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.

Discharges from concrete products facilities are considered to be point sources of pollutants and thus are subject to regulation under the VPDES permit program. There are two alternatives for compliance with the federal and state requirements to permit these point source discharges: one is to issue individual VPDES permits to each discharger; the other is to reissue the general VPDES permit to cover this category of discharger. Issuing a general VPDES permit is the most cost-effective manner to regulate this category of discharges.

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 Eleanore Daub at the Office of Water Permits and Compliance Assistance (OWPCA), Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218; telephone (804) 698-4111; fax (804) 698-4032, email elleanore.daub@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 DEQ by February 15, 2012, the last day of the public comment period.

Public Hearing at Proposed Stage

A public hearing will be held after publication of the proposed stage of the regulatory action.

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.

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