



Exempt Action Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-860
Regulation title	General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Potable Water Treatment Plants
Action title	Amend and Reissue the Existing Regulation
Document preparation date	November 9, 2012

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the 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.

This rulemaking is proposed in order to reissue the existing VPDES general permit which expires on December 23, 2013. The general permit contains limitations and monitoring requirements for point source discharge of treated wastewaters from potable water treatment plants to surface waters. This general permit regulation is being reissued in order to continue making it available for these plants to continue to discharge.

Substantive changes proposed are:

Definitions were added for Department, membrane treatment, microfiltration, municipal separate storm sewer system, nanofiltration, reverse osmosis, total maximum daily load and ultrafiltration; modified the definition of potable water treatment plant;

The expiration date of this permit is changed from December 23, 2018 to June 30, 2018 to avoid the holiday season and put it on a calendar quarter;

Added two reasons authorization to discharge cannot be granted (if the antidegradation policy is not met or if the discharge is not consistent with a total maximum daily load (TMDL)), moved the details of the whole effluent toxicity testing into the permit itself and added a statement in the authorization section that owners who demonstrate reasonable potential for toxicity are not allowed coverage under the general permit;

Added language to allow for 'administrative continuances' of coverage;

Adjusted the submittal dates for registration statements;

Expanded several registration statement questions to include chemical usage changes, treatment technology changes, discharges to a municipal separate storm sewer system (MS4) notification and notification of downstream water supply owners for new plants;

Reduced monitoring requirements on the effluent limits pages for plants that are not reverse osmosis or nanofiltration plants from monthly to quarterly;

Changed the '5 Grab/8 Hour Composite' on the effluent limits pages for total suspended solids (TSS) and total dissolved solids (TDS) samples to 'Composite' and explained how that differs for continuous vs. batch discharges;

In the special conditions, the inspection frequency was changed from 'daily' to 'daily when discharging.' This was done at the request of the industry technical advisory committee (TAC) members. This seemed reasonable as other states had a similar frequency or no inspections at all;

In the special conditions, added that discharges to total maximum daily load (TMDL) waters must implement measures and controls consistent with the TMDL;

In the special conditions, added that groundwater monitoring plans may be reevaluated and changed when appropriate, and that the owner may submit that evaluation to the Board for consideration;

In the special conditions, changed that Operations and Maintenance (O&M) manuals are no longer submitted to the Department for approval but they must be made available to Department personnel upon request;

In the special conditions, the details of the whole effluent toxicity (WET) testing requirement were moved here and out of the 'authorization to discharge' section 9VAC25-860-50. The 2008 regulation required this WET testing before coverage could be granted. This was a hardship on new permittees who had to apply and pay for an individual permit before they could qualify for the general permit. With this draft, we are proposing to require the WET testing during the term of the general permit, and only for permittees with flows greater than or equal to a daily maximum of 50,000 GPD. We are also giving the owners an opportunity to find and eliminate the source of any toxicity before they are subject to a WET limit at the next reissuance. This should attract new permittees and existing permittees with daily maximum flows less than 50,000 GPD to move away from their individual permits to the general permit. The regulation also allows for representative toxicity data from the past to be used to qualify for general permit coverage, and the owner does not have to retest unless there are significant changes at the plant. Finally, the WET testing requirement within the general permit is a onetime requirement. Once the permittee shows no reasonable potential for toxicity, then they do not need to repeat the tests unless changes are made at the plant. This should also attract more individual permit holders that already have this WET testing information to turn to the general permit; and,

In the special conditions, added that discharges should be controlled to meet water quality standards, added procedures for termination of coverage, and that coverage under the permit did not relieve an owner of the responsibility to comply with any other federal, state or local statute, ordinance or regulation.

The changes described here were made to make this general permit similar to other general permits issued recently and in response to staff and technical advisory committee members' requests to clarify and update permit limits and conditions.

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., the 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. 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 Environmental Protection Agency. This Memorandum of Understanding was modified on May 20, 1991 to authorize the Commonwealth to administer a General VPDES Permit Program.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The proposed regulatory action is needed in order to establish permitting requirements for discharges from potable water treatment plants to protect the quality of state waters. The existing permit expires on December 23, 2013, and the regulatory action is necessary in order to reissue the permit for another term. The goal of the regulatory action is to continue the existence of the general permit that establishes limitations and monitoring requirements for point source discharges from potable water treatment plants that ensures protection of the environment.

Substance

Please briefly identify and explain the new substantive provisions (for new regulations), the substantive changes to existing sections, or both where appropriate.

The substantive changes are listed in the summary above.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The advantages to the public and the agency are that a VPDES general permit will continue to be available to potable water treatment plants to enable them to discharge safely to surface waters. The regulatory action poses no disadvantages to the public or the Commonwealth.

One pertinent matter of interest to the regulated community and government officials is that potable water treatment plants have residual sludge that must be disposed of. Some potable water treatment plants land apply this sludge. These land application provisions are not included in this proposal; however, the agency is considering adding the land application requirements for disposal of potable water treatment plant residual sludge as a special condition to this permit. This special condition would only apply to those plants that land apply their residual sludge. If incorporated into this general permit regulation, the requirements would go to the technical advisory committee for review before final adoption by the State Water Control Board.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements that exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

The regulation will be applicable statewide and will not affect any one locality disproportionately.

Public Participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts of the regulation on the regulated community and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the State Water Control Board is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and on any impacts of the regulation on farm and forest land preservation. Also, the Board is 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 at the public hearing or by mail, fax or email to Elleanore Daub, P.O. Box 1105, Richmond, VA 23218, (804) 698-4111 (phone), (804) 698-4032 (fax) or 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 the close of the comment period.

A public hearing will be held and notice of the public hearing will appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

There are currently 34 potable water treatment plants in Virginia covered under this general permit. The requirements proposed are not expected to cause any more of an economic impact than under the existing permit.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

These discharges are point sources of pollutants to surface waters and thus are subject to regulation under the VPDES permit program. There are two alternatives for compliance with federal and state requirements to permit discharges. One is to issue individual VPDES permits to each facility. The other is to reissue the general VPDES permit to cover this category of discharger. A general VPDES is the least burdensome, intrusive and costly to achieve the purpose of the regulation.

The agency also considered making the whole effluent toxicity requirements less burdensome to the regulated community. For example, the details of the whole effluent toxicity testing requirement were moved to the permit itself and out of the 'authorization to discharge' section 9VAC25-860-50 of the regulation. The 2008 regulation required this WET testing before coverage could be granted. This was a hardship on new permittees who had to apply and pay for an individual permit before they could qualify for the general permit. With this draft, we are proposing to require the WET testing during the term of the general permit, only for permittees with daily maximum flows greater than or equal to 50,000 GPD, and

giving the owners an opportunity to find and eliminate the source of any toxicity before they are subject to a WET limit at the next permit reissuance. This should attract new permittees and existing permittees with a maximum daily flow of less than 50,000 GPD to move away from their individual permits to the general permit. The regulation also allows for representative toxicity data from the past to be used to qualify for the general permit, and the owner does not have to retest unless there are significant changes at the plant. Finally, the WET testing requirement within the general permit is a onetime requirement. Once the permittee shows no reasonable potential for toxicity, then they do not need to repeat the tests unless changes are made at the plant. This should also attract more individual permit holders that already have this WET testing information to turn to the general permit.

Another less burdensome amendment considered in the proposal is the reduced monitoring requirements for certain potable water treatment plants (generally, the conventional plants) from monthly sampling to quarterly. Also, daily inspections of the treatment works have been reduced to daily inspections only when discharging.

One alternative that was considered but not added to the proposed general permit regulation was adding land application provisions for disposal of potable water treatment plant residual sludge. The agency is considering adding the land application requirements for potable water treatment plant residual sludge as a special condition to this permit. This special condition would only apply to those plants that land apply their residual sludge. If incorporated into this general permit regulation, the requirements would go to the technical advisory committee for review before final adoption by the State Water Control Board.

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 permittees covered under this permit to date are localities and not small businesses.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Augusta County Service Authority	Requested to participate on technical advisory committee.	The authority was invited and did participate.

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.

This regulation will have no 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.

NOIRA - means "Notice of Intended Regulatory Action" and describes the subject matter and intent of the planned regulation and allows at least 30 days for public comment.

MS4 - means "municipal separate storm sewer system" and is defined in the regulation.

TAC - means "technical advisory committee" formed to assist and advise the Board on development and amendment of general permit regulations as provided for in the Administrative Process Act § 2.2-4006 A 8.

TDS - means "total dissolved solids" which is the total dissolved (filterable) solids that can pass through a filter of 2.0 mm (or smaller) nominal pore size under specified conditions. Dissolved solids are smaller than suspended solids.

TMDL - means "total maximum daily load" and is defined in the regulation.

TSS - means "total suspended solids" which is the total suspended (not filterable) solids retained on the 2.0 mm filter. Suspended solids are generally those which are visible and in suspension in the water.

VPDES - means the "Virginia Pollutant Discharge Elimination System" which is a permit or document issued by the Board pursuant to this chapter authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge.

WET - means "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.