



Exempt Action Final 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
Final agency action date	June 17, 2013
Document preparation date	May 1, 2013

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.

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. Since publication of the proposed only minor clarification changes have been made.

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 must 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.

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 June 17, 2013 the State Water Control Board (state agency action) the amended General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Potable Water Treatment Plants.

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
9VAC25-860-10	Microfiltration, nanofiltration, reverse osmosis and ultrafiltration definitions specified a pore size' up to' a certain size.	The pore size should be 'down' to a certain size	Filters take out smaller and smaller impurities so the pore sizes go 'down' to a smaller and smaller pore sizes.
9VAC225-860-70 Part I A 1 and 2	Footnotes were out of order in the tables of effluent limitations	Reordered the footnotes.	For clarity.
9VAC225-860-70 Part I A 2	Old footnote (1) deleted the requirement to meet alternate standards for dissolved oxygen when the water quality standards establish alternate standards for dissolved oxygen. This normally occurs in trout streams where a more stringent dissolved oxygen standard is required.	Added the requirement back in but listed it separately as new footnote (4).	To ensure water quality standards are met.
9VAC25-860-70 Part I B 10 a	Symbol for parts per thousand was incorrectly adopted into the regulation in 2008 as '%'	Corrected the symbol to ‰.	Typographical error
9VAC25-860-70 Part	Freshwater organisms are used for toxicity testing where the	Freshwater organisms are used where the salinity of the receiving water is less than	Proposed language doesn't include salinities at that are

I B 10 a	salinity of the receiving water is less than 1.0% (parts per thousand). Where the salinity of the receiving water is greater than 1.0% but less than 5.0% either freshwater or saltwater organisms may be used. Saltwater organisms are used where the salinity is greater than 5.0%.	1.0‰ (parts per thousand). Where the salinity of the receiving water is greater than <u>or equal to</u> 1.0‰ but less than 5.0‰ either freshwater or saltwater organisms may be used. Saltwater organisms are used where the salinity is greater than <u>or equal to</u> 5.0‰	equal to 1.0‰ and 5.0‰. It only recognized salinities above and below 1.0‰ and 5.0‰.
9VAC25-860-70 Part II Y	Proposal stated the transfers of permits may be notified to the department within 30 days of the transfer.	Final went back to original language which stated transfers are notified to the department within 30 days in advance of the proposed transfer but added 'unless permission for a later date has been granted by the board.'	Proposed language could be problematic if the new owner was not appropriate for coverage under the transferred permit. The board and owners need time to issue another type of permit or stop discharge. With the new language the board still has the opportunity to give the owners more time if 30 days in advance is not possible.

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
Hanover County Department of Public Utilities (Matthew Ellinghaus, Assistant Chief of Operations & Maintenance)	Expressed support of the amended regulation. Many of the proposed changes will allow more potable water treatment plants to take advantage of the general permit which was not initially possible as well as decrease the regulatory burden on existing general permit holders. They noted the changes that related to reduced monitoring, whole effluent toxicity and clarification of definitions and inspection requirements.	Noted.

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.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10	N/A	Definitions for "Potable Water Treatment Plant" and "Reverse	Definitions were added for department, membrane treatment, microfiltration, municipal separate storm

		<i>Osmosis.</i> "	sewer system, nanofiltration, reverse osmosis, total maximum daily load and ultrafiltration. This terminology is used in the regulation and needed explanation. The definition of potable water treatment plant is expanded to include creation of potable water for private industrial uses and not just limit it to plants primarily engaged in distributing water for sale for domestic, commercial or industrial use. Most of these plants fall under Standard Industrial Classified (SIC) Code 4941 (Water Supply) but some establishments that produce potable water for their own use may not fit under this SIC Code and the TAC thought they should also have an opportunity for coverage under this permit.
N/A	15	EPA regulations in Title 40 of the Code of Federal Regulations are referenced within the document sections individually.	New Section 15 allows dates for U.S. Environmental Protection Agency references to be as described in this new section one time without being updated at each 40 CFR reference throughout the regulation. All dates refer to the most recent Federal Register publication. In this case it is July 2012. Language is being inserted in all DEQ regulations as they are amended. Language provided by DEQ Policy staff
40 and 70	N/A	Permit became effective December 24, 2008 and expires December 23, 2013.	Revised permit effective date to December 24, 2013 and expiration date to June 30, 2018, which are the dates for this reissuance. In addition, the expiration date of this permit is changed to June 30, 2018 to move it away from the end of the year to address DEQ staff resource issues and to have the permit effective date begin on a calendar quarter which is consistent with other general permits. Normally this permit would expire on December 23, 2018.
50 A and B	N/A	Contains what conditions require authorization to discharge and will not allow authorization. The owner is required to submit a registration statement, a fee and comply with the permit limits. The owner must not be required to obtain an individual permit or must not discharge to a receiving stream that prohibits the discharge. Authorization to discharge was dependent on test results of the effluent demonstrating no whole effluent toxicity to be submitted with the registration statement.	Added two additional reasons authorization to discharge cannot be granted per EPA comments on other general permits issued recently. Therefore, an owner will be denied authorization when the discharge would violate the antidegradation policy and if the discharge is not consistent with the assumptions and requirements of an approved TMDL. The requirement to submit whole effluent toxicity data with the registration statement was removed and a whole effluent toxicity requirement was placed into the permit itself. However, if any whole effluent toxicity testing was done and demonstrated toxicity, the discharge would not be eligible for coverage. Reformatted to match structure of other general permits being issued at this time.
50 C	N/A	Receipt of the permit does not relieve the owner to comply with other applicable laws or regulations.	Added the statement <i>"Compliance with this general permit constitutes compliance with the Clean Water Act and the State Water Control Law, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation."</i> This was added in response to AGO comments on other general permits recently to recognize there are some exceptions to compliance with the CWA as stated in the permit regulation.
N/A	50 D	None	Added language to allow for administrative continuances of coverage under the old expired general permit until the new permit is issued and coverage is granted or coverage is denied; if the permittee has submitted a timely registration and is in compliance. This language is being added to all recently reissued general permits so permittees can discharge legally and safely if the permit reissuance process is delayed.
60 A	N/A	The deadline for existing facilities currently holding a general potable water treatment plant VPDES permit is 90 days. The deadline for existing facilities holding an individual permit is 180 days. The deadline for new facilities is 60	The deadline for existing facilities currently holding a general potable water treatment plant VPDES permit is 60 days. The deadline for existing facilities holding an individual permit is 270 days. This gives DEQ 30 days to determine whether coverage can be granted and the individual permit holder then has 60 days to prepare and submit an individual permit application to meet the

		days before commencement of discharge.	required 180 day deadline in their existing permit if their request for coverage under the general permit is denied. The deadline for new facilities is 60 days before commencement. These dates were discussed and concurred by the TAC.
N/A	60 B	None	Added that late registration statements will be accepted, but authorization to discharge will not be retroactive. Also, that existing permittees may get administrative continuance of their existing permit if a complete registration statement is submitted before the December 24, 2013 expiration date.
60	60 C	Registration requirements	Several minor editions to the registration statement questions were made for clarification. For example, added email address, allowance for computer maps to registration statement and a few other minor clarifications. Expanded the question about treatment type and whether it has changed since the previous registration. The whole effluent toxicity testing question is clarified to include submittal of data if required by the 2008 general permit or their individual permit, if not previously submitted to the department. The chemical usage question was expanded to ask if chemical usage had changed since the previous registration. A question about MS4s was added as follows: <i>"Whether the facility will discharge to a MS4. If so, the name of the MS4 owner must be provided. If the owner of the potable water treatment plant is not the owner of the MS4, the facility owner shall notify the MS4 owner of the existence of the discharge and include a copy of the notification with the registration statement. The notification shall include the following information: the name of the facility, a contact person and phone number, the location of the discharge, the nature of the discharge, and the owner's VPDES general permit number."</i> This notification is a permit requirement and the TAC thought it should be repeated as a reminder in the registration process. A question was added as follows: <i>"If a new potable water treatment plant owner proposes to discharge within five miles upstream of another public water supply system's intake, the new potable water treatment plant owner shall notify the public water supply system's owner and include a copy of the notification with the registration statement."</i> The TAC thought this notification was important to ensure any downstream localities are notified of any new discharges upstream.
70 Part I A 1	N/A	General permit limits pages for process water from a potable water treatment plant. Effluent limits monitoring frequency was monthly. TSS sample type was a 5 Grab/8 Hour Composite which are five grab samples collected at hourly intervals until the discharge ceases or until a minimum of five grab samples have been collected. Monitoring reductions to quarterly are allowed under certain circumstances. Footnotes were out of order. Narrative requirement for <i>"No discharge of floating solids or visible foam in other than trace amounts."</i>	General Permit limits pages for process water. Clarified that Part I A 1 pages apply to any water treatment plant that does not utilize reverse osmosis or nanofiltration. These are generally what are referred to as 'conventional' plants. The agency also determined that monitoring data associated with the existing general permit showed that monthly reporting from any facility is not necessary based on past compliance within the industry and the fact that these facilities often have no discharge. Therefore, all facilities are afforded the once 'reduced monitoring' allowance of 1/3 months (quarterly). Also, footnote #3 clarifies how a composite sample shall be taken which varies if the discharge is continuous or batch. The previous 5Grab/8 Hour Composite requirement was a hardship for batch type discharges. Footnotes were put in order. The narrative requirement for <i>"No discharge of floating solids or visible foam in other than trace amounts"</i> was moved to Part B, special conditions.
70 Part I A 2	N/A	General permit limits page for process water from reverse osmosis potable water treatment plant. 5 Grab/8 Hour composite	General Permit limits pages for reverse osmosis and nanofiltration plants. Except for the same clarifications on the composite sampling mentioned in Part I A 1 above, these requirements remained the same. There

		(see above box). Monthly monitoring with monitoring reductions to quarterly allowed under certain circumstances. Footnotes were out of order. Narrative requirement for "No discharge of floating solids or visible foam in other than trace amounts."	was no indication that monitoring frequencies should be reduced; although the owner may get reduced monitoring based on compliance history. Footnotes were put in order. The narrative requirement for "No discharge of floating solids or visible foam in other than trace amounts" was moved to Part B, special conditions.
70 Part I B 1	N/A	Inspection of the effluent and maintenance of the wastewater treatment facility shall be performed daily.	Changed that inspections are performed 'when discharging' rather than 'daily.' This was done at the request of the industry TAC members. This seemed reasonable as other states had a similar frequency or no inspections at all.
70 Part I B 4	N/A	Special condition 4 explained the compliance conditions under which to reinstate more frequent monitoring (monthly) when reduced monitoring (quarterly) had been granted.	This is where the "no discharge of floating solids or visible foam in other than trace amounts" was moved. Old special condition 4 is deleted which explained the compliance conditions under which to reinstate more frequent monitoring (monthly) when reduced monitoring (quarterly) had been granted. Almost all the water treatment plants in Virginia fall under Part I A 1 (conventional plants) which we are proposing to reduce to quarterly monitoring as the normal frequency. So this section no longer applies to them. If any reverse osmosis plants falling under Part I A 2 qualify for reduced monitoring (monthly to quarterly) they will retain that reduced monitoring frequency until reissuance.
70 Part I B 5	N/A	Special condition 5 required a solids management plan.	The solids management plan requirements were moved elsewhere in the special conditions and inserted here was a new special condition that "Owners of facilities that are a source of the specified pollutant of concern to waters where an approved TMDL has been established shall implement measures and controls that are consistent with the assumptions and requirements of the TMDL." This is a special condition added to all general permits. It reinforces the way general permits are currently handled in TMDLs. The assumption of the TMDL is that general permits are insignificant to the total load until such time that the TMDL program determines that the load is significant and the TMDL needs to be modified to include the load.
70 Part I B 6	N/A	Special condition 6 is a requirement to notify the MS4 locality if the potable water treatment plant discharges to the MS4.	Deleted. This requirement was moved to the registration statement.
70 Part I B 7	70 Part I B 6	Special condition 7 was the requirement to notify the department when certain listed toxic chemicals were discharged.	Special condition 7 became special condition 6.
70 Part I B 8	70 Part I B 7	Special condition 8 stated that if an approved groundwater program was in existence, they were required to continue to monitor under that plan.	Added that groundwater monitoring plans may be changed when appropriate and that the owner may submit that evaluation to the board for approval. The TAC thought this was reasonable.
70 Part I B 9	70 Part I B 8	Compliance reporting condition.	Compliance reporting condition section number changed.
70 Part I B 10	70 Part I B 9	Operations and Maintenance manual requirements and board submittal and approval requirements.	Clarified several of the requirements of the operations and maintenance manual. The manual shall be updated within 90 days of coverage or within 90 days of changes to the treatment system. However, now the O&M manuals are no longer submitted to the department for approval. However, they must be made available to department personnel upon request. O&M manuals have always been an enforceable part of this permit. The solids management plan requirements were moved here (old special condition 5).
N/A	70 Part I B 10	None	The details of the whole effluent toxicity testing

			<p>requirement were moved to this special condition and out of the 'authorization to discharge' section 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, only for permittees with flows greater than or equal to 50,000 GPD and giving the owners an opportunity to find and eliminate the source of toxicity before they are subject to a WET limit upon reissuance. This should attract new permittees and existing permittees 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 qualify for the general permit and they do 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, 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.</p>
N/A	70 Part I B 11	None	<p>Added <i>"The discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards."</i> This is a general requirement to meet water quality standards and matches similar language going into other recent general permits.</p>
N/A	70 Part I B 12	None	<p>Added a new special condition that describes how terminations of a general permit will be implemented. This is being added to all general permits as they are reissued.</p>
N/A	70 Part I B 13	None	<p>Added <i>"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."</i> This requirement is part of the regulation at section 50 C and staff thought it should be repeated in the permit to remind the permittee of the responsibility.</p>
70 Part II A		Lists monitoring instructions.	<p>Added <i>"Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45: Certification for Noncommercial Environmental Laboratories, or 1VAC30-46: Accreditation for Commercial Environmental Laboratories."</i> This is a new regulatory requirement effective January 1, 2012.</p>
70 Part II I		States how to contact DEQ or Emergency Services during an event that might adversely affect state waters or endanger public health.	<p>Added online option.</p>
70 Part II Y		Allows ability to transfer permit to a new owner by a modification or revocation and reissuance or minor modification. Also allows automatic transfer if the department is notified at least 30 days in advance and several other conditions occur.	<p>Deleted paragraph Y 1 which is the ability to transfer to a new owner by a modification or revocation and reissuance or minor modification. General permit coverage is not modified or revoked and reissued. Revised Y 2 to say automatic transfers can occur at least 30 days in advance of the proposed transfer unless permission for a later date has been granted by the board. Our regional office staff has also stated this advance transfer notification is unnecessary and we should be able to accept a transfer notification at any time</p>

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 and simplifies the application process. These owners are localities and generally not small business owners. Without the general permit, owners would be required to obtain an individual permit which would increase the complexity of a permit application and permit costs.

The proposal establishes less stringent reporting requirements from monthly to quarterly for conventional water treatment plants. The agency has followed the monitoring from the industry and it remains consistent such that the agency does not see the need for monthly reporting.

The proposal also includes an allowance for continuance of permit coverage in instances where a permittee has submitted a timely registration and is in compliance with their existing permit. This will allow the permittee to legally and safely discharge if the permit is not reissued on time by the Department.

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.

EPA - means "Environmental Protection Agency."

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

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.

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.

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.