



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-115
Regulation title	General VPDES Permit Regulation for Seafood Processing Facilities
Action title	Amend and Reissue the Existing Regulation
Date this document prepared	June 9, 2014

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 July 23, 2016. 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 seafood processing facilities.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. The identification should include (i) a reference to the agency/board/person's overall regulatory authority, as well as a specific provision authorizing the promulgating entity to regulate this specific subject or program; and a description of 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 permitting requirements for discharges from seafood processing facilities in order to protect the health, safety and welfare of citizens. The existing general permit expires on July 23, 2016. The general permit regulation is being reissued in order to continue to make it available after that date. Issues that may need to be addressed are updating the storm water management requirements, whether other types of seafood processing need to be added to the general permit, and whether oyster tumbling and sorting needs to be covered under the general permit.

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 will establish limitations and monitoring requirements for point source discharges from seafood processing facilities. As with an individual VPDES permit, the effluent limits in the general permit will be 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 July 23, 2016 and must be reissued in order to continue making it available after that date. Other issues that need consideration are updating the storm water management requirements, whether other types of seafood processing need to be added to the general permit, and whether oyster tumbling and sorting needs to be covered under the general permit. Amendments may be identified following the submittal of public comments on this Notice and by the technical advisory committee during deliberations of this general permit regulation.

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.

These discharges are point sources of pollutants 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 seafood processor and each owner must submit an application for a VPDES permit with the corresponding fees. The other is to reissue this general VPDES permit to cover this category of dischargers and owners may register for coverage under the general permit with the corresponding fees (which are less than an individual permit). General permits also require fewer DEQ staff resources to issue.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, including 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 this regulatory action, including but not limited to 1) ideas to be considered in the development of this 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) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation. (See periodic review/small business impact review announcement below)

Anyone wishing to submit written comments may do so by mail, email or fax to Eleanore Daub, DEQ, Office of VPDES Permits, P.O. Box 1105, Richmond, VA 23218, telephone no. 804/698-4111, fax no. 804/698-4032, email eleonore.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 11:59 pm on the last day of the public comment period.

A public meeting will not be held. Please contact Eleanore Daub (above) for questions.

Public hearing at proposed stage

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

Periodic review/small business impact review announcement

In addition, the agency is undergoing a periodic/small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form.

For purposes of the periodic review, public comment is sought on any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare and is designed to achieve its intended objective in the most efficient, cost-effective manner; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

For purposes of the small business impact review public comment is also requested on the components of this review which include: (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

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.

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.

- Board: State Water Control Board
- EPA (U.S. EPA): United States Environmental Protection Agency
- DEQ: Department of Environmental Quality
- NOIRA: Notice of Intended Regulatory Action
- NPDES: National Pollutant Discharge Elimination System
- USC: United States Code
- VAC: Virginia Administrative Code

VPDES: Virginia Pollutant Discharge Elimination System