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Exempt Action Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9VAC25-115
Regulation title(s)	General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Seafood Processing Facilities
Action title	Amend and Reissue the Existing Regulation
Final agency action date	October 1, 2015
Date this document prepared	August 11, 2015

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) or an agency's basic statute, the agency is not required, however, 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, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. 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 July 23, 2016. The general permit contains limitations and monitoring requirements for point source discharge of treated wastewaters from seafood processing facilities. The general permit regulation is being reissued in order to continue making it available for these facilities to continue to discharge.

Amendments are proposed to update and clarify definitions, effective dates, authorization, registration statement requirements; general permit limits pages, special conditions, stormwater pollution prevention plans and conditions applicable to all permits.

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.

APA means the Administrative Process Act.

BOD means biological oxygen demand.

CFR means Code of Federal Regulations.

DEQ means the Department of Environmental Quality.

EPA means the Environmental Protection Agency.

NPDES means National Pollutant Discharge Elimination System.

SWPPP means stormwater pollution prevention plan.

TAC means technical advisory committee and is an ad hoc committee consisting of interested stakeholders and staff formed to provide advice to DEQ in drafting amendments to the regulation.

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

µg/l means micrograms per liter.

USC means United States Congress

VAC means the Virginia Administrative Code.

VPDES means the Virginia Pollutant Discharge Elimination System and is recognized by EPA as Virginia's pollutant discharge elimination system program. Virginia was authorized to administer this program (VPDES) in 1975. Furthermore, in 1991 the Commonwealth was authorized to administer a General VPDES Permit Program.

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 October 1, 2015, the State Water Control Board amended the General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Seafood Processing Facilities.

Family impact

Please 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.

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
15	Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced or adopted in this chapter and incorporated by reference, that regulation shall be as it exists and has been published as of July 1, 2014.	July 1, 2014 changed to July 1, 2015.	Update to most recent year.
50 Part II B.5.b.(2)	Under 'Control Measures' for stormwater best management practices the requirement under (2) 'Eliminating and minimizing exposure' is as follows: To the extent practicable, industrial materials and activities shall be located inside, or protected by a storm-resistant covering to prevent exposure to rain, snow, snowmelt, and runoff.	Under 'Control Measures' for stormwater best management practices the requirement under (2) 'Eliminating and minimizing exposure' is changed as follows: To the [maximum] extent practicable, industrial materials and activities shall be located inside, or protected by a storm-resistant covering to prevent exposure to rain, snow, snowmelt, and runoff.	Assistant Attorney General requested insertion of word 'maximum' for clarity.
50 Part II B. 5. B (4) (b)	'Spill prevention and response procedures' include: (b) Response procedures shall include (i) notification of appropriate facility personnel, emergency agencies, and regulatory agencies; and (ii) procedures for stopping, containing, and cleaning up spills. Measures for cleaning up hazardous material spills or leaks shall be consistent with applicable RCRA regulations at 40 CFR Part 264 (2005) and 40 CFR Part 265 (2005).	'Spill prevention and response procedures' include: (b) Response procedures shall include (i) notification of appropriate facility personnel, emergency agencies, and regulatory agencies; and (ii) procedures for stopping, containing, and cleaning up spills. Measures for cleaning up hazardous material spills or leaks shall be consistent with applicable RCRA regulations at 40 CFR Part 264 [(2005)] and 40 CFR Part 265 [(2005)].	References to RCRA CFR dates are not needed as section 15 of this chapter indicates the applicability of incorporated references based on the dates that they became effective. Any title 40 of the CFR is referenced in this chapter and incorporated by reference that shall be as it exists or has been published as of July 1, 2015.

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
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<p>Office of Delegate Margaret Ransone via Jake Salmons Legislative Aide. 99th District Counties of Caroline (part), King George, Lancaster, Northumberland, Richmond and Westmoreland.</p>	<p>Their office is concerned that the proposed amendments to the VPDES Permit for Seafood Processing Facilities may have significant impacts on the businesses and citizens in their area. They were interested in the TAC consisting of interested stakeholders and staff. Who were the members that comprise the TAC that are proposing these changes to the regulation?</p>	<p>Water Policy Manager, Elizabeth Andrews, left a voicemail and email explaining the TAC met once and consensus was reached on the amendments to the General Permit. Attached to the email were the Town Hall background document and the list of TAC members.</p>
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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
Section 10	NA	Definition of stormwater not deleted.	Definition for stormwater was deleted as it is repetitive of the same definition in the VPDES Permit Regulation and the words and terms used in Chapter 115 have the meaning defined in the VPDES Permit Regulation (9VAC25-31). No impact.
NA	Section 15	Applicability of incorporated references based on the dates that they became effective not in the regulation.	Applicability of incorporated references based on the dates that they became effective. This section was added to update all Title 40 Code of Federal Regulations (CFR) within the document to be those published as of July 1, 2015. This is a recommendation from the DEQ Office of Policy so dates do not need to be added for each CFR reference. No impact.
Section 20 and 50	NA	Purpose and Part I - Effective and expiration dates reflect 2011 -2016 term.	Purpose and Part I - Effective and expiration dates were updated to reflect this reissuance. Impact – allows permit to be used for another 5-year term (2016-2021).
Section 30 A, B	NA	Same requirement.	Authorization – Reformatted to match structure of other general permits being issued at this time. The requirement that the discharge must meet the assumptions and requirements of a total maximum daily load (TMDL) was reworded to match other general permits. No impact.
Section 30 C	NA	Same requirement.	Authorization –Clarified that " <u>Compliance with this general permit constitutes compliance for purposes of enforcement with the federal Clean Water Act §§ 301,</u>

			<p><u>302, 306, 307, 318, 403 and 405 (a) through (b), the State Water Control Law, and applicable regulations under either, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation"</u> which better mirrors the language in the permit regulation at 9VAC25-31-60. No impact as this is a clarification.</p>
Section 30 D	NA	Continuation of Permit Coverage – dates are updated to continue to allow coverage under the 2006 expired general permit until the new permit is reissued and coverage is granted or coverage is denied; provided the permittee has submitted a timely registration and is in compliance with the existing permit.	Continuation of Permit Coverage – dates are updated to continue to allow coverage under the 2011 expired general permit until the new permit is reissued and coverage is granted or coverage is denied; provided the permittee has submitted a timely registration and is in compliance with the existing permit. Impact - these dates are updated with each reissued general permit so permittees can discharge legally and safely if the permit reissuance process is delayed.
Section 40	NA	Registration Statement – Clarification does not exist although statement that late registration statements will be accepted but not retroactive is present. Registration deadline for existing individual permit owners that wish to be covered under this general permit is 210 days prior to the expiration date of the individual permit. The allowance to submit registrations by electronic mail is not mentioned.	Registration Statement – clarified that existing owners are allowed to miss the June 23, 2016 deadline for registration submittal, but as long as they submit a complete statement before the expiration date of the permit (July 23, 2016), DEQ will grant a continuance under the old 2011 permit until such time as the board reissues the permit or determines that they are not eligible for continued coverage. This is language that is going into all general permits as they are reissued. Registration deadline for existing individual permit owners that wish to be covered under this general permit was changed from 210 to 240 days prior to the expiration date of the individual permit. This extra 30 days gives DEQ time to review the registration and if coverage is not appropriate, the permittee still has another 30 days to submit an individual permit application and still meeting their "180 day prior to" permit deadline for individual permit application submittal. Several clarifications were also added to the required registration information to ensure DEQ receives the needed information to make a determination about coverage. Finally, the allowance to submit registrations by electronic mail was added. No likely impact.
Section 50 Part I	NA	General Permit Limits – effective and expiration dates	General Permit Limits – effective and expiration dates changed to reflect the

A		reflect the current 2011-2016 permit term. Clarifications do not exist.	upcoming permit term. Annual monitoring clarified to reflect it is based on a calendar year. Hand-shucked oyster processing for existing sources which process more than 1,000 lbs of raw material per day (Limit page I A 18) added a definition of raw material which for hand-shucked oyster processing means the weight of the shucked product. This is different from raw material in the traditional food processing industry which means the product as it comes to the plant (e.g., whole fish or whole clams). This interpretation reflects the existing federal effluent guidelines for the seafood processing industry and is not a new interpretation. No impact.
Section 50 Part I B		General Permit Special Conditions – clarifications do not exist.	General Permit Special Conditions – In special condition 6 clarified that the permittee shall notify the department if they exceed 100 µg/l or 500 µg/l <u>of the toxic pollutant</u> not limited in the permit. This is not a new condition, rather a clarification referring back to what is actually being measured (the toxic pollutant). The quantification level for biological oxygen demand (BOD) was corrected to one significant digit and not two significant digits (2 rather than 2.0). This accurately reflects the BOD analytical test methodology. New special condition 10 contains termination procedures that describe what the permittee does if they wish to terminate their coverage under this permit. It is standard language that applies to all general permits. No impact.
Section 50 Part II	NA	Stormwater Pollution Prevention Plans (SWPPP) – deadlines reflect the current 2011 - 2016 permit term. Clarifications do not exist. Preparation or updates and implementation of SWPPP for existing facilities were not later than December 30, 2011 and new facilities were required to prepare and implement the SWPPP prior to submitting the registration statement.	Stormwater Pollution Prevention Plans (SWPPP) – deadlines changed to reflect the upcoming permit term. Preparation (or update) and implementation of SWPPP changed to within 60 days of permit coverage. This made all SWPPP preparation (or update) and implementation deadlines the same for all existing and new permittees. Deleted paragraph at B 5 which required the SWPPP to include a summary of sampling data collected because there is no stormwater sampling associated with this permit. Deleted wording that is difficult to enforce such as a requirement to minimize something to <i>the maximum extent practicable</i> or <i>as soon as practicable</i> or <i>if possible</i> . New paragraph

			G was added that lists allowable non-stormwater discharges. These allowable discharges are standard language for stormwater permits that was inadvertently left out of these stormwater requirements. No impact – clarifications of existing practices.
Section 50 Part III	NA	Conditions Applicable to All VPDES Permits – Requirement in A 4 that samples must be taken in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories not in permit but is an existing regulatory requirement. Part III B 2 – Requirement for records retention requirements for sewage sludge use and disposal since sewage discharges was in permit. In Part III I 3, online allowance for immediate (24-hour) noncompliance reporting was not mentioned. In Part III L requirement to meet sewage sludge standards was in the regulation. In Part III Y, waiving the automatic transfer timing (30 days in advance of proposed transfer) was not mentioned. References to modifications and revocations and reissuances were in the regulation.	Conditions Applicable to All VPDES Permits – Added a requirement in A 4 that samples must be taken in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories. This is a new regulatory requirement effective January 1, 2012, and is being added to all general permits as they are reissued. Part III B 2 - Removed records retention requirements for sewage sludge use and disposal since sewage discharges are not covered by this permit. In Part III I 3, added online allowance for immediate (24-hour) noncompliance reporting. In Part III L deleted requirement to meet sewage sludge standards as sewage discharges are not covered by this permit. In Part III Y, revised so that the board may waive the automatic transfer timing (30 days in advance of proposed transfer). Permittees are rarely able to meet this requirement and the staff thinks they need some flexibility with this. Also references to modifications and revocations and reissuances have been removed as these events are not appropriate for coverage under general permits. No impact as these are clarifications of existing practices or removal of requirements that do not apply to this permit.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.