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Exempt Action Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9VAC25-196
Regulation title(s)	General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Non-Contact Cooling Water Discharges of 50,000 Gallons Per Day Or Less
Action title	Amend and Reissue the Existing Non-Contact Cooling Water General Permit
Date this document prepared	June 14, 2017

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Administrative Process Act (APA), the agency is still 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The General Virginia Pollutant Discharge Elimination System (VPDES) Permit For Non-Contact Cooling Water Discharges of 50,000 Gallons Per Day or Less has existed since 1998. This regulation amendment will reissue the existing general permit which expires on March 1, 2018. This general permit establishes effluent limitations and monitoring requirements for point source discharges of 50,000 gallons per day or less of non-contact cooling water and cooling equipment blow down to surface waters. The effluent limits in the general permit are set to protect the quality of the waters receiving the discharges. The general permit regulation is being reissued in order to continue making it available as a permitting option for this type of discharger. The proposed changes to the regulation were made to make this general permit similar to other general permits.

Substantive changes to the existing regulation include:

- Requiring the permittees to notify a Municipal Separate Storm Sewer System (MS4) owner of the existence of the discharge at the time of registration under the general permit and include a copy of that notification with the registration statement;
- Removed the Effluent Limitations and Monitoring Requirements for the first four years of the previous permit term as these requirements are not applicable for this reissuance;
- Clarification that the “1/3 Months” monitoring frequency equals the following three-month periods each year of permit coverage: January through March, April through June, July through September, and October through December.
- Requiring the permittee to develop an operations and maintenance manual for equipment or systems used to meet effluent limitations within 90 days of permit coverage.

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: Administrative Process Act
- BMP: Best Management Practices
- CFR: Code of Federal Regulations
- DEQ: Department of Environmental Quality
- EPA: (U.S. EPA): United States Environmental Protection Agency
- MS4: Municipal Separate Storm Sewer System
- NPDES: National Pollutant Discharge Elimination System
- O&M: Operations and Maintenance
- QL: Quantification Level
- TAC: Technical Advisory Committee
- USC: United States Code
- VAC: Virginia Administrative Code
- VPDES: Virginia Pollutant Discharge Elimination System

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. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

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.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This proposed regulatory action is needed in order to amend and reissue the existing VPDES general permit for point source discharges of 50,000 gallons per day or less of non-contact cooling water and cooling equipment blow down to surface waters, which expires on March 1, 2018. The goal of the proposed regulation is to continue the general permit which establishes standard language for control of point source discharges from non-contact cooling water systems through effluent limitations, monitoring requirements and special conditions to ensure protection of the environment and the health, safety and welfare of citizens.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

Substantive changes to the existing regulation include requiring the permittees to notify a MS4 owner of the existence of the discharge at the time of registration under the general permit and include a copy of that notification with the registration statement, removing the Effluent Limitations and Monitoring Requirements for the first four years of the previous permit term as these requirements are not applicable for this reissuance, clarification of the "1/3 Months" monitoring frequency, and requiring the permittee to develop an operations and maintenance manual for equipment or systems used to meet effluent limitations within 90 days of permit coverage.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

The advantages to the public and the agency are that a VPDES general permit will continue to be available to facilities with non-contact cooling water discharges enabling them to discharge to surface

waters without the increased cost and more complicated application process associated with issuing an individual permit. There are no known disadvantages.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is 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.

There are no localities particularly affected by the proposed regulation as the regulation applies statewide.

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.

There are two alternatives for compliance with federal and state requirements to permit wastewater point source discharges to surface waters. One is to issue VPDES individual permits to each facility. The other is to reissue the VPDES general permit to cover this category of discharger. A VPDES general permit is the least burdensome and costly alternative to achieve the purpose of the regulation.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response. If there was no NOIRA comment period, delete this section.

Commenter	Comment	Agency response
Megan Addington	<p>Where Recycle Options Exist -- Why Risk Health and Industry of the Area?</p> <p>There are several examples across the country of alternatives to coal ash other than storing it. See page</p>	<p>Although DEQ staff recognizes your concerns regarding coal ash the Noncontact Cooling Water General permit does not authorize coal ash discharges or coal ash storage.</p>

	<p>into our waterways is not acceptable when it can be recycled and put to better use other than a potential disaster. Example in Evansburg where they reuse and repurpose it, combine it with other elements to create non-toxic materials used in construction as well as filling up old mines. The alternative being that current regulatory standards in Virginia are below what they should be and as more health and wellness reports are starting to show the increase in Cancer, Birth Defects and right down to the record lows of the fish and wildlife population in our waterways is devastating. I'm not with any organization or company, I'm just part of a family and my husband lived and worked in Russel County, VA all his life until he moved to this community and I've seen what a terrible effect the 1967 spill caused. Virginia and North Carolina are among the worst for dealing with their industrial waste and I really think we need to stop that in order to have healthy land for our children to inherit as well as to live old enough to see them grow up.</p> <p>I could understand if there were no options but there are! There are great ones that provide a useful material that could be sold or repurposed constructively and keep us from having a potential major contamination and spill. Trying to store anything that can pollute the water table in an area prone to tropical storms, flooding and having a lot of well, water.. just seems absolutely stupid to me.</p>	
<p>Matt Weeks, Wayne Hurst, Mary-Stuart Torbeck, Anne Dunckel, Trieste Lockwood, and Lauren Shaffer,</p>	<p>These individuals requested to be considered for membership on the TAC</p>	<p>DEQ approved each of these individuals for membership on the TAC.</p>

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 impacts of the regulated community and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts of this regulatory proposal and 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 for the public comment file may do so by mail, email or fax to Matthew Richardson, P.O. Box 1105, Richmond, Virginia 23218, matthew.richardson@deq.virginia.gov, phone (804) 698-4195, fax (804) 698-4032. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://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 hearing will be held following the publication of this stage 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 (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

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.

Periodic review/small business impact review report of findings

This section may be used to report the results of a periodic review/small business impact review. Otherwise, delete this section.

Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) 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.

No public comments were received regarding this regulation that pertained to small business impacts.

DEQ staff believes this regulation is necessary for the protection of public health, safety, and welfare; and is clearly written and easily understandable. DEQ staff believes there is a continued need for the regulation as it allows small businesses with eligible noncontact cooling water discharges to utilize a general permit to continue discharging wastewater. The general permit provides a less burdensome option for this type of discharge when compared to other permitting options.

DEQ staff attempted to draft this regulation in the least complex manner that allowed for the effective protection of human health and the environment. DEQ staff does not believe this regulation duplicates or conflicts with other regulations or laws that pertain to this type of wastewater discharge.

This regulation was last evaluated in 2012. Based on the discharge type, it is not apparent that any technological or economic conditions have change significantly enough to affect the drafting of this regulation.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the pre-emergency regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
		The title of the regulation is "General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation For Noncontact Cooling Water Discharges Of 50,000 Gallons Per Day Or Less"	Changed the title to "Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation For Noncontact Cooling Water Discharges Of 50,000 Gallons Per Day Or Less" to be consistent with other VPDES General Permits titles.
9VAC25-196-10. Definitions.			An added definition for "Board" to clarify this means State Water Control Board. Clarified "Cooling Water" definition. Made a grammatical change to "Total Maximum Daily Load" definition.
9VAC25-196-15. Applicability of incorporated references based on the dates that they became		This section updates all Title 40 Code of Federal Regulations (CFR) within the document to be those published as of July 1, 2012. This is a recommendation from the DEQ Office of Policy so dates do not need to be added for each CFR reference.	Simplified this paragraph to match other general permits and changed the date to July 1, 2017.

effective.			
9VAC25-196-40. Effective date of the permit.		Effective dates of the permit are for the expiring permit term (2013 – 2018).	Effective dates updated throughout regulation (2018-2023).
9VAC25-196-50. Authorization to discharge. Subsection A.		Requirement is the same as the 2013 regulation.	Made grammatical correction
9VAC25-196-50. Authorization to discharge. Subsection B.		Requirement is the same as the 2013 regulation.	Made grammatical correction
9VAC25-196-50. Authorization to discharge. Subsection D.		Statement that the owner shall not use any hexavalent chromium based water treatment chemicals.	Changed hexavalent based water treatment chemicals to read water treatment chemicals containing hexavalent chromium.
9VAC25-196-50. Authorization to discharge. Subsection F		Requirement is the same as the 2013 regulation	Made grammatical corrections suggested by enforcement staff
9VAC25-196-50. Authorization to discharge. Subsection G		Requirement is the same as the 2013 regulation	Made effective date changes and minor clarifications to language
9VAC25-196-60. Registration statement. Subdivision A.		Requirement is the same as the 2013 regulation	Made effective date changes and minor clarifications to language
9VAC25-196-60. Registration statement. Subdivision B.		Instructions for late registrations statement submittal.	Instructions not changed but paragraph is clarified and dates are updated.
9VAC25-196-60. Registration statement. Subdivision C.		Registration statement information includes the requirement to notify the owner of an MS4 within 30 days of coverage under the general permit.	Made effective date changes and minor clarifications to language. New requirement that Safety Data Sheet s will be submitted for each proposed cooling water additive. New requirement that each discharge will be identified by longitude and latitude. Requirement changed so that the notification to the MS4 owner occurs at the time of registration under the permit and that notification must be included with the registration.
9VAC25-196-70. General permit.		Effective dates of the permit are for the expiring permit term (2013 – 2018).	Updated the permit dates to 2018- 2023
9VAC25-196-70. General permit.		Stated that “[d]ischarge shall be in accordance with this cover page, Part I - Effluent Limitations and Monitoring Requirements and Part II	Updated language to be consistent with other general permits to: “[d]ischarge shall be in accordance with <u>the information submitted with the registration statement</u> , this cover page, Part I -

		- Conditions Applicable to All VPDES Permits, as set forth herein.”	Effluent Limitations and Monitoring Requirements and Part II - Conditions Applicable to All VPDES Permits, as set forth herein in this general permit.”
9VAC25-196-70. General permit. Part I A1.		Requires Effluent Limitations and Monitoring Requirements for the first four years of the permit term.	As these requirements were for the first four years of the previous permit term, these requirements were removed.
9VAC25-196-70. General permit. Part I A2.		Requirement is fundamentally the same as the 2013 regulation	Changed subsection to Part 1 A 1 as the Part 1 A 1 from the previous reissuance was removed. Replaced the word “streams” with “waterbodies” for clarification. Removed wording that stated these requirements were for the last year of the permit term as these requirements will be in effect for the entire new reissuance permit term. Clarified that the monitoring frequency of “1/3 Months” equals the following three-month periods of each year of permit coverage: January through March, April through June, July through September, and October through December. Removed the word “directly” to clarify that chlorine monitoring applied to outfalls discharging to surface waters.
9VAC25-196-70. General permit. Part I A3.		Requirement is fundamentally the same as the 2013 regulation	Changed subsection to Part 1 A 2 as the Part 1 A 2 from the previous reissuance was changed to Part 1 A 1. Replaced the word “streams” with “waterbodies” for clarification. Removed wording that stated these requirements were for the last year of the permit term as these requirements will be in effect for the entire new reissuance permit term. Clarified that the monitoring frequency of “1/3 Months” equals the following three-month periods of each year of permit coverage: January through March, April through June, July through September, and October through December. Removed the word “directly” to clarify that chlorine monitoring applied to outfalls discharging to surface waters.
9VAC25-196-70. General permit. Part I B 3.		Special Conditions	Added a requirement that a Safety Data Sheet will be submitted with any request to change chemical additives used in contact cooling water systems at the permitted facility.
9VAC25-196-70. General permit. Part I B 4.		Requirement for permittees that discharge into a MS4 must notify the MS4 owner of the existence of the discharge within 30 days of coverage.	Requirement changed so that the notification to the MS4 owner will occur at the time of registration under the permit. The notification will be submitted with the registration statement to DEQ.
9VAC25-196-70. General permit. Part I B 5.		Required permittees to properly operate and maintain cooling water systems and inspect each cooling water unit at least once per year.	Changed requirement to: Development of an operations and maintenance manual covering equipment or systems used to meet effluent limitations within 90 days of receiving permit coverage. The manual must detail the practices and procedures that will be followed to ensure compliance with the requirements of the permit and be available to the department within 30 days of a request to review.
9VAC25-196-70. General permit. Part I B 6 a 3.		Requirement is fundamentally the same as the 2013 regulation	Changed wording from “application” to “registration statement” for clarification.
9VAC25-		Requirement is fundamentally the	Made clarifications to language

196-70. General permit. Part I B 7.		same as the 2013 regulation	
9VAC25-196-70. General permit. Part I B 10.		Requirement is fundamentally the same as the 2013 regulation	Made clarifications to language
9VAC25-196-70. General permit. Part II D.		Requirement is fundamentally the same as the 2013 regulation	Made clarifications to language
9VAC25-196-70. General permit. Part II J.		Requirement is fundamentally the same as the 2013 regulation	Changed wording from “application” to “registration” for clarification.
9VAC25-196-70. General permit. Part II K.		Requirement is fundamentally the same as the 2013 regulation	Changed wording from “application” to “registration” for clarification.
9VAC25-196-70. General permit. Part II L.		Requirement is fundamentally the same as the 2013 regulation	Made clarification of language as requested by enforcement staff
9VAC25-196-70. General permit. Part II M.		Requirement is fundamentally the same as the 2013 regulation	Made clarifications to language
9VAC25-196-70. General permit. Part II W.		Inspection and entry. Regulation stated that “[t]he time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging.”	Changed wording from “and” to “or”. “[t]he time for inspection shall be deemed reasonable during regular business hours, and <u>or</u> whenever the facility is discharging.”
9VAC25-196-70. General permit. Part II X.		Requirement is fundamentally the same as the 2013 regulation	Made clarification of language as requested by enforcement staff
9VAC25-196-70. General permit. Part II Y.		Requirement is fundamentally the same as the 2013 regulation	Made clarification of language as requested by enforcement staff

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.