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Exempt Action Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9VAC25-800
Regulation title(s)	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters
Action title	Amend and Reissue Existing Regulation
Date this document prepared	May 9, 2018

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters has existed since 2011. This general permit contains effluent limitations, monitoring requirements and special conditions for discharges of pesticides to surface waters. The proposed changes to the regulation were made to reissue this general permit and in response to Technical Advisory Committee suggestions and staff requests to clarify the permit conditions.

No substantive changes are proposed to the existing regulation. The proposed changes affect effective dates, two definitions, two points of clarification and minor changes to certain standard conditions.

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
NPDES: National Pollutant Discharge Elimination System
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 pesticides to surface waters, which expires on December 31, 2018. The goal of the proposed regulation is to continue to make the general permit available, which establishes standard language for control of these point source discharges through effluent limitations, monitoring requirements and special conditions to ensure protection of the environment and public health, safety and welfare.

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.

No new substantive provisions have been added to the permit regulation. Two standard conditions under Part II of the permit have been revised to more appropriately address the applicability and requirements of this permit. The “duty to reapply” has been revised to reflect the fact that no registration statement is required to be submitted under this permit. In addition, the “transfer or permit coverage” provision has been revised to reflect the fact that since permit coverage is automatic where an operator meets eligibility requirements, coverage under this general permit is not transferable.

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 of reissuing this permit are that a VPDES general permit will continue to be available to facilities with eligible discharges enabling them to discharge to surface waters in a manner that is protective of those 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
10 commenters	Expressed interest in participating on the TAC.	DEQ accepted these individuals to participate on the TAC.
NA	No other substantive comments were received on the NOIRA.	NA

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 Peter Sherman, P.O. Box 1105, Richmond, Virginia 23218, peter.sherman@deq.virginia.gov, phone (804)

698-4044, 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 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. No public comments were received regarding this regulation that pertained to small business impacts. 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 2013. 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 "Virginia Pollutant Discharge Elimination System (VPDES) General Permit For Discharges Resulting From The Application Of Pesticides To Surface Waters"	Changed the title to "Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation For Discharges Resulting From The Application Of Pesticides To Surface Waters" to be consistent with other VPDES General Permits titles.
9VAC25-800-10. Definitions.		The definition of "active ingredient" include reference to terms as defined in FIFRA and the general U.S. Code citation.	Removed the U.S. code cite to FIFRA and replaced it with the CFR cite to the relevant definitions. EPA made this change in the federal 2016 NPDES pesticide general permit.
. 9VAC25-800-10. Definitions.		The definition of "adverse incident" describes "toxic or adverse effects" as including effects within surface waters upon "wildlife."	Deleted "wildlife" in the description of "toxic or adverse effects." EPA made this change in the federal 2016 NPDES pesticide general permit.
9VAC25-800-15. Applicability of incorporated references based on the dates that they became effective.		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.	Changed the date to July 1, 2018, which will be the latest EPA update prior to issuance of the final permit.
9VAC25-800-20. Purpose; delegation of authority; effective date of permit.		Indicates the permit was last effective on January 1, 2014 and expires on December 31, 2018.	Revised the effective and expiration date of the permit to be January 1, 2019 and December 31, 2023, respectively, to reflect reissuance of the permit regulation and the five-year term specified for VPDES permits. These revised dates are also included in 9VAC25-800-30 and 60.
9VAC25-800-30. Authorization to discharge.		Under C, Table 1 includes Annual Treatment Area Thresholds. Three use categories offer two choices (acres of treatment area; linear miles).	Where two treatment threshold choices are offered, added "or" between them to clarify that a permittee need only meet one of the applicable thresholds to be subject to pesticide discharge management plan requirements. EPA does this in its 2016 pesticide general permit (note that EPA

			applies these thresholds for different purposes than the state).
9VAC25-800-30. Authorization to discharge.		Under F, the permit indicates that coverage does not relieve the permittee's responsibility to comply with other applicable federal, state or local statute, ordinance or regulation.	Kept this provision and added language indicating that permit coverage also does not negate any applicable requirements to comply with state wetland program regulations administered by DEQ or the Virginia Marine Resources Commission. The TAC identified instances where there appears to be a lack of understanding that various requirements external to this permit apply to activities that could affect wetlands.
9VAC25-800-60. General Permit.		Under I.D.5, where DEQ contact information is provided the information for the Blue Ridge office includes a branch in Lynchburg, Virginia.	Deleted the DEQ Lynchburg office information. That office is closed.
9VAC25-800-60. General Permit.		Under II, Conditions Applicable to All VPDES Permits are included in the permit.	Made minor edits to these conditions to better reflect the nature of general permits and for consistency with other VPDES general permits.
9VAC25-800-60. General Permit.		Under II.I, the "Duty to reapply" conditions provide that operators not subject to automatic permit coverage renewal must submit a registration statement at least 30 days before the expiration date of the existing permit.	Removed the requirement to submit a registration statement. Require an operator wishing to continue coverage under their current pesticide general permit to have coverage under a new permit. Indicate that coverage under this reissued permit is automatic for eligible operators (no registration statement has been developed or is required) and thus no need to reapply is anticipated.
9VAC25-800-60. General Permit.		Under S, "Transfer of permit coverage" requires notice to DEQ, an agreement including the date of transfer, and no objection by the board.	Revised this provision to state that permits are not transferable except upon notice to DEQ, and to indicate that coverage under this general permit is automatic where an operator meets eligibility requirements so permit transfer is not anticipated.

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 VPDES general 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.