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Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9 VAC 25-71
VAC Chapter title(s)	Regulations Governing the Discharge of Sewage and Other Wastes from Boats
Action title	Amendment to add two No Discharge Zone (NDZ) designations
Final agency action date	April 14, 2021
Date this document prepared	March 15, 2021

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The amendments to the state's Regulations Governing the Discharge of Sewage and Other Wastes from Boats (9 VAC 25-71) include adding two new No Discharge Zone (NDZ) designations to the Virginia Administrative Code (9 VAC 25-71-70, Listing of designated no discharge zones in the Commonwealth of Virginia). The Administrative Process Act's Subsection (A)(4)(c) of § 2.2-4006 allows the Board to adopt this regulatory amendment as a final exempt action as the changes are necessary to conform to changes in the federal regulations.

The NDZs were developed in accordance with Clean Water Act Section 312 and § 62.1-44.33 of the Code of Virginia and will be included in Section 70 of 9 VAC 25-71 as a designated NDZ in Virginia. This regulatory action is a final exempt action under the Administrative Process Act (§2.2-4006.A.4.c) as it is necessary to amend the regulations to comport with EPA's approval of the NDZs. The NDZ application was subject to public participation during its development, as described in the Board Memo and in the

Substance section below. Specifically, DEQ convened a public meeting and sought public comment during the application development. EPA then sought public comment on its affirmative determination.

Additionally, DEQ also sought comment on this regulatory action. Although it is not required for final exempt actions, a general notice was published in the Virginia Register (Vol. 37, Iss. 13, February 15, 2021) and sought comments on the amendments. The comment period was from February 16, 2021 to March 18, 2021. No comments were received.

An NDZ creates the area in a waterbody where no discharge of sewage is permitted; vessels would instead use pumpout facilities (often located at marinas) or travel outside of the NDZ to discharge treated sewage. See the Substance section below for more details.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

On September 23, 2020, EPA published its affirmative determination to establish the two NDZs in the Federal Register (see 85 FR 59796). In accordance with that approval, DEQ is requesting the addition of these two NDZs into Virginia administrative code to be in conformance with federal regulations. This regulatory action is a final exempt action under the Administrative Process Act (§2.2-4006.A.4.c).

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"No Discharge Zone" (NDZ) means a waterbody or an area of a waterbody into which the discharge of treated sewage from all vessels is completely prohibited. It is illegal to discharge untreated sewage from vessels in all waterbodies of the Commonwealth. In a designated No Discharge Zone, it is also illegal to discharge any treated waste from vessels equipped with Marine Sanitation Devices (MSDs) that grind, treat and discharge human sewage.

"Pumpout facilities" means any device, equipment or method of removing sewage from a marine sanitation device. Also, it shall include any holding tanks either portable, movable or permanently installed, and any sewage treatment method or disposable equipment used to treat, or ultimately dispose of, sewage removed from boats.

"Sewage" means the spent water or wastewater containing human excrement coming from toilets, bathrooms, commodes and holding tanks.

Statement of Final Agency Action

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.

At its meeting on April 14, 2021 the State Water Control Board adopted the amendments to Section 70 of the Regulations Governing the Discharge of Sewage and Other Wastes from Boats (9 VAC 25-71) and affirmed that the Board will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision..

Legal Basis

Identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

These regulations are issued under authority of Article 7 (§62.1-44.33) of Chapter 3.1 of Title 62.1 of the Code of Virginia, Waters of the State, Ports and Harbors. This regulatory action is a final exempt action under the Administrative Process Act (§2.2-4006.A.4.c).

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The purpose of this regulatory action is to amend 9 VAC 25-71 to incorporate two new No Discharge Zones. On September 23, 2020, EPA published its affirmative determination to establish the two NDZs in the Federal Register (see 85 FR 59796). In accordance with EPA's approval, this regulatory action adds these two NDZs into 9 VAC 25-71. This regulatory action is a final exempt action under the Administrative Process Act (§2.2-4006.A.4.c).

Substance

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.

An NDZ creates the area in a waterbody where no discharge of sewage is permitted; vessels would instead use pumpout facilities (often located at marinas) or travel outside of the NDZ to discharge treated sewage. (The discharge of untreated sewage is prohibited in all waters.) This will result in improved water quality due to a reduction of bacteria loading, which benefits commercial fishing and shellfishing, recreation, and other uses. A reduction in nutrients and treatment chemicals can also be expected.

At the request of The Go Green Gloucester Advisory Committee of the Gloucester County Board of Supervisors, an application for two NDZs was developed in accordance with EPA Guidance 842-B-94-004 (Protecting Coastal Waters from Vessel and Marina Discharges: a Guide for State and Local Officials). The application was also subject to the public participation process contained in DEQ's Guidance Memo 08-2003 (Procedure for Designation of Vessel No Discharge Zones), issued in February 2008. In 2016, DEQ hosted a public meeting and sought public comment. The application was then submitted to EPA, who reviewed the application and also sought public comment. EPA then established the new NDZs by publishing its affirmative determination in the Federal Register (85 FR 59796).

This regulatory action amends 9 VAC 25-71 to add the new NDZs to Virginia's list of designated NDZs in conformance with federal regulations.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The designation of an NDZ prohibits the discharge of all vessel sewage, whether treated or not, into the designated NDZ. The primary advantage is a reduction in the discharge of bacteria to state waters, which will benefit commercial fishing, recreation, and overall water quality. Establishment of an NDZ may disadvantage some vessels who would need to alter their operations (e.g., use pumpout stations), but the application examined these scenarios and concluded that adequate facilities are available to vessels. Also refer to Substance for more information.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change that is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

This is a conforming change to align our NDZs (as specified in Section 70 of 9 VAC 25-71) with EPA's approved NDZs for Virginia. This regulatory amendment is not more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected:
None

Localities Particularly Affected:
Gloucester County was a proponent of the NDZ application. See the Substance section above for more details.

Other Entities Particularly Affected:
Commercial fishing and shellfishing industry, vessel owners and operators. Generally, the NDZs should improve water quality and the health of fish and shellfish communities, which would benefit those industries. EPA's determination also found that adequate pumpout facilities exist to serve vessel owners and operators.

Detail of All Changes Proposed in this Regulatory Action

List all changes proposed in this exempt action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. *Please put an asterisk next to any substantive changes.

The amendments would adopt two new No Discharge Zones, adding to the three already in the regulations.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
70		Listing of designated no discharge zones in the Commonwealth of Virginia	Adopting two new NDZs; one for Sarah Creek and one for Perrin River

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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

The regulations under 9 VAC 25-71 apply to all persons, including small business owners, who discharge treated vessel sewage in Virginia waters. EPA approved the NDZ application, thereby establishing the two NDZs. As a result, vessels can no longer discharge treated sewage in these waters. However, as part of the application process, EPA determined that there are adequate pumpout facilities available to vessel operators. This regulatory action is necessary to conform to federal requirements, as EPA has approved these NDZs.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please 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.

The amendment of the Regulations Governing the Discharge of Sewage and Other Wastes from Boats is for the protection of public health, safety, and welfare and the Board does not anticipate any direct impact on the institution of the family and family stability.