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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-191
<b>VAC Chapter title(s)</b>	Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations
<b>Action title</b>	Repeal 9VAC25-191
<b>Date this document prepared</b>	04/20/2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), 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 existing Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations Regulation (9VAC25-191) expired on December 31, 2010 and has not been re-issued. This general permit regulation does not allow the Board to provide the public notice opportunities as required by the Federal Concentrated Animal Feeding Operations (CAFO) Rule. CAFOs instead are now regulated under the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31). A VPDES individual permit is issued to livestock and poultry CAFOs that meet the discharge criteria; the individual permit process provides the public notice opportunities as required by the Federal CAFO Rule. This general permit regulation is no longer needed and is being repealed. A periodic review was conducted of this regulation in 2021 and the result of the periodic review was to repeal the regulation.

## 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.*

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- AFO(s) - Animal Feeding Operation(s)
- CAFO(s) - Concentrated Animal Feeding Operation(s)
- VPA - Virginia Pollution Abatement
- VPDES - Virginia Pollutant Discharge Elimination System
- NPDES - National Pollutant Discharge Elimination System

## 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.*

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At its meeting on June 22, 2022, the State Water Control Board authorized the department to:

1. Promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The board’s authorization also constituted its repeal of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal; and
2. Set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the department does not find it necessary to make any changes to the proposal.

## 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, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “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.”*

*As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.*

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A periodic review and small business impact review of the VPDES General Permit for Concentrated Animal Feeding Operations (9VAC25-191) was concluded in October 2021. The review of this regulation was guided by the principles in Executive Order No. 14 (2018) (as amended July 16, 2018), Development and Review of State Agency Regulations, and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia. The purpose of the periodic review was to determine if the regulation should be terminated, amended, or retained in its current form. A public comment period was held from August 2, 2021 through August 23, 2021. Comments were received from the Chesapeake Bay Foundation supporting the repeal of this regulation. The result of the periodic review was to repeal the regulation.

Repealing this regulation using the fast-track process will not be controversial because the general permit associated with this regulation is expired and no activities are currently covered by this regulation. CAFOs

are regulated under the VPDES Permit Regulation (9VAC25-31); an individual Permit is issued to cover livestock and poultry CAFOs that meet the discharge criteria. Animal Feeding Operations (AFOs) and CAFOs that do not discharge are also regulated under the VPA Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (9VAC25-192) and the VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630). Both the VPA general permits and VPDES individual permits are currently used to permit livestock and poultry AFOs and CAFOs.

**Legal Basis**

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency'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 issuance of 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 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, § 62.1-44.17 specifies the Board's authority to regulate discharges of other 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.

The State Water Control Board has the authority to administer the federal NPDES program within the Commonwealth, and as such, the program is called the VPDES program. Operations that meet the federal definition of CAFO found in 40 CFR 122.23(b) must seek coverage under a NPDES permit if the operation discharges. CAFOs are currently regulated in Virginia under the VPA permit regulation (9VAC25-32), the VPA Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (9VAC25-192), the VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630), and the VPDES Permit Regulation (9VAC25-31). CAFOs that discharge are required to obtain an individual VPDES permit under the authority of the VPDES Permit Regulation (9VAC25-31).

**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.*

Repealing this regulation will eliminate confusion as to the mechanism (individual permit versus general permit) that is being used to implement the requirements under the VPDES program that must be adhered to by owners of CAFOs that discharge. This general permit expired December 31, 2010 and has not been re-issued. This general permit regulation does not allow the Board to provide the public notice opportunities as required by the Federal CAFO Rule. CAFOs instead are now regulated under the VPDES Permit Regulation (9VAC25-31). A VPDES individual permit is issued to livestock and poultry CAFOs that meet the discharge criteria; the individual permit process provides the public notice opportunities as required by the Federal CAFO Rule. This general permit regulation is no longer needed and will be repealed.

### 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.*

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The general permit regulation is no longer needed. CAFO and AFO activities are regulated using other 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.*

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Repealing this regulation will only be advantageous to the public and to the Commonwealth because it will eliminate confusion as to the mechanism (individual permit versus general permit) that is being used to implement the requirements under the VPDES program that must be adhered to by owners of CAFOs that discharge.

### Requirements More Restrictive than Federal

*Identify and describe any requirement of the regulatory change which 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.*

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The individual permit will contain all of the applicable federal and state requirements. Repealing this regulation will not cause the individual permits to be more restrictive than the requirements contained in the VPA or VPDES permit regulations that govern the CAFOs.

### 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.*

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#### Other State Agencies Particularly Affected

There are no other State Agencies that are particularly affected by the repeal of this regulation.

#### Localities Particularly Affected

There are no localities that are particularly affected by the repeal of this regulation.

Other Entities Particularly Affected

There are no other Entities that are particularly affected by the repeal of this regulation.

For purposes of "Locality Particularly Affected" under the Board's statutes

There are no localities that are particularly affected by the repeal of this regulation.

**Economic Impact**

*Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.*

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:                  a) fund source / fund detail;                  b) delineation of one-time versus on-going expenditures; and                  c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>There are entities regulated by this general permit. There is no economic impact associated with the repeal of this regulation.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are entities regulated by this general permit. There is no economic impact associated with the repeal of this regulation.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>Repealing this regulation will eliminate confusion as to the appropriate mechanism that is being used to implement the requirements that must be adhered to by owners of CAFOs under the VPDES program.</p>

**Impact on Localities**

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There are entities regulated by this general permit. There is no economic impact associated with the repeal of this regulation.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Repealing this regulation will eliminate confusion as to the appropriate mechanism that is being used to implement the requirements that must be adhered to by owners of CAFOs under the VPDES program.</p>

**Impact on Other Entities**

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>There are entities regulated by this general permit.</p>
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<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> <li>a) is independently owned and operated and;</li> <li>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</li> </ul>	<p>There are entities regulated by this general permit. There is no economic impact associated with the repeal of this regulation.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> <li>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</li> <li>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;</li> <li>c) fees;</li> <li>d) purchases of equipment or services; and</li> <li>e) time required to comply with the requirements.</li> </ul>	<p>The regulation is no longer needed and is being repealed. Public comment was received during the public comment period supporting the repeal of this regulation. The general permit associated with this regulation expired December 31, 2010. Continuing to list this regulation as an active regulation leads to confusion concerning regulatory requirements to be complied with.</p> <p>CAFOs that meet the discharge criteria are regulated under the VPDES Permit Regulation (9VAC25-31); an individual VPDES permit is issued to cover poultry and livestock CAFOs that meet the discharge criteria. AFOs and CAFOs that do not discharge are regulated under the VPA Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (9VAC25-192) and the VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630). Both the VPA general permits and VPDES individual permits are currently used to permit livestock and poultry AFOs and CAFOs and do not conflict with federal laws.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Repealing this regulation will eliminate confusion as to the appropriate mechanism that is being used to implement the requirements that must be adhered to by owners of CAFOs under the VPDES program.</p>

**Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

Currently, under the authority of the VPDES Permit Regulation (9VAC25-31) individual permits are being processed or have been issued to the owners of CAFOs that discharge. The general permit associated with this regulation is expired and no longer achieves the purpose of this regulation. This regulation will be repealed.

## Regulatory Flexibility Analysis

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

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The Department could amend the general permit to allow for its reissuance; however, the process for obtaining coverage under the general permit does not allow for adequate public input into the process as required by the NPDES CAFO Rule. The current process of issuing an individual permit provides the opportunity for public comment before issuance of the permit as required by the federal regulations.

## Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

*As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

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If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

In addition to any other comments, the State Water Control Board is seeking comments on the costs and benefits of the proposal and the potential impacts on the regulated community. Also, the agency/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 reported, 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 **Betsy Bowles, P.O. Box 1105, Richmond, Virginia 23218, phone: 804-659-1913, Fax: 804-698- 4178 and Betsy.Bowles@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](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.

## Detail of Changes

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.*

**Table 1: Changes to Existing VAC Chapter(s)**

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
9VAC25-191	N/A	Regulatory requirements for permit CAFOs under the VPDES general permit	Repeal: The regulation is being repealed since the general permit does not allow for adequate public input into the process as required by the Federal CAFO Rule.

## 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.*

Because CAFOs are currently regulated in Virginia and this action serves only to repeal the VPDES general permit regulatory mechanism governing select CAFOs; repealing this regulation is not expected to have significant impact on family or family stability.