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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-192-10 et seq.
<b>VAC Chapter title(s)</b>	Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management
<b>Action title</b>	2024 Reissue and amend, as necessary, the Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management
<b>Date this document prepared</b>	November 2, 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 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

The State Water Control Board is proposing this action to reissue and amend, as necessary, the existing Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (9VAC25-192-10 et seq.). Section 62.1-44.17:1 of the Code of Virginia, states that the Board shall adopt a general VPA permit to cover animal feeding operations having 300 or more animal units utilizing a liquid manure collection and storage system. The current VPA regulation and general permit expires on November 15, 2024. This regulation governs the pollutant management activities of animal wastes at animal feeding operations not covered by a Virginia Pollutant Discharge Elimination System permit and animal waste utilized or stored by animal waste end-users. These animal feeding operations may operate and maintain treatment works for waste storage, treatment, or recycling and may perform land application of manure, wastewater, compost, or sludges. The general permit is the

primary permit mechanism used to cover animal feeding operations which confine livestock such as, but not limited to, swine, dairy and beef cattle across the Commonwealth. During this action, language will be amended to update the incorporation by reference date of 40 CFR references in the regulation as necessitated by changes to the Federal Rules.

## Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

Animal Feeding Operations (AFO) means a lot or facility where the following conditions are met:

1. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
2. Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation for the purposes of determining the number of animals at an operation, if they adjoin each other, or if they use a common area or system for the disposal of wastes.

Animal waste means liquid, semi-solid, and solid animal manure and process wastewater, compost, or sludges associated with animal feeding operations including the final treated wastes generated by a digester or other manure treatment technologies.

Animal waste end-user or end-user means any recipient of transferred animal waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial use for an operation under his control.

300 animal units (300 A.U.) means 300,000 pounds of live animal weight, or the following numbers and types of animals:

- a. 300 slaughter and feeder cattle;
- b. 200 mature dairy cattle (whether milked or dry cows);
- c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);
- d. 150 horses;
- e. 3,000 sheep or lambs;
- f. 16,500 turkeys;
- g. 30,000 laying hens or broilers.

CFR - Code of Federal Regulations

DEQ - Department of Environmental Quality

VPA - Virginia Pollution Abatement

## 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 the ORM procedures, "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."*

The impetus of the regulatory change is § 62.1-44.15 (5b) of the Code of Virginia, which states, "All certificates issued by the Board under this chapter shall have fixed terms. ... The term of a Virginia Pollution Abatement permit shall not exceed 10 years, except that the term of a Virginia Pollution Abatement permit for confined animal feeding operations shall be 10 years." The general permit issued

through this regulation must be reissued in order to meet the requirements of § 62.1-44.17:1 of the Code of Virginia and continue the general permit coverage of confined animal feeding operations. This regulation expires on November 15, 2024 and must be reissued to cover the existing animal feeding operations and any new animal feeding operations. There are currently 113 animal feeding operations covered under the general permit. If the regulation is not reissued in a timely manner, the operations that are covered under the general permit as well as any new operations that need a permit will be required to seek coverage under an individual VPA permit, which require more time to develop and issue, and impose a greater burden and costs on permittees and increased administrative burden on DEQ.

## 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.*

In 1994, the Virginia General Assembly passed House Bill 222 (now § 62.1-44.17:1 of the Code of Virginia) establishing the general permit for confined animal feeding operations. The Act required the State Water Control Board to adopt the general permit, establish provisions for issuing the general permits and establish criteria for the design and operation of the confined AFOs. Section 62.1-44.17:1 of the Code of Virginia authorizes the State Water Control Board to establish and implement the general permit for confined AFOs having 300 or more animal units. The regulation and general permit first became effective on November 16, 1994. Since 1994, the regulation has been reissued two more times, the last becoming effective on November 16, 2014. Changes to this chapter of the Virginia Administrative Code are exempt from Article 2 of the Administrative Process Act (§ 2.2-4006 A 8 of the Code of Virginia).

## Purpose

*Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.*

The purpose of this action is to reissue and amend, as necessary, the existing Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management. This regulation expires on November 15, 2024 and must be reissued to cover the existing animal feeding operations and any new animal feeding operations. This action is needed in order to maintain permitting requirements for pollutant management activities of animal wastes at animal feeding operations not covered by a Virginia Pollutant Discharge Elimination System permit and animal waste utilized or stored by animal waste end-users. The goal is to update the regulation and the permit to be consistent with the other VPA general permit covering animal feeding operations and protect water quality.

## Substance

*Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

This action is primarily a reissuance of the existing general permit and significant changes are not expected; however, the following items will also be considered in the development of a regulatory proposal:

1. Groundwater monitoring technology has greatly improved over the years. These improvements have led to more robust methods and techniques for determining if groundwater contamination is occurring while enabling improved methods for determining sources of contamination. The current regulation does not provide for the use of modern groundwater monitoring technology and techniques. This regulatory action will consider the addition of language that would provide options for groundwater monitoring to include modern technology.
2. The continuation of permit coverage language will be amended to remove the dates and to make it consistent with language in the VPA Regulation and General Permit for Poultry Waste Management.
3. During this action, language will be amended to update the incorporation by reference date of 40 CFR references in the regulation as necessitated by changes to the Federal Rules.
4. Other amendments to the Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management may be considered by the Board based on comments received in response to this notice and discussions of the technical advisory committee.

### 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, 113 animal feeding operations are covered under this general permit regulation. One alternative to the reissuance of the VPA Regulation and General Permit for Animal Feeding Operations and Animal Waste Management is to issue an individual VPA permit to each animal feeding operation which confines 300 or more animal units. Obtaining an individual permit may place a financial burden on an owner of an operation currently covered or seeking coverage under the general permit. However, due to the number of animal feeding operations currently required to obtain coverage under a VPA permit, it is not practical to issue an individual VPA permit to each operation. Operations that do not qualify for coverage under the general permit will be issued an individual VPA permit.

### 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. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

The State Water Control Board is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. The State Water Control Board is also 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) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

This NOIRA is not being used to announce a periodic review or a small business impact review.

Anyone wishing to submit written comments may do so by mail, email or fax to Betsy Bowles at P.O. Box 1105, Richmond, VA 23218; [betsy.bowles@deq.virginia.gov](mailto:betsy.bowles@deq.virginia.gov); or fax: 804-698-4178. Phone: 804-659-1913. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall (<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 before midnight on the last day of the public comment period.

### Public Hearing at Proposed Stage

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar <https://commonwealthcalendar.virginia.gov/>.

### Technical Advisory Committee

*A technical advisory committee will be involved in the development of the proposed regulation.*

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The Board is using a technical advisory committee to develop a proposal. Persons interested in assisting in the development of a proposal should notify the Department's contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). The primary function of the advisory committee is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the advisory committee will be sent to all applicants.