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Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-71
VAC Chapter title(s)	Regulations Governing the Discharge of Sewage and Other Wastes from Boats
Date this document prepared	7/26/2022

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**.

Acronyms and Definitions

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

CFR- Code of Federal Regulations
NDZ- no discharge zones

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 or 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.

Section § 62.1-44.33 A of the Virginia Code directs the State Water Control Board "to adopt all necessary regulations for the purpose of controlling the discharge of sewage and other wastes from both documented and undocumented boats and vessels on all navigable and nonnavigable waters within this Commonwealth." The State Water Control Board adopted this regulation in 2003 and amended the regulation in 2004, 2007, 2009, 2011 and 2021.

Section 62.1-44.33 of the Code of Virginia, includes language declaring that "tidal creeks of the Commonwealth are hereby established as no discharge zones for the discharge of sewage and other wastes from documented and undocumented boats and vessels. Criteria for the establishment of no discharge zones shall be premised on improvement of impaired tidal creeks." Virginia has applied to EPA in the past for No Discharge Zones (NDZ) to be established in waters where local stakeholders and DEQ have determined that greater environmental protection is needed. NDZs are designated at the request of the state when adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

These regulations prohibit the discharge of sewage and other wastes from boats in areas designated as "no discharge zones". There are no known alternatives that would achieve the stated purpose of the program in a less burdensome and intrusive manner. The regulation lists specific areas that have been approved by EPA as no discharge zones. The NDZs were developed in accordance with Clean Water Act Section 312.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

An informal advisory group was not formed as part of this review. The Notice of Public Review was posted to Town Hall on April 25, 2022. No public comments were received during the public comment period.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation is necessary for the protection of public health, safety and welfare and is clearly written and easily understandable. Both untreated and treated sewage may contain disease-causing microorganisms, chemicals, and nutrients. Vessel sewage is more concentrated than domestic sewage so it can have a disproportionate impact on water quality, especially in sensitive areas near shellfish beds or recreational areas. The regulation lists NDZs that have been approved by EPA in accordance with Section 312 of the Clean Water Act.

Decision

Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The agency is recommending the regulation stay in effect without change. The regulation is beneficial to the protection of state waters and is no more stringent than existing requirements under state or federal law. The NDZ included in this regulation have been approved by EPA in accordance with Section 312 of the Clean Water Act.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

The current regulation continues to be needed. The regulation addresses discharges of sewage and other wastes from boats and identifies designated No Discharge Zones. This regulation is needed to prevent contamination of state waters from sewage discharges from boats in order to protect the health and safety of citizens of the Commonwealth.

Section 62.1-44.33 of the Code of Virginia, includes language declaring that “tidal creeks of the Commonwealth are hereby established as no discharge zones for the discharge of sewage and other wastes from documented and undocumented boats and vessels. Criteria for the establishment of no discharge zones shall be premised on improvement of impaired tidal creeks.” Virginia has applied to EPA for No Discharge Zones to be established in waters where local stakeholders and DEQ have determined that greater environmental protection is needed. Both untreated and treated sewage may contain disease-causing microorganisms, chemicals, and nutrients. Vessel sewage is more concentrated than domestic sewage so it can have a disproportionate impact on water quality especially in sensitive areas near shellfish beds or recreational areas. NDZs are designated when adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available.

No public comments were received during the public comment period.

The subject matter of the regulation is complex in nature and the regulations detail the requirements of the program. The regulation establishes No Discharge Zones in the Commonwealth and the prohibition of the discharge of sewage and other waste in these areas upon designation of the No Discharge Zone by EPA. The regulation specifies requirements existing in the state code with respect to discharges from boats and provides a means of designating No Discharge Zones, but it is no more stringent than existing requirements under state or federal law. Federal Marine Sanitation Device Standards found in 40 CFR Part 140 are referenced in this regulation.

The regulation was last amended in 2021 to establish two newly designated No Discharge Zones. Changes in technology and economic conditions since 2021 have not impacted the requirements of the regulation.

The agency is recommending the regulation stay in effect without change. The regulation is beneficial to state waters and is no more stringent than existing requirements under state or federal law. The NDZ included in this regulation have been approved by EPA.
