



Exempt Action Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-31
Regulation title	Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation
Action title	Amendment of Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation – Exempt Action Conformance with Code of Federal Regulations for Concentrated Animal Feeding Operations
Final agency action date	December 14, 2009
Document preparation date	November 13, 2009

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is 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, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The existing Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) has been amended, where applicable, to reflect changes to 40 CFR Parts 9, 122, and 412 as published in the Federal Register Volume 73, No. 225, dated November 20, 2008. There is no material difference between the regulation amendments and the corresponding federal regulations; therefore, these amendments qualified for exemptions from the Administrative Process Act § 2.2-4006(A)(4)(c).

The VPDES permit regulation governs the authorization to manage pollutants from various sources, including concentrated animal feeding operations (CAFOs). The State Water Control Board has the authority to administer the federal National Pollutant Discharge Elimination System program within the Commonwealth, and as such, the program is called the Virginia Pollutant Discharge Elimination System (VPDES). 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 or proposes to discharge. CAFOs are currently regulated in Virginia under the Virginia Pollution Abatement (VPA) permit regulation (9VAC25-32), the VPA General Permit Regulation for Confined Animal Feeding Operations (9VAC25-192), and the

VPA General Permit Regulation for Poultry Waste Management (9VAC25-630). Concentrated Animal Feeding Operations currently covered under these regulations will be required to be covered under the VPDES permit regulation (9VAC25-31) or VPDES general permit regulation (9VAC25-191) if they discharge or propose to discharge.

Statement of final agency action

Please 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.

The final action will be taken on December 14, 2009 by the State Water Control Board. The title of the regulation is the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed change	Rationale
9VAC25-31-30 Federal effluent guidelines	Amended date of the Feedlots 40 CFR Part 412 (2005) (2009)	The Federal effluent guidelines 40 CFR part 412 were amended and became effective December 22, 2008, the date was amended to reflect these changes.
9VAC25-31-100 Application for a permit Subsection A.	Amended: Strike: All concentrated animal feeding operations have a duty to seek coverage under a VPDES permit. Add: <u>The requirements for concentrated animal feeding operations are described in subdivision C 1 and 3 of 9VAC25-31-130.</u>	40 CFR 122.21 was amended and became effective December 22, 2008, the language was amended to reflect these changes.
9VAC25-31-100 Application for a permit Subsection I.	Amended: Strike: For CAFOs that must seek coverage under a permit after December 31, 2006, certification that a nutrient management plan has been completed and will be implemented upon the date of coverage. Add: <u>For CAFOs required to seek coverage under a permit after December 31, 2009, a nutrient management plan that at a minimum satisfies the requirements specified in subsection E of 9VAC 25-31-200, subdivision C 9 of 9VAC25-31-130, including, for all CAFOs subject to 40 CFR part 412 subpart C or subpart D (2009), the requirements of 40 CFR 412.4(c) (2009), as applicable.</u>	40 CFR 122.21 was amended and became effective December 22, 2008, the language was amended to reflect these changes.
9VAC25-31-130	Amended language below: Concentrated animal feeding operations <u>as defined in</u>	40 CFR 122.23 was amended and

Subsection A.	9VAC25-31-10 or designated in accordance with subsection B of this section are point sources that require VPDES permits for discharges or potential proposed discharges.	became effective December 22, 2008, the language was amended to reflect these changes.
9VAC25-31-130 Subsection C.	<p>Amended language below: All CAFO owners or operators must apply for a permit. All CAFO The owners or operators of a CAFO must shall seek coverage under a VPDES permit, except as provided in subdivision 2 of this subsection. if the CAFO discharges or proposes to discharge. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge will occur. Specifically, the CAFO owner or operator must shall either apply for an individual VPDES permit or apply for coverage under a VPDES general permit. If there is no VPDES general permit available to the CAFO, the CAFO owner or operator must shall submit an application for an individual permit to the board.</p> <p>Amend and add: criteria regarding discharges from land application Strike: all "No potential to discharge determination" language and criteria Add: "No discharge certification option" criteria Amend: deadline to apply for coverage (February 27, 2009) Amend: language regarding duty to maintain coverage Add: procedures for CAFOs seeking coverage under a general permit</p>	40 CFR 122.23 was amended and became effective December 22, 2008, the language was amended to reflect these changes.
9VAC25-31-130 Subsection C.	Add: procedures that apply when a CAFO owner or operator makes changes to a nutrient management plan	40 CFR 122.42 was amended and became effective December 22, 2008, the language was amended to reflect these changes.
9VAC25-31-130 Subsection C.	Add language regarding modifications of nutrient management plans: <u>Causes for modification of nutrient management plans. The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit when a CAFO obtains coverage under a general permit in accordance with subdivision C 8 of 9VAC25-31-130 and 9VAC25-31-170 is not a cause for modification pursuant to the requirements of 9VAC25-31-370.</u>	40 CFR 122.62 was amended and became effective December 22, 2008, the language was amended to reflect these changes.
9VAC25-31-170 Subsection B.	Amend to allow for coverage under a general permit: <u>A CAFO owner or operator may be authorized to discharge under a general permit only in accordance with the process described in subdivision C 8 of 9VAC25-31-130.</u>	40 CFR 122.28 was amended and became effective December 22, 2008, the language was amended to reflect these changes.
9VAC25-31-200 Subsection E.	Amended: Amended language regarding additional requirements for CAFO: Add new annual report item:	40 CFR 122.42 was amended and became effective December 22, 2008, the language

	<p><u>The actual crop(s) planted and actual yield(s) for each field, the actual nitrogen and phosphorus content of the manure, litter, and process wastewater, the results of calculations conducted in accordance with subdivisions 5 a (2) and 5 b (4) of this subsection, and the amount of manure, litter, and process wastewater applied to each field during the previous 12 months; and, for any CAFO that implements a nutrient management plan that addresses rates of application in accordance with subdivision 5 b of this subsection, the results of any soil testing for nitrogen and phosphorus taken during the preceding 12 months, the data used in calculations conducted in accordance with subdivision 5 b (4) of this subsection, and the amount of any supplemental fertilizer applied during the previous 12 months.</u></p> <p>Add: new language regarding nutrient management plan criteria</p>	<p>was amended to reflect these changes.</p>
9VAC25-31-290 Subsection C	<p>Added language that exempts the requirement of newspaper publication of permits for Concentrated Animal Feeding Operations.</p>	<p>Clarify the language regarding the public notice requirements in accordance with State Statute.</p>
9VAC25-31-400 Subsection G	<p>Add language regarding modifications: <u>Incorporate changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements of subdivision C 9 of 9VAC25-31-130.</u></p>	<p>40 CFR 122.63 was amended and became effective December 22, 2008, the language was amended to reflect these changes.</p>
9VAC25-31-9998 (FORMS)	<p>Added: Application Form 2B - for CAFO (Rev. 11-08)</p>	<p>Added reference of revised EPA application form to list.</p>

Regulatory flexibility analysis

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.

As the changes are being made to conform with federal regulations, options for regulatory flexibility were not available in this case.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

Because CAFOs are currently regulated in Virginia, and this action serves only to transfer the regulatory mechanism governing select CAFOs from the VPA regulatory system to the VPDES regulatory system, it is not expected to have significant impact on family or family stability.