



Exempt Action Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-800
Regulation title	Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters
Action title	Amendment and Reissuance of General Permit Regulation
Final agency action date	September 30, 2013
Document preparation date	August 23, 2013

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 14 (2010) 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.

This rulemaking is proposed in order to reissue the existing VPDES general permit which expires on December 31, 2013. The permit must be reissued in order to make coverage under the general permit available to operators after December 31, 2013. The existing regulation contains the general permit requirements to control point source discharges of chemical pesticide residues and biological pesticides applied in or over, including near, surface waters. The following pesticide uses are covered under the general permit as they are most likely to reach surface waters:

- Mosquito and other flying insect pest control
- Weed and algae pest control
- Animal pest control
- Forest canopy pest control
- Intrusive vegetation pest control.

The regulatory changes include updates to the narrative technology and water quality based permit requirements, monitoring requirements, pesticide discharge management plans and special conditions (corrective actions, adverse incidents and recordkeeping and reporting). The regulatory changes are based on the 2011 EPA Pesticide General Permit (PGP) for Discharges from the Application of Pesticides, technical advisory committee recommendations, public comment and agency needs.

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.

On September 30, 2013 the State Water Control Board (state agency action) the amended Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
9VAC25-800-10. Definitions	"Treatment area" means the area of land including any waters, or the linear distance along water's edge, to which pesticides are being applied. Multiple treatment areas may be located within a single pest management area.	"Treatment area" means the area of land including any waters, or the linear distance along [water or] water's edge, to which pesticides are being applied. Multiple treatment areas may be located within a single pest management area.	To match changes made to 9VAC25-800-30 footnote 2 where linear mileage calculations were clarified to include linear measurements along roads, ditches, canals, waterways and utility rights of way and in surface waters that are linear water features.
*9VAC25-800-30. Authorization to discharge	Forest pest control was broadened to include aerial utility transmission and aerial distribution line pest control	Forest pest control covers only forest canopy pest control and another use category was added for other types of intrusive vegetation pest control (roads, ditches, canals, waterways, utility rights of way) where the pesticide application would unavoidably reach surface waters..	After receiving public comment that the forestry pest control to include aerial utility pest control was not broad enough for utilities vegetative pest control, DEQ staff elected to add this fifth category to ensure coverage where intrusive vegetative pest control along roads, ditches, canals, waterways and utility

			rights of way would unavoidably reach surface waters.
9VAC25-800-30. Authorization to discharge	In Table 1, the annual thresholds were broken down into those pesticide uses measured 'in water' and 'at water's edge.' The linear calculation explanation in footnote 2 didn't include linear calculations for water features, just linear calculations at waters' edge.	The annual thresholds broken down into those pesticides uses measured 'in water' and 'at water's edge' were removed from Table 1. Annual thresholds now refer only to either footnote 1 or footnote 2 which explain how to calculate acreage and linear thresholds. Footnote 2 was clarified to include linear calculation in water and not just at water's edge.	For clarification.
9VAC25-800-60. General permit	Part I A 1 b (4) Proposed as 'forest pest control.'	Final changed to 'forest canopy pest control.'	Due to changes made in 9VAC25-800-30. Authorization to discharge
*9VAC25-800-60 General Permit	No existing requirement for IPM for intrusive vegetation pest control in Part I A 1 b	Added IPM for intrusive vegetation pest control per changes made in 9VAC25-800-30. Authorization to discharge.	Due to changes made in 9VAC25-800-30. Authorization to discharge
9VAC25-800-60 General Permit	Part I C 3, a PDMP, Problem identification, pest problem description referenced Part A 1 b (1), I A 1 b (2), I A 1 b (3), and I A 1 b (4).	Part I C 3 a PDMP, Problem identification, pest problem description references PA 1 b (1), I A 1 b (2), I A 1 b (3), and I A 1 b (4) and I A 1 b (5) to include the new IPM procedures for intrusive vegetation pest control.	Due to changes made in 9VAC25-800-30. Authorization to discharge
9VAC25-800-60 General Permit	Part I C 7 a, The requirement for the operator to review the PDMP at a minimum once per calendar year and whenever necessary to update the pest problem identified and pest management strategies evaluated for the pest management area was deleted.	The requirement was reinstated.	Public comment requested this minimum review requirement remain.
9VAC25-800-60 General Permit	Part I D 2 a instructed adverse incident 24-hour notification be done by telephone.	Part I D 2 a the adverse incident telephone notification was deleted and the operator is instructed to refer to Part I D 5 which provide more detailed notification instructions including telephone, FAX and electronic notification.	Staff clarification based on current procedures.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
City of Suffolk L.J. Hansen, P.E., Dept. of Public Works	Although the definition of “Surface Waters” identifies wastewater ponds and lagoons as exempt, it does not clearly define whether or not BMP’s utilized for storm water treatment would be included.	BMPs utilized for storm water may or may not be identified as wastewater ponds or lagoons. It depends on whether or not the BMP (storm water management structure) is permitted under a VPDES or VSMP permit. A storm water structure with a VPDES or VSMP permit is not surface water. All other storm water structures are surface waters. If unsure, we advise operators to count it in their acreage calculations. DEQ does not want to alter the definition of surface waters as it is based on the federal definition. However, additional guidance will be added to the fact sheet with examples.
Northern Virginia Regional Commission Aimee Vosper, Director, Environmental & Planning Services	The removal of <i>invasive</i> species as targets for pesticide application is not supported by NVRC. Invasive species pose significant threats and should be controlled.	DEQ revised the definitions to align with the EPA pesticide permit definition which eliminated the use of the words <i>invasive</i> and <i>nuisance</i> plants and replaced them with the phrase <i>weeds, algae and pathogens that are pests</i> . <i>Pests</i> are further defined as <i>deleterious organisms</i> and plants are specifically defined as <i>deleterious</i> if they are <i>growing where not wanted</i> . DEQ thinks and fully intends to cover pesticide applications to surface water for <i>invasive</i> and <i>nuisance</i> plants because they are <i>deleterious and growing where not wanted</i> .
Northern Virginia Regional Commission Aimee Vosper, Director, Environmental & Planning Services	IN the PDMP, NVRC recommends that in addition to <i>Problem Identification</i> , operators also include an <i>Area Descriptions</i> , as previously required. An <i>Area Description</i> contains relevant information about surrounding vegetation and environmental factors which could inform the optimal pest control strategy while ensuring minimal environmental damage.	This section has been renamed from <i>Pest management area description</i> to <i>Problem identification</i> to better describe the purpose of this section which was to describe the problem, set action levels and have a general area (location) map. The purpose of the section has not changed. DEQ never intended this section to require relevant information about surrounding vegetation and environmental factors which could inform the optimal pest control strategy while ensuring minimal environmental damage. No change was made to the language, which DEQ thinks is much clearer and based on the EPA pesticide permit.

<p>Northern Virginia Regional Commission Aimee Vosper, Director, Environmental & Planning Services</p>	<p>Require operators to review the PDMP at least once per year as per the previous permit to enforce documented review of changing factors such as the problem, local ecology and climate, technology and available products, and available information on environmental impacts.</p>	<p>The request is for an annual minimum review of the PDMP has been reinstated.</p>
<p>Northern Virginia Regional Commission Aimee Vosper, Director, Environmental & Planning Services</p>	<p>NVRC recommends the DEQ consider some restriction on mosquito control as it related to bee population health. Certain mosquito control measures cause significant harm to bee populations. Some measures to include could be restricting mosquito pesticide application to dawn and dusk, limiting application of toxic chemicals known to damage bee colonies, avoid pesticide application while target plants are in bloom and required advance notice to local beekeepers before mosquito pesticides are applied. References to this topic were included.</p>	<p>The purpose of this permit and the authority of the SWCB is to protect state water uses. Including these types of requirements exceeds the authority granted to the SWCB. However, the information and references provided will be added to the Fact Sheet.</p>
<p>Dominion Pamela F. Faggert</p>	<p>Supports the exemption for submission of a registration statement and allowing for automatic coverage.</p>	<p>Noted.</p>
<p>Dominion Pamela F. Faggert</p>	<p>A linear treatment threshold should be added for aerial pest control activities for vegetation control along transmission and distribution rights of way. Furthermore a fifth use pattern to include intrusive vegetation control for roads and utility rights of way where the pesticide will unavoidably be applied over and deposited into surface waters should be added.</p>	<p>DEQ agrees and has moved the utility transmission and distribution line pest control to the new use pattern of <i>Intrusive vegetation</i> control and 20 linear miles of treatment areas was added for this use pattern.</p>

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 new section number, if applicable	Current requirement	Proposed change and rationale
9VAC25-800-10.	N/A	Definitions	Definitions were updated or deleted to match EPA's where appropriate.
9VAC25-800-30	N/A	Four pesticide use patterns covered.	Five pesticide use patterns covered. After receiving public comment that the forestry pest control to include aerial utility pest control was not broad enough for utilities vegetative pest control, DEQ staff elected to add this fifth category to ensure coverage where pesticide applications for intrusive vegetative pest control along roads, ditches, canals, waterways and utility rights of way would unavoidably reach surface waters.
9VAC25-800-30	N/A	In Table 1, the annual thresholds were broken down into those pesticide uses measured 'in water' and 'at waters edge.' The linear calculation explanation in footnote 2 didn't include linear calculations for water features, just linear calculations at waters' edge.	The annual thresholds broken down into those pesticides uses measured 'in water' and 'at water's edge' were removed from Table 1. Annual thresholds now refer only to either footnote 1 or footnote 2 which explain how to calculate acreage and linear thresholds. Footnote 2 was clarified to include linear calculation in water and not just at water's edge.
9VAC25-800-30	N/A	Two different ways to calculate thresholds are present, depending on pesticide use category in the footnotes.	The annual treatment area acreage calculations were made consistent for all pesticide use categories in the footnotes.
9VAC25-800-60	N/A	Permit expires December 31, 2013. 9VAC25-800-60 Part I A 1 a, and b. Operators (decision make or applicator) must meet all requirements.	Permit will be reissued for a five year period effective January 1, 2014 and expiring December 31, 2018. The current Virginia permit was adopted as a two-year permit because at the time of adoption, EPA's pesticide permit had not been finalized yet. The two-year permit allowed DEQ to evaluate EPA's final permit to include the parts of EPAs permit that could be useful to Virginia. Part I A 1 a, and b. Clarified the

			<p>requirements that apply to the operator/decision maker vs. the operator/applicator. For example, made the operator/applicator responsible for meeting the requirements to 'minimize pesticide discharges to surface waters' by using the lowest effective amount of pesticide and maintaining the equipment. These requirements are basically the same as VDACS regulations at 9VAC5-670-170 A and B (application and equipment) and following the FIFRA label requirements. Another requirement to 'minimize pesticide discharges to surface waters' is the use of integrated pest management (IPM) IPM is done by the operator with control over the financing for, or the decision to perform pesticide applications that result in discharges to surface waters. Also larger operators (either decision maker or applicator) who must prepare a Pesticide Discharge Management Plan (PDMP) must document IPM in their PDMP.</p>
*9VAC25-800-60 General Permit	No existing requirement for IPM for intrusive vegetation pest control in Part I A 1 b	Added IPM for intrusive vegetation pest control per changes made in 9VAC25-800-30. Authorization to discharge.	Due to changes made in 9VAC25-800-30. Authorization to discharge
9VAC25-800-60			Part I B. Simplified the monitoring requirements for all operators to be just visual monitoring, consistent with EPA's pesticide general permit.
9VAC25-800-60			Part I C Pesticide discharge management plan requirements have been clarified and amended to more closely align with EPA's pesticide general permit requirements.
9VAC25-800-60 General Permit	Part I D 2 a instructed adverse incident 24-hour notification be done by telephone.	Part I D 2 a the adverse incident telephone notification was deleted and the operator is instructed to refer to Part I D 5 which provide more detailed notification instructions including telephone, FAX and electronic notification.	Staff clarification based on current procedures.

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.

Alternative regulatory methods include:

- No registration statements or notice of intent.
- No registration fee.
- Less stringent reporting requirement than those recommended by EPA.
- Exempt pesticide operators that treat below a certain acreage of surface water from developing a pesticide discharge monitoring plan.

The agency also simplified the monitoring and Pesticide Discharge Management Plan language in Parts I B and I C.

All these alternatives will accomplish the objectives of applicable law but will minimize the adverse impact on small business and will be consistent with health, safety, environmental, and economic welfare.

Family impact

Assess the impact of this 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.

It is not anticipated by this agency that this regulation will have a direct impact on the institution of the family or family stability.