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Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-190
VAC Chapter title(s)	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining
Action title	Amend and Reissue the Existing General Permit Regulation
Final agency action date	November 30, 2023
Date this document prepared	September 27, 2023, Revised March 8, 2024

This information is required for executive branch review pursuant to 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. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to 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 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 Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining has existed since 1994. This general permit contains effluent limitations, monitoring requirements and special conditions for discharges of process wastewater, which may be commingled with stormwater, as well as stormwater associated with industrial activity, to surface waters. The changes to the regulation are being made to reissue this general permit and in response to Technical Advisory Committee suggestions, comments, and staff requests to revise, update and clarify the permit conditions.

Primary substantive changes include adding items to and editing items on the registration statement, adding language that conditionally allows dewatering during flooded conditions, adding a conditional electronic reporting requirement for registration statements and DMRs, revising language regarding updating the SWPPP, revising two authorized non-stormwater discharge provisions,

revising the 24-hour noncompliance reporting provision and updating the web link, and establishing a new term of July 1, 2024 – June 30, 2029.

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, internal staff review, 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.”

VPDES permits are limited to a term of five years. The existing VPDES Nonmetallic Mineral Mining General Permit regulation expires on June 30, 2024, and it must be reissued for another five-year term to remain available to mine operators that conduct in-scope activities. If this permit is not re-issued in a timely manner, no new coverage is available to any additional operators and such operators would be required to obtain individual VPDES permits. Process wastewater and industrial stormwater have been determined to be point source discharges and if the general permit is not available such dischargers will need to apply for and obtain individual VPDES permits, which impose significantly greater burden and costs on permittees and increased administrative burden on DEQ.

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.

- APA: Administrative Process Act
- BMP: Best Management Practices
- CFR: Code of Federal Regulations
- COD: Chemical oxygen demand
- DEQ: Department of Environmental Quality
- DMR: Discharge Monitoring Reports
- EPA: (U.S. EPA): United States Environmental Protection Agency
- MSGP: U.S. EPA Multi-Sector General Permit
- NAICS: North American Industry Classification System
- NMMM: Nonmetallic Mineral Mining
- NPDES: National Pollutant Discharge Elimination System
- PAH: Polycyclic Aromatic Hydrocarbons
- SIC: Standard Industrial Classification [Codes]
- SWPPP- Storm Water Pollution Prevention Plan
- TAC: Technical Advisory Committee
- TMDL: Total maximum daily load
- TSS: Total suspended solids
- USC: United States Code
- VAC: Virginia Administrative Code
- VPDES: Virginia 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.

On November 30, 2023, the State Water Control Board adopted 9VAC25-190, the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining, as a

final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Legal Basis

Identify (1) the agency or other promulgating entity, 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 entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’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 Board to issue permits for the discharge of treated sewage, industrial wastes or other wastes into or adjacent to state waters and § 62.1-44.15(7) authorizes the Board to adopt rules governing the procedures of the Board 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, § 62.1-44.16 specifies the Board's authority to regulate discharges of industrial wastes or 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.

Section 402 of the Clean Water Act (33 USC § 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991 to authorize the Commonwealth to administer a General VPDES Permit Program.

Changes to this chapter of the Virginia Administrative Code are exempt from Article 2 of the Administrative Process Act (§ 2.2-4006 A 8).

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.

This regulatory action is needed to amend and reissue the existing VPDES general permit for nonmetallic mineral mining, which expires on June 30, 2024. The goal of the regulatory action is to continue to make available the general permit, which establishes standard language for control of these point source discharges through effluent limitations, monitoring requirements and special conditions to ensure protection of the environment and public health, safety, and welfare.

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.

Substantive changes to the existing regulation include:

- Revised the term of the general permit regulation to July 1, 2024 - June 30, 2029;
- Changed the name “Virginia Department of Mines, Minerals and Energy” to “Virginia Energy, Division of Mineral Mining” to reflect the agency name change (made October 1, 2021);
- Clarified use of the term wastewater per an EPA comment;
- Changed “board” to “department” when the reference is to a permit action;

- For registration statement requirements:
 - Replaced facility operator with facility contact;
 - Added a NAICS code requirement for permittees to be consistent with existing requirements in the VPDES Regulation, 9VAC25-31-100 G;
 - Revised the substantially identical and representative stormwater outfall language; [Revised the representative stormwater outfall provision in section 60 to standardize the language consistent with electronic DMR (eDMR) reporting requirements]
 - Added a requirement to indicate ownership type, whether located on Indian lands, and existing permits;
 - Added a conditional electronic submittal requirement for registration statements, which provides for notice and a 3-month period before it becomes effective.
- Specified that for visual monitoring of stormwater discharges, samples must be in a clean, colorless glass or plastic container and examined in a well-lit area;
- In Section 70, Part I.A.1, designated the process wastewater limits and monitoring table as Table 1, and in Part I.A.2, designated the industrial stormwater limits and monitoring table as Table 2.
- In section 70, Note 3 to Table 1, clarified the use of alternate pH standards, per an EPA comment;
- In section 70, Table 2, moved the TSS evaluation value (100 mg/l) to the table and made conforming edits, per an EPA comment;
- Clarified sample containment and examination in section 70 Part I A 2 b;
- Revised the TMDL special condition so it is not limited to stormwater and for consistency with VPDES requirements and other permits;
- Added a new special condition 18 that conditionally allows emergency dewatering during extreme storm conditions;
- Revised the representative stormwater outfall language in section 70 Part II for program consistency and to meet electronic reporting requirements;
- Under storm water pollution prevention plan (SWPPP) deadlines, simplified the reference to continuing coverage by removing the year of the general permit;
- Supplemented the language triggering review and amendment of the SWPPP to include any other process, observation, or event results in a determination that modifications to the SWPPP are necessary. Also added when the department notifies the permittee that a TMDL has been developed and applies to the permitted facility;
- For authorized non-stormwater discharges, clarified that firefighting includes firefighting training activities managed in a manner to avoid an instream impact in accordance with § 9.1-207.1 of the Code of Virginia, and that building washdown is managed in a manner to avoid an instream impact;
- Under standard conditions, added a conditional electronic submittal requirement for DMRs, which provides for notice and a 3-month period before it becomes effective;
- Under noncompliance reporting, revised the 24-hours reporting language and updated the link for online reporting, which is now preferred. Specified that for reporting outside of normal working hours, online reporting is required. For emergency calls, changed “Virginia Department of Emergency Services” to “Virginia Department of Emergency Management’s Emergency Operations Center.”
- For inspection and entry, clarified that an authorized representative of the director includes an authorized contractor acting as a representative of the administrator.

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.

The advantages to the public, regulated community, and the agency of reissuing this permit are that a VPDES general permit will continue to be available to facilities with eligible discharges enabling them to discharge to surface waters in a manner that is protective of those waters without the increased cost and more complicated application process associated with issuing an individual permit. There are no known disadvantages to the public, regulated community, or agency.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to previously reported information concerning agencies, localities and entities particularly affected.

Other State Agencies Particularly Affected

There are no state agencies particularly affected by the regulation.

Localities Particularly Affected

There are no localities likely to bear any identified disproportionate material impact by the regulation as the regulation applies statewide.

Other Entities Particularly Affected

In-scope covered operations that conduct mineral mining must do so in a manner consistent with this general permit. No other entities are particularly affected by the regulation.

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

There is no locality particularly affected under the Board's statutes.

Public Comment

Summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. Ensure to include all comments submitted: including any received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

Comments received and DEQ responses are presented below.

Commenter	Comment	Agency response
Virginia Transportation Construction Alliance (VTCA)	VTCA Aggregate Producers greatly appreciate the proposed – VPDES General Permit for Nonmetallic Mineral Mining Facilities that includes language that provides operators the ability to dewater	DEQ acknowledges the comment. See below for responses to substantive points.

Commenter	Comment	Agency response
	<p>pits that have become incapacitated due to significant flooding events.</p> <p>While the included language is helpful there are still a couple of modifications that would assist mineral mining operators commencing operations that have ceased as a result of flood conditions.</p> <p>VTCA has concerns with the below language (bulleted) and offers potential language considerations to the General Permit for pits that have ceased to operate because of flooding conditions:</p>	
<p>VTCA (cont.)</p> <p>[Note: VTCA also made this comment at the public hearing held at DEQ PRO June 26, 2023.]</p>	<ul style="list-style-type: none"> • “Rather, the TSS levels in such dewatering discharges shall not exceed a daily maximum of 100 mg/l during emergency dewatering.” <p>The daily maximum limit of 100 mg/l may not be high enough to permit rapid dewatering given the emergency conditions that would surround significant flooding. We understand the charge of the Department to ensure clean water, however quarries and pit that become flooded to the point of ceased operations is generally a result of a stream breach or otherwise upset condition that is not in the normal design or drainage area of waters that are normally directed into the pits.</p> <p>Given this consideration, is it feasible for the above language to be amended to permit operators to discharge water from the flooded pits meeting the listed conditions without daily TSS limits for a short period (5 days) or until the TSS levels in the discharged water are below the TSS levels in the receiving system?</p>	<p>The new dewatering special condition, combined with the use of required BMPs, provides industry with additional flexibility while ensuring the protection of water quality. Waiving TSS limits for a short period, as suggested, could create an incentive to dewater rapidly and is not consistent with the requirement to maximize the settling of stormwater prior to and during dewatering, as specified in Part I.B.18. Likewise, waiving TSS limits until the discharged TSS level is below that of the receiving stream, if the receiving stream TSS is greater than 100 mg/L, also discourages settling and allows the discharge to increase the load to the already storm-impacted receiving stream. No changes are being made to the regulation in response to this comment.</p>
<p>VTCA (Cont.)</p>	<ul style="list-style-type: none"> • During emergency dewatering, the permittee shall monitor for TSS daily and notify DEQ of any exceedances... <p>Daily monitoring is excessive. Will the department consider weekly (or less frequent) monitoring?</p>	<p>Daily monitoring during emergency dewatering is necessary to verify changing conditions during such dewatering. Such monitoring also serves as an indicator that required practices being implemented to protect water quality are effective. No changes are being made to the regulation in response to this comment.</p>
<p>VTCA (Cont.)</p>	<p>Again, these are our only concerns with the proposed language for the reissuance of this permit. Virginia’s Aggregate Producers thank the State Water Control Board and the Department of Environmental Quality for the consideration of our concerns for rapidly dewatering pits following significant flooding events.</p>	<p>DEQ acknowledges the comment.</p>
<p>Jen Fulton, Acting Chief, Clean Water Branch</p>	<p>1.Part I.A.1 – Footnote 3 states that where the water quality standards establish alternate standards for pH, those standards shall be the minimum and maximum pH</p>	<p>DEQ has revised footnote 3 in the table in Part I.A.1 to reflect EPA’s comment. Note 3 now reads “Where the Water Quality Standards (9VAC25-260) establish alternate standards</p>

Commenter	Comment	Agency response
US EPA Mid-Atlantic Region	limits. This statement should be corrected so that the most stringent limit, considering both the technology-based and water quality-based effluent limit, is used.	for pH, the most stringent limit (technology-based or water quality-based) shall be the minimum and maximum pH effluent limits.”
Jen Fulton, Acting Chief, Clean Water Branch US EPA Mid-Atlantic Region	<p>2. Part I.A.2 – The draft permit requires benchmark monitoring on an annual basis. Type, intervals, and frequency of monitoring must yield sufficient data to be representative of the monitored activity. See 40 C.F.R. § 122.48(b). A rationale was not provided, nor was any data/information provided that was used to determine that collecting only one sample per year for stormwater discharges is appropriate and representative. Consistent with the requirements at 40 C.F.R. §§ 124.8 and 124.56, the fact sheet needs to be updated to include an explanation regarding how the sampling frequencies in the draft permit will yield representative information.</p> <p>EPA, as documented in the 2021 MSGP, has determined that quarterly benchmark monitoring is representative. EPA’s 2021 MSGP requires quarterly benchmark monitoring, and permittees with no benchmark exceedances for two years may discontinue monitoring. EPA’s fact sheet for the 2021 MSGP explains that quarterly stormwater event samples collected over one year are inadequate to characterize industrial stormwater discharges or describe industrial BMP performance. As a result, the benchmark monitoring in EPA’s MSGP was extended to the first and fourth year of permit coverage. This monitoring schedule combined with quarterly inspections under the 2021 MSGP aims to ensure that operators have current data on their industrial stormwater discharges and stormwater control measure effectiveness and will help identify any adverse effects from modifications in facility operations and personnel over time.</p>	<p>This industry has had annual benchmark (i.e., “evaluation value”) monitoring since the first nonmetallic mineral mining general permit in 1999. DEQ will add to the fact sheet some discussion of how the annual sampling is representative given the specific monitoring parameters (within 30 minutes of storm event, 72-hours since the last storm event) and supported by quarterly visual monitoring and site inspections. The fact sheet indicates that this general permit is coordinated with state mining regulations and requires that each facility hold a mining permit under which each facility must meet several requirements that address runoff, including provisions addressing operation and reclamation, drainage and sediment control, sediment basins (including installation, basin sizing, and maintenance of capacity), protection of intermittent or perennial streams, protection of natural drainage ways, diversions to address erosion and water pollution, and compliance with applicable water quality standards.</p> <p>DEQ compared the percent of exceedances in annual stormwater TSS benchmark data from this general permit with the semi-annual data from similar industrial stormwater sectors regulated under the VPDES Industrial Stormwater General Permit. NMMM General Permit stormwater data for 1/10/18-12/31/22 shows 13.6% of reported numeric TSS values were above the evaluation value (100 mg/l). Data analyzed for the VPDES 2019 Industrial Stormwater General Permit reissuance showed semi-annual TSS benchmark (100 mg/l) monitoring exceedances for the sectors most similar to nonmetallic mining to be: Sector D (Asphalt) – 12%; Sector E (Glass/Clay/ Cement) – 13%; and Sector G (Metal Mining) – 11%. These data suggest that the annual stormwater TSS monitoring in this general permit is reasonably similar in its representativeness to semi-annual monitoring for similar industrial stormwater sectors.</p> <p>No changes are being made to the regulation in response to this comment.</p>
Jen Fulton, Acting Chief, Clean Water Branch US EPA Mid-Atlantic Region	3. The fact sheet includes outdated references to the 2015 EPA MSGP. References should be updated to reflect the current 2021 EPA MSGP.	Relevant references have been updated to reflect the current 2021 EPA MSGP.

Commenter	Comment	Agency response
<p>Jen Fulton, Acting Chief, Clean Water Branch US EPA Mid-Atlantic Region</p>	<p>4. Part I.A.2 - The presentation of benchmark monitoring requirements is unclear. The table contains only discharge limitations and includes benchmark monitoring levels as a footnote. We recommend clearly defining the benchmark monitoring pollutant levels in the table and not as a footnote.</p>	<p>The benchmark monitoring requirement, which is identified as an evaluation value in the general permit based on discussions with prior TACs, has been moved to the limits/ monitoring Table under Part I.A.2.a and the phrase “Discharge Limitations” in the table has been deleted and only the phrase “Evaluation Value Monitoring” remains.</p>
<p>Jen Fulton, Acting Chief, Clean Water Branch US EPA Mid-Atlantic Region</p>	<p>5. Part I.B.8 – It appears as though the terms “process water” and “wastewater” are being used interchangeably. EPA recommends replacing the terms with “process wastewater” to be consistent with terminology used throughout the draft permit, or defining the terms “process water” and “wastewater” if they are, in fact, distinct.</p>	<p>The term “wastewater” has been replaced with the term “process wastewater,” which is defined in section 10 of the general permit/ regulation. The term “process water” has been replaced with the term “process wastewater” in special conditions 8, 9 and 10.</p>
<p>Jen Fulton, Acting Chief, Clean Water Branch US EPA Mid-Atlantic Region</p>	<p>6. EPA recommends incorporating indicator and benchmark monitoring parameters (e.g. nitrate plus nitrite nitrogen, Polycyclic Aromatic Hydrocabons, COD) consistent with the 2021 EPA MSGP requirements for Sector J, Non-Metallic Mineral Mining and Dressing for SIC codes covered under VAG84.</p>	<p>EPA’s 2021 MSGP provides for indicator monitoring for PAHs at facilities with industrial stormwater discharges from surfaces paved or re-sealed with coal-tar sealcoat. Nonmetallic mineral mines covered under this general permit typically do not conduct industrial activities on paved portions of the respective sites. Thus, it is not clear that this indicator parameter is applicable to these facilities or would provide needed or useful information.</p> <p>Regarding indicator monitoring for COD, the waste streams associated with nonmetallic mineral mining (NMMM) facilities do not contain significant organic matter. Thus, DEQ does not see a reasonable basis for the imposing the cost and burden associated with requiring indicator COD monitoring.</p> <p>As for the 2021 MSGP benchmark monitoring for nitrate plus nitrite nitrogen (applicable to sand and gravel), DEQ’s current general permit does not include this benchmark parameter, nor does the proposed 2024 reissuance. The current (2019) NMMM general permit does include a special condition requiring the use of BMPs to ensure that contaminants do not enter surface waters as a result of blasting (a potential source of nitrogen), and that special condition is carried forward in the reissuance. No changes are being made to the regulation in response to this comment.</p>
<p>Jen Fulton, Acting Chief, Clean Water Branch US EPA Mid-Atlantic Region</p>	<p>7. Part II.A.2 – EPA recommends defining the term “representative sample.”</p>	<p>The use and meaning of “representative sample” in Part II A.2. is self- explanatory and consistent with the term’s use in the base VPDES regulation which requires that “Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity” (9VAC25-31-190 J), which is the same language used in 40 CFR 122.41(j). DEQ has not identified a definition of “representative sample” in the 2021 MSGP or</p>

Commenter	Comment	Agency response
		<p>in the NPDES regulations. No changes are being made to the regulation in response to this comment.</p>
<p>Jen Fulton, Acting Chief, Clean Water Branch US EPA Mid-Atlantic Region</p>	<p>8. Part II.G. – EPA recommends specifying that the SWPPP be reviewed, and amended as appropriate, when monitoring exceeds the benchmark values. In addition, a maximum time timeframe for implementing or modifying a BMP should be included.</p>	<p>The process for addressing any exceedance of the benchmark/ evaluation value in this general permit is based both on the MSGP as well as TAC input over several reissuances, including consideration of the requirements imposed under state mining permit regulations. The process is comparable to the approach specified in the MSGP, and consistent with applicable VPDES program requirements.</p> <p>Under the NMMM general permit (Part I.A.2.a. Note 3), if there is an exceedance of the TSS evaluation value, the permittee must conduct a routine inspection within five days, maintain documentation per Part II.H.3, and deficiencies must be corrected within 60 days. Routine inspections include assessing the adequacy and effectiveness of BMPs, and follow-up actions including updating the SWPPP as appropriate - see Part II.H.3.d). No changes are being made to the regulation in response to this comment.</p>
<p>Jen Fulton, Acting Chief, Clean Water Branch US EPA Mid-Atlantic Region</p>	<p>9. The monitoring and records standard condition language contained in 40 C.F.R. §122.41(j)(5) was not included in the draft permit.</p>	<p>The conditions in 40 CFR § 122.41(j)(5) are not included in the NMMM general permit regulation or the VPDES regulation standard conditions because this administrative penalty language is in state statute at § 62.1-44.32 of the Code of Virginia.</p> <p>Under § 62.1-44.32(a) violations of the chapter, an order of the Board or of a court can be subject to civil penalties not to exceed \$32,500 per violation.</p> <p>Under § 62.1-44.32(b) any person who knowingly makes any false statement in any form required to be submitted under this chapter or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not less than \$5,000 nor more than \$50,000 for each violation.</p> <p>§62.1-44.15 of the Code of Virginia does allow the agency to unilaterally assess administrative civil penalties under certain conditions of up to \$32,500 per violation, not to exceed \$100,000 per special order. (See, (8)(a)).</p>

Commenter	Comment	Agency response
		The certification required for registration statements and reports acknowledges penalties for submitting false information. No changes are being made to the regulation in response to this comment.
Sam Connors, Nestle Purina Petcare [Comment from public hearing held at DEQ PRO June 26, 2023.]	With regard to stormwater discharge monitoring, is the substance of the provision that allows for reporting the results of a “representative” outfall in place of all “substantially identical” outfalls changing?	The substance of the provisions that allow for reporting the results of a “representative” stormwater outfall in place of all “substantially identical” stormwater outfalls is not changing. The wording of the provisions has changed slightly to achieve consistency across general permits and to be consistent with federally required electronic reporting requirements. No changes are being made to the regulation in response to this comment.

Details of Changes Made Since the Previous Stage

List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Changes made since the proposed stage are identified below.

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
9VAC25-190-15		Code of Federal Regulations (CFR) publication date referenced is July 1, 2022.	Code of Federal Regulations (CFR) publication date referenced is July 1, 2023.	Cite is to most recent update. This maintains consistency with federal regulations.
9VAC25-190-20 [Also in 60 and 70]			Use the term “process wastewater” in place of the term “wastewater.”	Change in response to EPA comment. Makes terminology consistent and clear.
9VAC25-190-60		C.19. Requests existing VPA permit number	C.19. Requests existing VPDES permit number	Corrects permit type and maintains consistency with nForm.
9VAC25-190-70			In Part I.A.1, designated the process wastewater limits and monitoring table as Table 1, and in Part I.A.2, designated the	Improve the clarity and organization of key permit information.

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
			industrial stormwater evaluation value monitoring table as Table 2	
9VAC25-190-70			I.A.1 Note 3 in Table 1. In place of alternative standards, state that the most stringent pH limit (technology-based or water quality based) shall apply	Change in response to EPA comment and to achieve consistency with federal regulation. This is an update to an existing requirement, not a new or additional requirement. Clarifies which standards for pH apply where Water Quality Standards, 9VAC-25-260, are in applicable to a discharge from a permitted facility.
9VAC25-190-70			I.A.2.a., Table 2. Renamed the middle column in table from "Discharge Limitations" to be "Evaluation Value Monitoring." Also added 100 mg/l for TSS daily maximum evaluation value.	Change in response to EPA comment. Makes the evaluation value monitoring requirement clear.
9VAC25-190-70			I.A.2.a. Note 3 in Table 2. Moved 100 mg/l evaluation value in Note 3 to the table. Revised Note 3 to reference evaluation value indicated in Table 2.	Change in response to EPA comment. Makes the evaluation value monitoring requirement clear.

Details of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Changes to the Nonmetallic Mineral Mining General Permit regulation include the following:

Current section number	New section number, if applicable	Current requirement in VAC	Change, intent, rationale, and likely impact of new requirements
9VAC25-190-15. Applicability of incorporated references based on the dates that they became effective		Code of Federal Regulations (CFR) publication date referenced is July 1, 2018.	Code of Federal Regulations (CFR) publication date referenced is July 1, 2023. <i>Updated the CFR reference to reflect the most recent update.</i>
9VAC25-190-20. Purpose; effective date of permit		B. This general permit will become effective on July 1, 2019 and will expire June 30, 2024.	B. This general permit will become effective on July 1, 2024 and will expire June 30, 2029. <i>Revised the permit term to reflect reissuance for another five-year term.</i>
9VAC25-190-20. Purpose; effective date of permit [Also in 60 and 70]		Use the term “process wastewater” in place of the term “wastewater.”	<i>Change in response to EPA comment to make terminology consistent and clear throughout the regulation.</i>
9VAC25-190-50, 60 and 70		Various provisions reference the term “board.”	Revised to be consistent with Senate Bill 657 (2022) which limited the authority of the State Water Control Board to promulgating regulations. The “department” (DEQ) is responsible for permitting, orders, etc. <i>This change is based on SB 657 (2022).</i>
9VAC25-190-50 Authorization to discharge		A. 4. The owner has and maintains during such authorization a mineral mining permit for the operation to be covered by this general permit that has been approved by the Virginia Department of Mines, Minerals and Energy, Division of Mineral Mining (or an associated waived program, locality, or state agency) under provisions and requirements of Title 45.1 of the Code of Virginia.	A. 4. The owner has and maintains during such authorization a mineral mining permit for the operation to be covered by this general permit that has been approved by Virginia Energy, Division of Mineral Mining (or an associated waived program, locality, or state agency) under provisions and requirements of Title 45.1 of the Code of Virginia. <i>Changed DMME to Virginia Energy to reflect the agency’s name change.</i> <i>(The same name change is also in 190-60 c 4.)</i>

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9VAC25-190-50. Authorization to discharge		C. Compliance with this general permit constitutes compliance for purposes of enforcement with §§ 301, 302, 306, 307, 318, 403, and 405(b) of the federal Clean Water Act and the State Water Control Law, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation.	C. Compliance with this general permit constitutes compliance for purposes of enforcement with §§ 301, 302, 306, 307, 318, 403, and 405(a) through (b) of the federal Clean Water Act and the State Water Control Law, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. <i>Revised the language to also reference CWA § 405(a) for consistency with federal regulatory language and other VPDES general permits.</i>
9VAC25-190-60. Registration statement		C. 1. Facility owner and operator or other contact name, address, email address, and telephone number;	C. 1. Facility owner and facility contact name, address, email address, and telephone number; <i>Replaced facility operator with facility contact. This is to standardize registration statements and facilitate electronic reporting, which is required under federal regulations (40 CFR Part 3 and 40 CFR Part 127) and state regulations (9VAC25-31-950 et seq., electronic reporting requirements for VPDES permits, effective July 26, 2017, which incorporated the federal electronic reporting rule).</i>
9VAC25-190-60. Registration statement		C.4. Primary and secondary SIC codes;	C.4. Primary and secondary SIC and NAICS codes; <i>Added NAICS codes for consistency with electronic reporting requirements in the VPDES Regulation, 9VAC25-31-100 G. The NMMM GP is allowed under provisions of the VPDES Regulation and needs to be consistent with requirements in 9VAC25-31. Electronic reporting is a federal requirement under 40 CFR Part 3 and 40 CFR Part 127 (the NAICS code included in the required program data listed in Table 2 of Appendix A to Part 127).</i>
9VAC25-190-60. Registration statement		C.5.f. Indicate which stormwater outfalls will be representative outfalls that require a single discharge monitoring report (DMR). For stormwater outfalls that are to be represented by other	C.5.f. Indicate which stormwater outfalls could operate as substantially identical or representative outfalls (if any). Provide the following for each: a) The locations of the outfalls; b) Why the outfalls are expected to discharge substantially identical effluents

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		outfall discharges, provide a description of the activities associated with those outfalls and explain why they are substantially the same as the representative outfall to be sampled;	including, where available, evaluation of monitoring data; <i>Revised the substantially identical and representative stormwater outfall language to remove reference to a single DMR and request the location of the outfalls and explanation why they are expected to discharge substantially identical effluent. These changes promote consistency with electronic reporting requirements and other general permits.</i>
9VAC25-190-60. Registration statement		C.19. Certification of signee.	Renumbered certification as 20. <u>Added 19</u> : Ownership type, whether located on Indian lands, and existing VPDES permits; <i>Making application (registration statement) requirements consistent with the VPDES regulation, 9VAC25-31-100 G 4 and standardizing electronic registration statements to be consistent with federal and state electronic reporting requirements.</i>
9VAC25-190-60. Registration statement		E. Where to submit. The registration statement shall be delivered to the department by either postal or electronic mail and shall be submitted to the DEQ regional office serving the area where the industrial facility is located.	* <u>Added to E</u> : Following notification from the department of the start date for the required electronic submission of Notices of Intent to discharge forms (i.e., registration statements), as provided for in 9VAC25-31-1020, such forms submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least a three-month notice provided between the notification from the department and the date after which such forms must be submitted electronically. <i>The new language facilitates electronic reporting, which is required under federal regulations at 40 CFR Part 3 (requiring states to allow electronic reporting) and 40 CFR Part 127, and state regulations (9VAC25-31-950 et seq., electronic reporting requirements for VPDES permits, effective July 26,</i>

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			<i>2017, which incorporated the federal electronic reporting rule).</i>
9VAC25-190-70. General permit		Effective Date: July 1, 2019 Expiration Date: June 30, 2024	Effective Date: July 1, 2024 Expiration Date: June 30, 2029 <i>Revised to reflect the new permit term.</i>
9VAC25-190-70. General permit		Part I.A.1 includes a limits and monitoring table for process wastewater discharges. Part I.A.2 includes a limits and monitoring table for industrial stormwater discharges.	In Part I.A.1, designated the process wastewater limits and monitoring table as Table 1, and in Part I.A.2, designated the industrial stormwater limits and monitoring table as Table 2 <i>Improve the clarity and organization of key permit information.</i>
9VAC25-190-70. General permit		I.A.1, Note 3. Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH, those standards shall be the minimum and maximum pH effluent limits.	Revised Note 3 (to what is now Table 1) to read: "Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH, the most stringent limit (technology-based or water quality-based) shall be the minimum and maximum pH effluent limits." <i>Change made in response to EPA comment and to achieve consistency with federal regulation. This is an update to an existing requirement, not a new or additional requirement. Clarifies which standards for pH apply where Water Quality Standards, 9VAC-25-260, are in effect for a discharge.</i>
9VAC25-190-70. General permit		I.A.2.a. Middle column in table identified as "Discharge Limitations."	I.A.2.a. Renamed middle column in what is now Table 2 from "Discharge Limitations" to be "Evaluation Value Monitoring." <i>Change made in response to EPA comment and to make the monitoring requirement clear.</i>
9VAC25-190-70. General permit		I.A.2.a. Note 3 Permittees shall review the results of the TSS monitoring required by Part I A 2 a to determine if changes to the stormwater pollution prevention plan (SWPPP) may be necessary. If the TSS monitoring results are greater than the evaluation value of 100 mg/l, then the permittee shall perform a routine facility	I.A.2.a. Note 3 (to what is now Table 2). Moved TSS 100 mg/l evaluation value in Note 3 to the table. Revised Note 3 to reference evaluation value indicated in Table I A 2 a. <i>Change made in response to EPA comment and to make the monitoring requirement clear.</i>

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		inspection within five days of becoming aware of the exceedance and maintain documentation as described in Part II H 3 d for that outfall. Any deficiencies noted during the inspection shall be corrected within 60 days of being identified.	
9VAC25-190-70. General permit		No Part or heading specified at beginning of section.	Added heading "Part I Effluent Limitations, Monitoring Requirements, and Special Conditions" <i>Improve clarity, ease of use, and to make consistent with other general permits.</i>
9VAC25-190-70. General permit		Part I.A.2.b.	Part I A.2.b. <u>Added</u> : Samples will be in a clean, colorless glass or plastic container and examined in a well-lit area. <i>Added language to improve consistency with other general permits.</i>
9VAC25-190-70. General permit		Part I.B.12. Discharges to waters subject to TMDL wasteload allocations. Owners of facilities that are a source of the specified pollutant of concern to waters for which a total maximum daily load (TMDL) wasteload allocation has been approved prior to the term of this permit shall incorporate measures and controls into the SWPPP required by Part II that are consistent with the assumptions and requirements of the TMDL. The department will provide written notification to the owner that a facility is subject to the TMDL requirements. If the TMDL establishes a numeric wasteload allocation that applies to discharges from the facility, the owner shall perform any required monitoring in accordance with Part I A and implement	Part I B.12. Discharges to waters with an approved total maximum daily load (TMDL). Owners of facilities that are a source of the specified pollutant of concern to waters where a TMDL has been approved prior to the term of this permit shall implement measures and controls that are consistent with the assumptions and requirements of the TMDL. The department will provide written notification to the owner that a facility is subject to the TMDL requirements. If the TMDL establishes a numeric wasteload allocation that applies to discharges from the facility, the owner shall perform monitoring for the pollutant of concern in accordance with the monitoring frequencies in Part I A and implement measures necessary to meet that allocation. At permit reissuance, the permittee shall submit a demonstration with the registration statement to show the wasteload allocation is being met. <i>Revised the TMDL special condition so that it is clear it is not limited to</i>

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		measures necessary to meet that allocation.	<i>stormwater and for consistency with federal NPDES requirements (EPA's NPDES regulation, 40 CFR § 122.44(d), requires permits be consistent with TMDL wasteload allocations), state VPDES requirements (9VAC25-31-220), and other VPDES general permits.</i>
9VAC25-190-70. General permit		I.B Special conditions.	<p><i>* Added Special Condition 18, Discharge requirements for emergency dewatering during flooded conditions. This provision provides a time-limited, conditional exception from the TSS limits applicable to process wastewater for mine pit dewatering discharges resulting from a storm equal to or greater than a 10-year, 24-hour storm event that has caused flood conditions within the mine such that normal operation at the active portion of the mine cannot continue. Dewatering discharges shall not exceed a daily maximum of 100 mg/l during emergency dewatering, are subject to daily monitoring, and must meet additional conditions including providing notice to DEQ.</i></p> <p><i>This provision is in response to concerns raised by the TAC that extreme storms can flood the pit and impair a mines ability to operate. The current permit does not provide options for dewatering under extreme conditions. This provision provides an alternative to permittees by allowing greater flexibility to dewater while protecting water quality. The impact of this provision should be limited since very large storms are rare and water quality remains protected through BMPs and an alternative TSS limit. The 100 mg/L limit is an exception to the daily maximum limitation of 60 mg/L, providing greater flexibility under limited, exceptional conditions.</i></p>
9VAC25-190-70. General permit		Part II.B. Representative outfalls. If a facility has two or more exclusively stormwater outfalls that discharge substantially identical	Part II B. Representative outfalls. If a facility has two or more exclusively stormwater outfalls that discharge substantially identical effluents, based on similarity of industrial activity,

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		<p>effluents, based on similarity of industrial activity, significant materials, frequency of discharges, and management practices and activities within the area drained by the outfalls, then the permittee may submit information with the registration statement substantiating the request for only one DMR to be issued for the outfall to be sampled that represents one or more substantially identical outfalls. The permittee shall document representative outfalls in the SWPPP and list on the DMR of the outfall to be sampled all outfall locations that are represented by the discharge. The representative outfall monitoring provisions apply to Part I A 2 a monitoring and quarterly visual monitoring.</p>	<p>significant materials, frequency of discharges, and management practices and activities within the area drained by the outfalls, then the permittee may monitor the effluent stormwater of just one of the outfalls and report that the observations also apply to the substantially identical outfall. The permittee shall document representative outfalls in the SWPPP. The representative outfall monitoring provisions apply to Part I A 2 a monitoring and quarterly visual monitoring.</p> <p><i>Revised the representative stormwater outfall provision to be consistent with E-reporting requirements (remove mention of submitting only one DMR) and other general permits.</i></p>
<p>9VAC25-190-70 General permit</p>		<p>II. E. Owners of existing facilities that were covered under the 2014 Nonmetallic Mineral Mining General Permit that are continuing coverage under this general permit shall update and implement any revisions to the SWPPP within 60 days of the department granting coverage under this permit.</p>	<p>II.E. Owners of existing facilities who are continuing coverage under this general permit shall update and implement any revisions to the SWPPP within 60 days of the department granting coverage under this permit.</p> <p><i>Simplified the reference to continuing coverage by removing the year of the general permit.</i></p>
<p>9VAC25-190-70 General permit</p>		<p>II.G. 3. Inspections by local, state, or federal officials determine that modifications to the SWPPP are necessary;</p>	<p>II.G. 3. Inspections by local, state, or federal officials determine, or any other process, observation, or event results in a determination that modifications to the SWPPP are necessary;</p> <p>* <i>Added new:</i> 6. The department notifies the permittee that a TMDL has been developed and applies to the permitted facility.</p> <p><i>Supplemented the language for review and amendment of the SWPPP to include "...any other process,</i></p>

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			<p><i>observation, or event results in a determination...” that modifications to the SWPPP are necessary. Also added where the department notifies the permittee that a TMDL has been developed and applies to the permitted facility. These reflect corrective action language that is part of the SWPPP requirements in EPA’s 2021 MSGP.</i></p>
<p>9VAC25-190-70 General permit</p>		<p>II.I. 1. Discharges from emergency firefighting activities; 7. Routine external building washdown that does not use detergents or hazardous cleaning products;</p>	<p>II.I. 1 Discharges from emergency firefighting activities or firefighting training activities managed in a manner to avoid an instream impact in accordance with § 9.1-207.1 of the Code of Virginia; 7. Routine external building washdown that does not use detergents or hazardous cleaning products and is managed in a manner to avoid an instream impact;</p> <p><i>Updated consistent with revisions being made to the Industrial Stormwater General Permit.</i></p>
<p>9VAC25-190-70 General permit</p>		<p>III.C.2. Monitoring results shall be reported on a discharge monitoring report (DMR) or on forms provided, approved or specified by the department.</p>	<p>* <u>Added to III.C.2.</u> Following notification from the department of the start date for the required electronic submission of monitoring reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least a three-month notice provided between the notification from the department and the date after which such forms and reports must be submitted electronically.</p> <p><i>To facilitate electronic reporting, which is required under federal regulations at 40 CFR Part 3 (requiring states to allow electronic reporting) and 40 CFR Part 127, and state regulations (9VAC25-31-950 et seq., electronic reporting requirements for VPDES permits, effective July 26, 2017, which incorporated the federal electronic reporting rule).</i></p>

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9VAC25-190-70 General permit		III.I.2 The permittee shall report all instances of noncompliance not reported under Parts III I 1 a or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I 2.	III.I.2. The permittee shall report all instances of noncompliance not reported under Parts III I 1 a or 1 b, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I 1 b. <i>Corrected two cross-references.</i>
9VAC25-190-70 General permit		I. Note: Provides information for 24-hour noncompliance reports, including online links, reporting outside working hours, and emergencies.	<i>Made Note into new subsection I.3. Revised the 24-hours reporting language and updated the link for online reporting, which is now preferred. Specified that for reporting outside of normal working hours, online reporting is required. For emergency calls, changed "Virginia Department of Emergency Services" to "Virginia Department of Emergency Management's Emergency Operations Center."</i> <i>Revised language consistent with current online reporting capability. Making consistent across all general permits.</i>
9VAC25-190-70 General permit		III.W. Inspection and entry.	<i>For inspection and entry, clarified that an authorized representative of the director includes an authorized contractor acting as a representative of the administrator. This reflects a prior EPA comment.</i>

Regulatory Flexibility Analysis

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

This action is primarily the reissuance of the VPDES General Permit Regulation for Nonmetallic Mineral Mining so that it remains available to existing and new permittees. VPDES permits are required by federal and state law for point source discharges of pollutants. The reissuance of this VPDES general permit accomplishes the objectives of applicable law and minimizes the application burden and permit implementation costs to affected small business owners. Without the general permit, a small business

owner would be required to obtain an individual permit, which would increase the complexity of a permit application, implementation, and compliance costs. As a general permit, this regulation imposes lower costs and a reduced permit application burden on permittees compared with individual permits. The requirements in this permit also have been coordinated with requirements in the mining permit regulations to avoid duplication to the extent possible.

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.

This regulation will have no direct impact on the institution of the family or family stability.