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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-890
VAC Chapter title(s)	Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s)
Action title	CH 890 – 2028 Amend and Reissue the Existing General Permit Regulation
Date this document prepared	June 1, 2026

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

This rulemaking is proposed in order to amend and reissue the existing Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s) which expires on October 31, 2028. This general permit governs local governments and state and federal agencies, such as public universities, departments of transportation, hospitals and prisons, that discharge stormwater from municipally owned separate storm sewer systems located within urban areas with a population of 50,000 or more, as determined by the Bureau of Census.

In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Environmental Quality (DEQ) is conducting a periodic review and small business impact review of this regulation.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

Agreement: Chesapeake Bay Watershed Agreement

Board: State Water Control Board

CFR: Code of Federal Regulations

CWA: Clean Water Act (33 USC § 1251 et seq.)

DEQ: Department of Environmental Quality

L2: Level 2

MS4: Municipal separate storm sewer system

NOIRA: Notice of Intended Regulatory Action

NPDES: National Pollutant Discharge Elimination System

TMDL: Total Maximum Daily Load

USC: United States Code

U.S. EPA: United States Environmental Protection Agency

VAC: Virginia Administrative Code

VPDES: Virginia Pollutant Discharge Elimination System

WIP: Watershed Implementation Plan

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The impetus for this regulatory change is subsection 5a of § 62.1-44.15 of the Code of Virginia which states: "All certificates issued by the Board under this chapter shall have fixed terms. The term of a Virginia Pollutant Discharge Elimination System permit shall not exceed five years."

This general permit expires on October 31, 2028, and must be reissued to make coverage available for small MS4s discharging to surface waters after October 31, 2028. In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, DEQ is conducting a periodic review and small business impact review of this regulation.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The promulgating entity for this regulation is the State Water Control Board (Board). The basis of this regulation is § 62.1-44.5 of the Code of Virginia which states it is unlawful to discharge stormwater into state waters from MS4s or land disturbing activities without a permit issued by the Board.

Further, § 62.1-44.15 (5) of the Code of Virginia authorizes the Board to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters and § 62.1-44.15 (7) of the Code of Virginia 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) of the Code of Virginia authorizes the Board to adopt such regulations as it deems necessary to enforce the general water quality management program, § 62.1-44.15 (14) of the Code of Virginia authorizes the Board to establish requirements for the treatment of sewage, industrial wastes, and other wastes, § 62.1-44.16 of the Code of Virginia specifies the Board’s authority to regulate discharge of industrial waste, § 62.1-44.20 of the Code of Virginia 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 of the Code of Virginia 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.

The federal Clean Water Act (CWA) (33 USC § 1251 et seq.) authorizes states to administer the National Pollutant Discharge Elimination System (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 United States Environmental Protection Agency (U.S. EPA). This Memorandum of Understanding was modified on May 20, 1991, to authorize the Commonwealth to administer a General VPDES Permit Program. Under the General VPDES Permit Program, regulation of small MS4s is based on the requirements in 40 CFR Part 122 (40 CFR § 122.21 et seq.).

Changes to this chapter of the Virginia Administrative Code (Chapter 890) are exempt from Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to § 2.2-4006 A 8.

Purpose

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

The proposed regulatory action is needed to establish permitting requirements for stormwater discharges from small MS4s to protect water quality in the Commonwealth of Virginia which is essential to the health, safety, and welfare of Virginia’s citizens. Small MS4s are defined in 9VAC25-875-850 as

all separate storm sewers that are (i) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity or an Indian tribe or an authorized Indian tribal organization or a designated and approved management agency under § 208 of the CWA that discharges to surface waters and (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated under 9VAC25-875-950 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

The VPDES General Permit for Discharges of Stormwater from Small MS4s establishes minimum control measures to reduce the potential discharge of pollutants in municipal stormwater as well as requirements to demonstrate compliance with Total Maximum Daily Load (TMDL) wasteload allocations for local watersheds and the Chesapeake Bay. The primary issue that needs to be addressed is that the existing general permit expires on October 31, 2028, and must be reissued to authorize small MS4s to continue to discharge under the general permit.

Issuing a general permit as opposed to an individual permit is the less intrusive and less costly alternative for owners or operators of small MS4s. General permits also require fewer DEQ staff resources to issue.

Substance

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

The general permit will establish permit requirements for stormwater discharges from small MS4s. The general permit conditions and requirements will be reviewed to ensure that the permit is still protective of water quality. The primary issue that needs to be addressed is that the existing general permit expires on October 31, 2028, and must be reissued to authorize small MS4s to continue to discharge under the general permit.

The Chesapeake Bay TMDL special condition reduction requirements in Part II of the current general permit (9VAC25-890-40) are based on the Level 2 (L2) scoping run reductions, as specified in Virginia’s Phase I, Phase II, and Phase III Chesapeake Bay TMDL Watershed Implementation Plans (WIPs). The WIPs committed to a phased approach for MS4s, affording MS4 permittees up to three full five-year permit cycles to implement these reductions. Permittees covered under the current general permit are required to achieve 100% of the L2 scoping run reductions by October 31, 2028.

An updated *Chesapeake Bay Watershed Agreement (Agreement)* was approved on December 2, 2025. The updated *Agreement* sets new Goals, Outcomes, and Targets through 2040, which are to be achieved through specific Management Strategies. Page 13 of the *Agreement* states "Through 2030, signatories will continue to accelerate completion of all interim water quality planning targets through implementation of Chesapeake Bay Watershed Implementation Plans, two-year milestone commitments and other innovative strategies to achieve and maintain reduced levels of nitrogen, phosphorus and sediment."

DEQ intends to review and revise the Chesapeake Bay TMDL special condition as necessary to maintain reductions. In addition, all permit conditions will be reviewed and addressed as necessary, including local TMDL requirements and special permit conditions. Amendments may be identified following the submittal of public comments on this notice, through the work of the technical advisory committee, or to comply with federal regulations and watershed plans.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

One alternative to promulgating a regulation for the small MS4 general permit is the issuance of individual permits to authorize the discharge of stormwater from small MS4s, however, the application and maintenance fee costs associated with an individual permit are significantly higher than those for coverage under the general permit, creating additional financial burdens on local governments, state agencies, and federal entities. Without the ability to issue coverage under a general permit, DEQ would be required to issue 103 individual MS4 permits, requiring significant staff resources and funding to implement. This alternative is not expected to be less costly or less intrusive while still achieving the purpose of the regulatory change and therefore it was rejected.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

Pursuant to § 2.2-4007.1 of the Code of Virginia, DEQ is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

DEQ is providing an opportunity for comments on this regulatory proposal, including (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation. DEQ is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

In addition, please see the periodic review/small business impact review announcement section above for details on specific comments requested for the periodic review.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to Sarah Desmarais, DEQ, Division of Policy, P.O. Box 1105, Richmond, VA 23218, or sarah.desmarais@deq.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Public Hearing at Proposed Stage

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

Technical Advisory Committee

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

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