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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-31
<b>VAC Chapter title(s)</b>	Virginia Pollutant Discharge Elimination System (VPDES) Regulation
<b>Action title</b>	Amend the regulation to correspond with federal NPDES regulations and corrections of technical and style language
<b>Final agency action date</b>	June 29, 2020
<b>Date this document prepared</b>	Began December 20, 2019

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### 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 primary reason for this action is to incorporate the June 12, 2019 NPDES Applications and Program Updates rule that applies to 40 CFR 122.21 and 124 into 9VAC25-31-100 (Application for a permit). The rule modernizes and clarifies permit applications by including items such as email information and NAICS codes. Some of the amendments of the NPDES Program Update Rule are not included in this final exempt action because they are inconsistent with state statute (web based public notice allowances for VPDES draft permits) or were specific to EPA and unnecessary in the VPDES Permit Regulation.

This action will also incorporate the September 18, 2014 NPDES Use of Sufficiently Sensitive Test Methods for Permit Applications and Reporting rule that applies to 40 CFR 122.21 and 122.44 into 9VAC25-31-100 (Application for a permit) and 9VAC25-31-220 (Establishing limitations, standards, and other permit conditions).

Clarified application sample type instructions in 9VAC25-31-100 H, I and K and for grabs and composites to correspond with 40 CFR 122.21 (h)(4)(i) language for non-process wastewater, 40 CFR 122.21(j)(4)(viii) language for POTWs.

Added new subdivision 9VAC25-31-380 B 4 to be consistent with the Closure Plan and Demonstration of Financial Capability regulation at 9VAC25-650-70 that requires a new owner to provide financial assurance prior to the transfer of the permit.

Include a phrase in 9VAC25-31-800 (Pretreatment program requirements: development and implementation by POTW) that provides legal authority to POTWs to enforce their pretreatment requirements to include a series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by state law. This corresponds to 40 CFR 403.8 (Pretreatment Program Requirements: Development and implementation by POTW).

Other items included in this final agency action are: amending the entire VPDES permit regulation to make “storm water” (two words) to “stormwater” (one word) to be consistent with the USEPA NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity and also the VPDES ISWGP; updating two definitions in 9VAC25-31-10 (Definitions) to be consistent with 40 CFR 122.26 and the ISWGP; updating the 40 CFR reference to July 1, 2019 (9VAC25-31-25); including a reference to VELAP requirements in 9VAC25-31-190 J 5; updating reference to wastewater works operator requirements license regulations to 18VAC160-30 (Waterworks and Wastewater Works Operators Licensing Regulations in 9VAC25-31-200 C; and, correcting several citations throughout the regulation.

## 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). “Mandate” is defined as “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 mandates are as follows:

1. Amendments in 40 CFR 122 and 124 adopted in the Federal Register Vol. 84, No. 29, February 12, 2019, entitled “NPDES: Applications and Program Updates”, effective June 12, 2019;
2. Amendments in 40 CFR 122 adopted in the Federal Register Vol. 79, No. 160, August 19, 2014, entitled “NPDES: Use of Sufficiently Sensitive Test Methods for Permit Applications and Reporting”, effective September 18, 2014;
3. Amendments in 40 CFR 122.21 adopted in the Federal Register, Vol. 72, No. 47, March 12, 2007, entitled “Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the CWA; National Primary Drinking Water Regulations; and National Secondary Drinking Water Regulations; Analysis and Sampling Procedures” effective April 11, 2007;
4. Statutory Authority § [2.2-1105](#) of the Code of Virginia mandates environmental laboratory certification and is reflected in 1VAC30-45 Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories;
5. Amendment in 9VAC25-650-70 Closure plans and Demonstration of Financial Capability (Transfer of ownership or permit) effective December 26, 2019 ([Virginia Register Vol. 36 Iss 6](#)) as a result of findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.
6. Changes in style or corrections of technical errors are based on 40 CFR 122.21, 124.8, 136, 403.8, the NPDES General Permit for Stormwater Discharges from Industrial Activities, effective June 4, 2015 and

the VPDES General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity (9VAC25-151), Waterworks and Wastewater Works Operators Licensing Regulations (18VAC160-30).

7. Section 2.2-4006 A 3 (Exemptions from requirements of this article) of the Administrative Process Act allows for final exempt changes in style or form or corrections of technical errors. Section 2.2-4006 A 4 c allows for final exempt changes that are necessary to meet the requirements of federal law or regulation, provided such regulations do not differ materially from those required by federal law or regulation.

### 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
- CAFO – Combined Animal Feeding Operations
- CFR – Code of Federal Regulations
- CWA – Clean Water Act
- ISWGP - Industrial Stormwater General Permit
- NAICS – North American Industry Classification System
- NPDES – National Pollutant Discharge Elimination System
- USEPA – United States Environmental Protection Agency
- VAC – Virginia Administrative Code
- VELAP – Virginia Environmental Laboratory Accreditation Program
- 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 June 29, 2020, the State Water Control Board adopted the amendments to 9VAC25-31 and affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of this regulation, as provided by the Administrative Process Act..

### 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 waste 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, § 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.

## 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.*

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The amendments are primarily needed because updates have been made to the federal NPDES regulation at 40 CFR 122 and 124 per the NPDES Program Update rule effective June 12, 2019, 84 FR 3324). With the EPA final action, authorized states, territories, and tribes have up to one year to revise, as necessary, their NPDES regulations to adopt the requirements of this rule, or two years if statutory changes are needed, as provided at 40 CFR 123.62.

Consistency with the federal NPDES regulation and requirements is the goal. The provisions modernize, update and clarify permit applications and the use of sufficiently sensitive method for analysis to assure compliance of permit limits. These actions serve to protect the health, safety and welfare of citizens.

## 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.*

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The primary reason for this action is to incorporate the June 12, 2019 NPDES Applications and Program Updates rule that applies to 40 CFR 122.21 and 124 into 9VAC25-31-100 (Application for a permit). The rule modernizes and clarifies permit applications.

This action will also incorporate the September 18, 2014 NPDES Use of Sufficiently Sensitive Test Methods for Permit Applications and Reporting rule that applies to 40 CFR 122.21 and 122.44 into 9VAC25-31-100 (Application for a permit) and 9VAC25-31-220 (Establishing limitations, standards, and other permit conditions).

Clarified application sample type instructions in 9VAC25-31-100 H, I and K and for grabs and composites to correspond with 40 CFR 122.21 (h)(4)(i) language for non-process wastewater, 40 CFR 122.21(j)(4)(viii) language for POTWs.

Added new subdivision 9VAC25-31-380 B 4 to be consistent with the Closure Plan and Demonstration of Financial Capability regulation at 9VAC25-650-70 that requires a new owner to provide financial assurance prior to the transfer of the permit.

## 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.*

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The advantages to the public and the Commonwealth is to ensure consistency with the federal and state regulations. There are no disadvantages to the public or the Commonwealth.

### **Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change that is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

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There are no requirements more restrictive than applicable Federal requirements.

### **Agencies, Localities, and Other Entities Particularly Affected**

*Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

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Other State Agencies Particularly Affected:  
None

Localities Particularly Affected:  
None

Other Entities Particularly Affected:  
None

### **Detail of All Changes Proposed in this Regulatory Action**

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

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Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-31-10, 40, 100, 120, 130, 170, 200, 220,	NA	The term “storm water” is being replaced with one word “stormwater.”	Consistency with the USEPA NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity and also the VPDES ISWGP (9VAC25-151). No impact.
9VAC25-31-10. Definitions.	NA	Municipal separate storm sewer definition.	Minor punctuation changes for consistency with the ISWGP (9VAC25-151) and 40 CFR <a href="#">122.26(b)(8)</a> . No impact.
9VAC25-31-10. Definitions.	NA	Storm water discharge associated with industrial activity definition	Minor punctuation changes for consistency with the ISWGP (9VAC25-151). No impact.
9VAC25-31-25. Applicability of incorporated references based on the dates that they became effective.	NA	Federal references are dated July 2017.	Updated to federal references as of July 2019. Impact is to recognize federal changes to the most recent federal fiscal year.
9VAC25-31-100 D, G, K, and Q Application for a permit.	NA	No applicant email required for VPDES applications.	Applicant email required. This is to conform with the NPDES Program Update rule effective June 12, 2019, 84 FR 3324. Some impact expected but industries and municipalities generally have email access.
9VAC25-31-100 D 1	NA	Persons are encouraged to submit applications in advance of the 90 or 180 day requirement.	The 90 day requirement is deleted. There is no 90 day requirement associated with this subsection. No impact.
9VAC25-31-100 F 4 Application for a permit.	NA	Reference is to subsection J or P of that section. J is application requirements for CAFOs and P is recordkeeping.	Reference changed to <u>K or Q</u> . This is a correction to correspond to the citations in <a href="#">122.21(e)(2)</a> . No impact.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
<p><b>9VAC25-31-100 F 5 Application for a permit.</b></p>	<p>NA</p>	<p>No direct reference to require sufficiently sensitive methods for application data. However, 40 CFR 136 is referenced in the regulation and in all permits and 40 CFR 136 references the sufficiently sensitive methods requirements.</p>	<p>Direct reference to sufficiently sensitive methods requirements added in accordance with 40 CFR <a href="#">122.21(e)(3)</a>. No impact as the VPDES permit regulation (9VAC25-31-750) and all VPDES permits expressly incorporate by reference 40 CFR <a href="#">136</a>, Guidelines for Establishing Test Procedures for the Analysis of Pollutants. The provisions in Part 136 are applicable for pollutant quantitation in NPDES permit applications and NPDES permit reports. 40 CFR 136 stipulates that the test procedures used must be sufficiently sensitive as defined in 40 CFR <a href="#">122.21(e)(3)</a> and <a href="#">122.44(i)(1)(iv)</a>.</p>
<p><b>9VAC25-31-100 G Application for a permit.</b></p>	<p>NA</p>	<p>Information requirements refers to additional information required in subsections H through L. H through L are application requirements for existing process wastewater industries, nonprocess wastewater industries, CAFOs, POTWs, and new discharges. H through L contain additional application requirements.</p>	<p>Information requirements refers to additional information required in subsections H through L <u>and Q through R</u> of this section. Q through R are application requirements for sewage sludge management and cooling water intakes. These citations correspond to the NPDES federal regulation at <a href="#">122.21 (f)</a> and is unknown why the citation to Q through R was left out of the VPDES regulation since all these sections contain additional application requirements. No impact.</p>
<p><b>9VAC25-31-100 G 3 Application for a permit.</b></p>		<p>No applicant NAICS codes required for VPDES applications.</p>	<p>Applicant NAICS codes required. This is to conform with the NPDES Program Update rule effective June 12, 2019, 84 FR 3324 at <a href="#">122.21(f)(3)</a>.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
<p><b>9VAC25-31-100 G 9 and 10 Information requirements other than POTWs and other TWTDS</b></p>	<p>NA</p>	<p>These application information requirements do not exist.</p>	<p>These new subdivisions 9 and 10 in application information ask for an indication of whether the facility uses cooling water and the source of the cooling water.</p> <p>Also added the question of whether the facility is requesting any of the variances allowed by 9VAC25-31-100 M, if known at the time of application. This is to conform with the NPDES Program Update rule effective June 12, 2019, 84 FR 3324 at <a href="#">122.21(f)(9) and (10)</a>. These new questions will add a short amount of time when filling out a permit application. Small impact.</p>
<p><b>9VAC25-31-100 H 5 Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.</b></p>	<p>NA</p>	<p>If an effluent guideline promulgated under § 304 of the CWA applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the facility.</p>	<p>Same requirement but added a reference for the requirement (as required by <a href="#">9VAC25-31-230 B 2</a>) must reflect the actual production of the facility. This corresponds to the reference cited in <a href="#">122.21(g)(5)</a>. No impact.</p>
<p><b>9VAC25-31-100 H 7 a Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.</b></p>	<p>NA</p>	<p>When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136</p>	<p>Same requirement to use analytical methods under 40 CFR <a href="#">136</a> but added a clarification "unless use of another method is required under subchapters 40 CFR Subchapters N or O." This corresponds to language in in 40 CFR <a href="#">122.21(g)(7)</a>. No impact.</p>



Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
<p><b>9VAC25-31-100 H 7 a</b>  <b>Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.</b></p>	<p>NA</p>	<p>Specifies that grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus.</p>	<p>Clarified that when this paragraph requires analysis of pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including E. coli) and Enterococci (previously known as fecal streptococcus at 40 CFR <a href="#">122.26(d)(2)(iii)(A)(3)</a>), or volatile organics, grab samples must be collected for those pollutants. For all other pollutants, a 24-hour composite samples sample, using a minimum of four grab samples, must be used unless specified otherwise at 40 CFR <a href="#">136</a>. This corresponds to language in 40 CFR <a href="#">122.21(g)(7)</a>. Reflects existing requirements. No impact.</p>
<p><b>9VAC25-31-100 H 7 a</b>  <b>Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.</b></p>	<p>NA</p>	<p>No instruction on averaging of grab samples to obtain the daily average or compositing allowances in the laboratory.</p>	<p>Added the instruction that results of analyses of individual grab samples for any parameter may be averaged to obtain the daily average. Grab samples that are not required to be analyzed immediately (see Table II at 40 CFR <a href="#">136.3(e)</a>) may be composited in the laboratory, provided that container, preservation, and holding time requirements are met (see Table II at 40 CFR <a href="#">136.3(e)</a>) and that sample integrity is not compromised by compositing. This corresponds to language in <a href="#">122.21(g)(7)</a>. Clarification. No impact.</p>
<p><b>9VAC25-31-100 H 7 e</b>  <b>Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.</b></p>	<p>NA</p>	<p>Reference is to subdivisions 7c (3), (4) and (5) of this subsection.</p>	<p>Reference changed to subdivisions 7 e (3), (4), and (5) of this subsection. Corresponds to Notes 1,2 and 3 referenced in <a href="#">122.21(g)(7)(v)(A)</a>. This is a correction. No impact.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
<p><b>9VAC25-31-100 H 7 j</b>  <b>Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.</b></p>		<p>This instruction does not exist. The application form instructions associated with existing manufacturing, commercial, mining, and silvicultural dischargers specified 3 years.</p>	<p>Instructions for allowable age of quantitative data was added in a new subdivision:  <i>j. Where quantitative data are required in subdivisions H 7 a through i of this section, existing data may be used, if available, in lieu of sampling done solely for the purpose of the application, provided that: All data requirements are met; sampling was performed, collected, and analyzed no more than four and one-half years prior to submission; all data are representative of the discharge; and all available representative data are considered in the values reported.</i></p> <p>This is to conform with the NPDES Program Update rule effective June 12, 2019, 84 FR 3324 at <a href="#">122.21(g)(7)(ix)</a>. Permittees would see this as a positive impact as it allows these types of industrial permittees to use older data than was allowed in previous applications. But this data age allowance is consistent with the data age allowance that has been acceptable for municipal facilities since 1999.</p>
<p><b>9VAC25-31-100 I 4 a</b>  <b>Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers which discharge only nonprocess wastewater.</b></p>	<p>NA</p>	<p>Specifies that grab samples must be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, 24-hour composite samples must be used.</p>	<p>Clarified that when this paragraph requires analysis of pH, temperature, residual chlorine, oil and grease, or fecal coliform (including E. coli), and Enterococci (previously known as fecal streptococcus) and volatile organics is required in subsections I 4 a (1) through (11) of this section, grab samples must be collected for those pollutants. For all other pollutants, a 24-hour composite sample, using a minimum of four (4) grab samples, must be used unless specified otherwise at 40 CFR <a href="#">136</a>. For a composite sample, only one analysis of the composite of aliquots is required. This corresponds to language in 40 CFR <a href="#">122.21(h)(4)(i)</a>. Reflects existing requirements. No impact.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
<p><b>9VAC25-31-100 K 1 i</b>  <b>Application requirements for new and existing POTWs and treatment works treating domestic sewage.</b></p>	<p>NA</p>	<p>No question asking for whether the applicant is operating or requesting to operate under a variance under subsection N of this section.</p>	<p>An indication of whether applicant is operating under or requesting to operate under a variance as specified at in subsection N of this section, if known at the time of application. Subsection N allows POTWs to request variances for effluent limitations under certain statutory provisions. This is to conform with the NPDES Program Update rule effective June 12, 2019, 84 FR 3324 at <a href="#">122.21(j)(1)(ix)</a>. These new questions will add a short amount of time when filling out a permit application. Small impact.</p>
<p><b>9VAC25-31-100 K 4 a</b>  <b>Application requirements for new and existing POTWs and treatment works treating domestic sewage.</b></p>	<p>NA</p>	<p>No instruction on when unbuilt facilities should submit effluent data for the application.</p>	<p>Added a statement that POTWs applying prior to commencement of discharge, data shall be submitted no later than 24 months after the commencement of discharge. This is to conform with the NPDES Program Update rule effective June 12, 2019, 84 FR 3324 at <a href="#">122.21(j)(4)(i)</a>. This has a positive impact as there was no instruction how to handle pollutant application data submittal for unbuilt facilities.</p>
<p><b>9VAC25-31-100 K 4 i</b>  <b>Application requirements for new and existing POTWs and treatment works treating domestic sewage.</b></p>	<p>NA</p>	<p>Specifies that grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform.</p>	<p>Specifies that when analysis of pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform (including E. coli), or volatile organics is required in paragraphs subdivision K 4 b, c and e of this section, grab samples must be collected for those pollutants.</p> <p>This corresponds to language in 122.21(j)(4)(viii). Reflects existing requirements. No impact.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
<p><b>9VAC25-31-100 K 5 a</b>  <b>Application requirements for new and existing POTWs and treatment works treating domestic sewage.</b></p>	<p>NA</p>	<p>No instruction on when unbuilt facilities should submit whole effluent toxicity data for the application.</p>	<p>Added a statement that POTWs applying prior to commencement of discharge, data shall be submitted no later than 24 months after the commencement of discharge. This is to conform with the NPDES Program Update rule effective June 12, 2019, 84 FR 3324 at <a href="#">122.21(j)(5)(i)</a>. This has a positive impact as there was no instruction how to handle WET testing application data submittal for unbuilt facilities.</p>
<p><b>9VAC25-31-100 K 6 a</b>  <b>Application requirements for new and existing POTWs and treatment works treating domestic sewage.</b></p>	<p>NA</p>	<p>Specifies that applicants must submit the number of significant industrial users (SIUs) and nonsignificant categorical industrial users (CIUs) discharging to the POTW.</p>	<p>Specifies that applicants must submit the number of significant industrial users (SIUs) and nonsignificant categorical industrial users (NSCIUs) discharging to the POTW, including SIUs and NSCIUs that truck or haul waste, discharging to the POTW. This is to conform with the NPDES Program Update rule effective June 12, 2019, 84 FR 3324 at <a href="#">122.21(j)(6)(i)</a> which adopted specific targeted changes to the NPDES application requirements for POTWs that would bring the NPDES regulations in concert with changes to the general pretreatment regulations at 40 CFR <a href="#">403.3(v)</a>. No impact.</p>
<p><b>9VAC25-31-100 L</b>  <b>Application requirements for new sources and new discharges.</b></p>	<p>NA</p>	<p>Reference is to subsection H of this section.</p>	<p>Reference changed to subsection I of this section. This corresponds to the citation in <a href="#">122.21(k)</a>. This is a correction. No impact.</p>
<p><b>9VAC25-31-100 L 5</b>  <b>Application requirements for new sources and new discharges.</b></p>	<p>NA</p>	<p>Reference is to subdivisions H 4 a, b, and c of this section.</p>	<p>Reference changed to subdivisions I 4 a, b, and c of this section. This corresponds to the citation in <a href="#">122.21(k)(5)</a>. This is a correction. No impact.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
<p><b>9VAC25-31-100 L 5 f</b>  <b>Application requirements for new sources and new discharges (manufacturing, commercial, mining and silvicultural).</b></p>	<p>NA</p>	<p>No later than two years after the commencement of discharge from the proposed facility, the applicant is required to submit the information required in subsection G of this section. However, the applicant need not complete those portions of subsection H of this section requiring tests which he has already performed and reported under the discharge monitoring requirements of his VPDES permit;</p>	<p>No later than 24 months after the commencement of discharge from the proposed facility, the applicant is required to submit the information required in subsection H of this section. However, the applicant need not complete those portions of subsection H of this section requiring tests which have already been performed and reported under the discharge monitoring requirements of the VPDES permit. This is to conform with the NPDES Program Update rule effective June 12, 2019, 84 FR 3324 at <a href="#">122.21(k)(5)(vi)</a> which carries forth the instruction on when to turn in Form 2C data for unbuilt facilities. The two years after commencement of discharge was always the requirement but EPA changed it to 24 months to conform to other unbuilt facility requirements in the rule. Also the rule removes the reference to a permit holder's presumed gender. No impact.</p> <p>Reference changed to subsection H of this section. This corresponds to the citation in <a href="#">122.21(k)(5)(vi)</a>. This is a correction. No impact.</p>
<p><b>9VAC25-31-190 J 5</b>  <b>Conditions applicable to all permits.</b></p>	<p>NA</p>	<p>This new subdivision J 5 does not exist. The subsection specifies monitoring and records requirements.</p>	<p>The new subdivision J 5 specifies that samples taken shall be analyzed by a certified laboratory under 1VAC30-45 Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories (Statutory Authority § <a href="#">2.2-1105</a> of the Code of Virginia). These certified laboratory regulations have been required and implemented for VPDES permittees since January 2012 under VELAP. This is a clarification to reflect existing regulations. No impact.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
<p><b>9VAC25-31-200 C</b>  <b>Additional conditions applicable to specified categories of VPDES permits.</b></p>	<p>NA</p>	<p>Wastewater works operator requirements license regulations reference is to 18VAC160-20 (Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations).</p>	<p>Wastewater works operator requirements license regulations reference corrected to 18VAC160-30 (Waterworks and Wastewater Works Operators Licensing Regulations). This is a correction as 18VAC160-20 was repealed. No impact.</p>
<p><b>9VAC25-31-220 I 4 d.</b>  <b>Establishing limitations, standards, and other permit conditions.</b></p>	<p>NA</p>	<p>No direct reference to require sufficiently sensitive methods for monitoring requirements. However, 40 CFR 136 is referenced in the regulation and in all permits and 40 CFR 136 references the sufficiently sensitive methods requirements.</p>	<p>Direct reference to sufficiently sensitive methods requirements added in accordance with 40 CFR <a href="#">122.44(i)(1)(iv)</a>. No impact as the VPDES permit regulation (9VAC25-31-750) and all VPDES permits expressly incorporate by reference 40 CFR <a href="#">136</a>, Guidelines for Establishing Test Procedures for the Analysis of Pollutants. The provisions in Part 136 are applicable for pollutant quantitation in NPDES permit applications and NPDES permit reports. 40 CFR <a href="#">136.1(c)</a> stipulates that the test procedures used must be sufficiently sensitive as defined in 40 CFR <a href="#">122.21(e)(3)</a> and <a href="#">122.44(i)(1)(iv)</a>.</p>
<p><b>9VAC25-31-280 B 11</b>  <b>Fact sheet.</b></p>	<p>NA</p>	<p>Reference is to 9VAC25-31-100 J or P.</p>	<p>Reference changed to 9VAC25-31-100 <u>K</u> or <u>Q</u> to correspond with references given in 40 CFR <a href="#">124.8(b)(9)</a>. This is a correction. No impact.</p>
<p><b>9VAC25-31-380 B 4</b></p>	<p>NA</p>	<p>This new subdivision B 4 does not exist. The subsection specifies how automatic ownership transfers may occur.</p>	<p>The new subdivision B 4 specifies that automatic ownership transfers may occur if the new owner or operator has demonstrated compliance with the financial assurance regulation 9VAC25-650-70. This is for consistency with the Closure Plan and Demonstration of Financial Capability regulation which requires the new owner to provide financial assurance prior to the transfer of the permit. No impact as this requirement is currently effective in 9VAC25-650-70.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
<p><b>9VAC25-31-800 F 1 Pretreatment program requirements: development and implementation by POTW.</b></p>	<p>NA</p>	<p>The POTW shall operate pursuant to legal authority enforceable in federal, state or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of Sections 307(b), (c) and (d), and 402(b) (8) of the CWA and any regulations implementing those sections. Such authority may be contained in a statute, or ordinances which the POTW is authorized to enact, enter into or implement, and which are authorized by state law.</p>	<p>The underlined statement was amended to correspond with language in 40 CFR <a href="#">403.8(f)(1)</a> Pretreatment Program Requirements: Development and Implementation by POTW. The POTW shall operate pursuant to legal authority enforceable in federal, state or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of §§ 307(b), (c) and (d), and 402(b)(8) of the CWA and any regulations implementing those sections. Such authority may be contained in a <u>statute, ordinance, or series of contracts or joint powers agreements</u> which the POTW is authorized to enact, enter into or implement, and which are authorized by state law. No impact as this is a reflection of existing procedures that have been following the federal law..</p>

### 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.*

Most of these amendments apply to individual permits. The agency offers general permit coverage for many industries. That is the primary regulatory method the agency uses to minimize adverse impact on small businesses. Many of these amendments are corrections and clarifications that have no impact on small business.

### 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.*

The regulatory action will not impact the institution of the family and family stability.