



## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9VAC25-31-191
<b>Regulation title</b>	Virginia Pollutant Discharge Elimination System General Permit for Concentrated Animal Feeding Operations
<b>Action title</b>	Amendment and Reissuance of the Virginia Pollutant Discharge Elimination System General Permit for Concentrated Animal Feeding Operations.
<b>Date this document prepared</b>	1/12/2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The purpose of this action is to amend and reissue the existing Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations (CAFOs) (9VAC25-31-191), as the current general permit expires on December 31, 2010. The general permit regulation governs the authorization to manage pollutants from concentrated animal feeding operations. This action will include amending the general permit regulation to reflect changes made to the federal CAFO program in 40 CFR Parts 9, 122, and 412 as published in the Federal Register Volume 73, No. 225, dated November 20, 2008, and adopted by the State Water Control Board on December 14, 2009.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

The State Water Control Board has the authority to administer the federal National Pollutant Discharge Elimination System program within the Commonwealth, and as such, the program is called the Virginia Pollutant Discharge Elimination System (VPDES). Operations that meet the Federal definition of CAFO

found in 40 CFR 122.23(b) must seek coverage under a NPDES permit if the operation discharges or proposes to discharge. CAFOs are currently regulated in Virginia under the Virginia Pollution Abatement (VPA) permit regulation (9VAC25-32), the VPA General Permit Regulation for Confined Animal Feeding Operations (9VAC25-192), and the VPA General Permit Regulation for Poultry Waste Management (9VAC25-630). Concentrated Animal Feeding Operations currently covered under these regulations will be required to be covered under the VPDES permit regulation (9VAC25-31) or VPDES general permit regulation (9VAC25-191) if they discharge or propose to discharge. The current VPDES CAFO general permit became effective on January 1, 2006.

**Need**

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

The current VPDES general permit which governs the authorization to manage pollutants from concentrated animal feeding operations (CAFOs) expires on December 31, 2010. The use of the general permit provides permittees the authority to manage pollutants and allows for the protection of state waters while utilizing fewer resources of the Commonwealth.

**Substance**

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

This action is primarily a reissuance of the existing general permit as well as amendments to reflect the changes to 40 CFR Parts 9, 122, and 412 as published in the Federal Register Volume 73, No. 225, dated November 20, 2008 and any amendments which may be identified following the submittal of public comments on this notice.

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

One alternative to the reissuance of the VPDES General Permit for Concentrated Animal Feeding Operations is to issue coverage under an individual VPDES permit to each CAFO which discharges or proposes to discharge. However, due to the number of concentrated animal feeding operations which are anticipated to require coverage under a VPDES permit, it is not practical to issue coverage to each operation under an individual VPDES permit. Operations that do not qualify for coverage under the general permit will be issued coverage under an individual VPDES permit.

## Public participation

*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

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The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives, 3) potential impacts of the regulation and 4) impacts of the regulation on farm and forest land preservation. The agency 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) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to **Betsy Bowles, P.O. Box 1105, Richmond, Virginia 23218, phone 804-698-4059, fax 804-698-4116 and [betsy.bowles@deq.virginia.gov](mailto:betsy.bowles@deq.virginia.gov)**. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: [www.townhall.virginia.gov](http://www.townhall.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

## Regulatory Advisory Panel

*A regulatory advisory panel will be involved in the development of the proposed regulation.*

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The Board is using a regulatory advisory panel to develop a proposal. Persons interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). The primary function of the advisory panel is to develop recommended regulation amendments for Department 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 panel will be sent to all applicants.

## Family impact

*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.*

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