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Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-31
VAC Chapter title(s)	Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation
Action title	Amendment to change the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31 et seq.) in response to Chapter 276 of the 2023 Virginia Acts of Assembly
Final agency action date	June 22, 2023
Date this document prepared	May 17, 2023

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.

This final exempt regulatory action is necessary to implement Chapter 276 of the 2023 Acts of Assembly, which requires the pretreatment standards adopted by the State Water Control Board to require any industrial user of a publicly owned treatment works that receives and cleans, repairs, refurbishes, or processes any equipment, parts, or media used to treat any water or wastewater from any off-site manufacturing process that the industrial user knows or reasonably should know uses PFAS chemicals to test its wastestream for PFAS chemicals prior to and after cleaning, repairing, refurbishing, or processing such items. This action will amend 9VAC25-31, the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation, to include this new statutory requirement.

These regulatory amendments are exempt from the state administrative procedures for adoption of regulations because they are necessary to conform to Virginia statutory law (§ 2.2-4006(A)(4)(a) of the Code of Virginia).

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."

HB2189 was passed during the 2023 Session of the General Assembly. This bill requires the pretreatment standards adopted by the State Water Control Board to require any industrial user of a publicly owned treatment works that receives and cleans, repairs, refurbishes, or processes any equipment, parts, or media used to treat any water or wastewater from any off-site manufacturing process that the industrial user knows or reasonably should know uses PFAS chemicals to test its wastestream for PFAS chemicals prior to and after cleaning, repairing, refurbishing, or processing such items.. The Governor signed this bill into law on March 22, 2023 (HB2189 – Chapter 276 of the 2023 Acts of Assembly) and these changes will become effective July 1, 2023. This regulatory action is required to conform the existing regulation to changes in Code.

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 22, 2023, the State Water Control Board approved final amendments to the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31 et seq.) 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.