



Exempt Action Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC25-110
Regulation title	General VPDES Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons per Day
Action title	Amend and Reissue the Existing Regulation
Document preparation date	May 11, 2010

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulation amendment will reissue the existing VPDES general permit for domestic sewage discharges of less than or equal to 1,000 GPD (VAG40) that will expire on August 1, 2011. The significant revisions to the regulation are as follows:

1. Section 60 - Authorization to Discharge. Added two reasons why the Department would deny coverage under the general permit.
2. Section 70 - Registration Statement. Added a provision that allows owners of treatment works that were authorized under the expiring general permit, and who intend to continue coverage under this general permit, to be automatically covered without requiring the owner to submit a new registration statement. Also clarified that maintenance contracts are required for treatment works serving individual single family dwellings.
3. Section 80 - General Permit.

Part I - Effluent Limitations, Monitoring Requirements, and Special Conditions. Identified the two effluent limitation sections/tables as Part I.A and Part I.B, and changed the Special Conditions section to Part I.C.

Also modified the bacteria effluent limits to address the recent changes to the Virginia Water Quality Standards. Added clarifications to the effluent limits table footnotes explaining where to find the classes of water and boundary designations in the Virginia Water Quality Standards, and the description of what are "shellfish waters". Deleted the Schedule of Compliance special condition because it is no longer used/needed. Clarified the Maintenance Contract special condition for treatment works serving individual single family dwellings indicating that maintenance contracts are required for these treatment works, and modified the previous permit special condition to clarify that it applies to treatment works serving non-single family dwellings. Clarified the Operation and Maintenance Plan special condition to indicate that this requirement applies to treatment works serving non-single family dwellings, and added a requirement that the results of all testing and sampling be kept with the maintenance log. Added a Compliance Recordkeeping special condition containing compliance recordkeeping instructions for the permittee regarding quantification levels (QLs) and significant digits. Added a Water Quality Standards special condition requiring discharges authorized by this permit to meet water quality standards.

Part II - Conditions Applicable To All VPDES Permits. Modified the Duty to Reapply section to indicate that permittees that are required to submit a new registration statement to reapply for permit coverage must submit the new registration statement at least 60 days prior to the expiration date of the permit, and added clarification explaining automatic permit coverage renewal and how a facility qualifies. Clarified the Transfer of Permits section to state that the automatic transfer provision applies when the current permittee notifies the Department within 30 days of the transfer of property title.

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., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

This proposed regulatory action is needed in order to amend and reissue the existing VPDES general permit which expires on August 1, 2011. The general permit will establish standard language for control of point source discharges from small domestic sewage treatment works to surface waters through effluent limitations, monitoring requirements and special conditions.

Substance

Please briefly identify and explain the new substantive provisions (for new regulations), the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The substantive changes to existing sections of the regulation are as follows:

1. Section 60 - Authorization to Discharge.

- Added two reasons why the Department would deny coverage under the general permit: (1) the discharge would violate the antidegradation policy stated in 9VAC25-260-30 of the Virginia Water Quality Standards; and (2) a TMDL (board adopted, EPA approved or EPA imposed) contains a waste load allocation (WLA) for the facility, unless this general permit specifically addresses the TMDL pollutant of concern and the permit limits are at least as stringent as those required by the TMDL WLA.

2. Section 70 - Registration Statement

- Added a provision that allows owners of treatment works that were authorized under the expiring general permit, and who intend to continue coverage under this general permit, to be automatically covered without requiring the owner to submit a new Registration Statement, provided : (1) the ownership of the treatment works has not changed since the registration statement for coverage under the 2006 general permit was submitted, or, if the ownership has changed, a new registration statement or VPDES Change of Ownership form was submitted to the Department at the time of the title transfer; and (2) there has been no change in the design and/or operation of the treatment works since the registration statement for coverage under the 2006 general permit was submitted; and (3) for treatment works serving individual single family dwellings, the VDH has no objection to the automatic permit coverage renewal for this treatment works based on system performance issues, enforcement issues, or other issues sufficient to the department. If the VDH objects to the automatic renewal for this treatment works, the owner will be notified by the Department in writing; and (4) for treatment works serving non-single family dwellings, the Department has no objection to the automatic permit coverage renewal for this treatment works based on system performance issues, or enforcement issues. If the Department objects to the automatic renewal for this treatment works, the owner will be notified in writing.
- Maintenance Contract - clarified that maintenance contracts are required for treatment works serving individual single family dwellings.

3. Section 80 - General Permit

Part I - Effluent Limitations and Monitoring Requirements

- Identified the two effluent limitation sections/tables as: Part I.A (Receiving waters where the 7Q10 flows are < 0.2 MGD); and Part I.B (Receiving waters where the 7Q10 flows are >= 0.2 MGD), and changed the Special Conditions section to Part I.C.
- Modified the bacteria effluent limits to address the recent changes to the Virginia Water Quality Standards (9 VAC 25-260).

- Added clarifications to the effluent limits table footnotes explaining where to find the classes of water and boundary designations in the Virginia Water Quality Standards, and the description of what are "shellfish waters".
- Special Conditions:
 - 2. Schedule of Compliance - Deleted this condition because it is no longer used/needed.
 - 2. (old #3) Maintenance Contract - Added requirements for treatment works serving individual single family dwellings (maintenance contracts are required for these treatment works); modified the previous permit special condition to clarify that it applies to treatment works serving non-single family dwellings.
 - 3. (old #4) Operation and Maintenance Plan - Clarified that this requirement applies to treatment works serving non-single family dwellings. Added a requirement that the results of all testing and sampling must be kept with the maintenance log.
 - 4. (new) Compliance Recordkeeping - Added this special condition containing compliance recordkeeping instructions for the permittee regarding quantification levels (QLs) and significant digits.
 - 5. (new) Water Quality Standards - Added this special condition requiring discharges authorized by this permit to meet water quality standards.

Part II - Conditions Applicable To All VPDES Permits

- M. Duty to Reapply - Modified this section to indicate that permittees that are required to submit a new registration statement to reapply for permit coverage must submit the new registration statement at least 60 days prior to the expiration date of the permit. Also added clarification explaining automatic permit coverage renewal and how a facility qualifies.
- Y. Transfer of Permits - Clarified that the automatic transfer provision applies when the current permittee notifies the Department within 30 days of the transfer of property title (previously it was 30 days prior to transfer of property title).

Issues

Please identify the issues associated with the proposed regulatory action, 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantage to the public and to the agency of implementing the amended provisions are that a VPDES general permit will continue to be available to small domestic sewage treatment works, allowing them an efficient way to be permitted to discharge to surface waters. The regulatory action poses no disadvantages to the public or to the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include 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 statement to that effect.

There are no applicable federal requirements or no requirements that exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality will be particularly affected by the proposed regulation.

Public Participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts of the regulation on the regulated community and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and on any impacts of the regulation on farm and forest land preservation. Also, the Board is 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 for the public comment file may do so at the public hearing or by mail, email or fax to George Cosby, Office of Regulatory Affairs; Dept. of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone 804/698-4067, fax 804/698-4032, email george.cosby@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. Written comments must include the name and address of the commenter. In order to be considered comments must be received by DEQ by 11:59 p.m. on the date established as the close of the comment period.

A public hearing will be held and notice of the public hearing will appear on the Virginia Regulatory Town Hall website and in the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

It is not anticipated that the proposed amendments will impart an additional economic impact on the owners of domestic sewage treatment works. There are currently 2116 treatment works registered under this general permit.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

There are two alternatives for compliance with the federal and state requirements to permit discharges from domestic sewage treatment works with a design discharge flow of less than or equal to 1,000 gallons per day. One is to issue individual VPDES permits to the owner of each treatment works. The other is to reissue the general VPDES permit to cover this category of discharger. Due to the magnitude of treatment works that are required to be permitted, it is not practical to issue individual permits to each of these facilities. Individual permits will only be issued to those treatment works that do not qualify to be permitted under the general permit.

Regulatory flexibility analysis

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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

The agency is proposing to lessen the reapplication burden on all existing permittees by allowing the owners to be automatically covered under the reissued permit without the need to resubmit a registration statement. The owner would be automatically covered under the new general permit provided that: (1) the ownership of the treatment works hasn't changed since the last registration, or if the ownership has changed, the agency was notified; (2) there has been no change to the design and/or operation of the treatment works; (3) neither the agency nor the Virginia Department of Health objects to the automatic reissuance based on facility performance or enforcement issues. The agency is also proposing to allow the continuance of permit coverage in instances where an owner has submitted a timely reapplication registration (if they are required to submit a registration) and is in compliance with their existing permit. This will allow the permittee to legally discharge if permit coverage is not granted by the agency prior to the expiring permit's expiration date.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Amy Ewing, VA Dept. of Game and Inland Fisheries	DEQ should look into alternatives to use of chlorine for pre-treatment of waste water discharged by small treatment systems covered by the general permit regulation.	This issue was brought before the technical advisory committee for discussion.
Cindy Kane, U.S. Fish and Wildlife Service	Offered to participate on the technical advisory committee (TAC)	Cindy Kane name was submitted for approval to serve on the TAC.

Family impact

Assess the impact of this 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.