



townhall.virginia.gov

Exempt Action: Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-115
VAC Chapter title(s)	General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Seafood Processing Facilities
Action title	Update and amend the regulation that expires on July 23, 2021 in order to continue to offer general permit coverage for this industry.
Date this document prepared	Beginning December 30, 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 regulation specifies requirements for seafood processing facilities to discharge process water and stormwater to protect water quality. The most significant amendments to this regulation are updating the definition of seafood processing to include NAICS codes and exclude shellfish aquaculture, update the industrial stormwater requirements to be consistent with other industries subject to stormwater permitting. This includes adding quarterly visual monitoring and annual inspections for nonstormwater discharges.

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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."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 impetus of the regulatory change is Virginia Code § 62.1-44.15 (5a) which states, "All certificates issued by the Board under this chapter shall have fixed terms. The term of a Virginia Pollution Discharge Elimination System permit shall not exceed five years." This general permit expires on July 23, 2021 and must be reissued in order to make coverage available for seafood processors that discharge to surface waters after July 23, 2021.

The periodic review of this regulation is mandated by Executive Order 14 (as amended July 16, 2018). <http://TownHall.Virginia.Gov/EO-14.pdf>.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

- DEQ: Department of Environmental Quality
- EPA (U.S. EPA): United States Environmental Protection Agency
- ISWGP: VPDES Industrial Stormwater General Permit 9VAC 25-151
- MSGP: NPDES Multi-Sector Industrial Stormwater General Permit
- NAICS: North American Industry Classification System
- NPDES: National Pollutant Discharge Elimination System
- SIC: Standard Industrial Classification
- TAC: Technical Advisory Committee
- USC: United States Code
- VAC: Virginia Administrative Code
- VPDES: Virginia Pollutant Discharge Elimination System

Legal Basis

Please 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 promulgating entity is the State Water Control Board. 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 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 is intended to solve.

This proposed regulatory action is needed in order to establish permitting requirements for discharges from seafood processing facilities in order to protect the health, safety and welfare of citizens. The existing general permit expires on July 23, 2021 and must be reissued to cover existing and new seafood processing discharges. The goal is to update the permit and the regulation to be consistent with other VPDES general permits.

Substance

Please 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.

Substantive provisions include updating and including new definitions related to stormwater management, updating the definition of "Seafood Processing" and excluding aquaculture from the requirements of the permit and updating the entire stormwater section to be more consistent with other industrial stormwater general permit requirements.

Issues

Please 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.

The advantages to the public and the agency of reissuing this permit are that a VPDES general permit will continue to be available to facilities with eligible discharges enabling them to discharge to surface waters in a manner that is protective of those waters without the increased cost and more complicated application process associated with issuing an individual permit. There are no known disadvantages.

Requirements More Restrictive than Federal

Please 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.

There are no requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please 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.

Other State Agencies Particularly Affected:
None

Localities Particularly Affected:
None

Other Entities Particularly Affected:
None

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.

The reissuance of the VPDES general permit accomplishes the objectives of applicable law and minimizes the costs to a small business owner and simplifies the application process. Without the general permit, a small business owner would be required to obtain an individual permit, which would increase the complexity of a permit application and permit costs.

Public Comment Received

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
A.J. Erskine, Bevans Oyster Company and Cowart Seafood Corporation	Would like to participate on TAC.	Invited to participate on TAC.
Hannah Kellum W. Ellery Kellum Seafood, Inc. and Virginia Seafood Council	Would like to participate on TAC.	Invited to participate on TAC.

Commenter	Comment	Agency response
Mike Oesterling, Virginia Shellfish Growers of Virginia	Would like to participate on TAC.	Invited to participate on TAC.

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 and the impacts of the regulated community.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts of this regulatory proposal and any impacts of the regulation on farm and forest land preservation. Also, the agency/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 by mail, email or fax to Elleanore Daub, P.O. Box 1105, Richmond, VA 23218, phone (804) 698-4111, fax: 804-698-4178 (please ensure recipient [Elleanore Daub] is on fax or cover page of fax), email elleanore.daub@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <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 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. If the regulatory change will be a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory change. Please include citations to the specific section(s) of the regulation that are changing.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-115-10. Definitions.		Contains definitions for various terms.	Added six new definitions to support the amended stormwater management requirements in 9VAC25-115-50 (Part II) and to be consistent with the ISWGP. The new definitions are “best management practices”, “control measure”, “corrective action”, “minimize”, “no exposure” and “Virginia Environmental Excellence Program.” Added a definition for NAICS and added the NAICS to the definition of “seafood processing facility” because this classification system is being added to the permit. Added an exclusion for shellfish aquaculture facilities to the seafood processing facility definition based on a request from the TAC. Some minor changes were made to existing definitions for “Significant materials” and “stormwater discharge associated with industrial activity” to be consistent with the IWSGP. No impact.
9VAC25-115-15. Applicability of incorporated references based on the dates that they became effective.		Effective date for the Title 40 CFR is July 1, 2015	Effective date for the Title 40 CFR changed to July 1, 2020. No impact.
9VAC25-115-20. Purpose; delegation of authority; effective date of permit.		Effective date of permit July 24, 2016 – July 23, 2021.	Updated effective dates to July 24, 2021 – June 30, 2026 in order to begin the permit at the start of July next reissuance (and thereafter) to help ensure continuous e-DMR submittal using full calendar quarters (July – September, October – December, January – March, and April – June, etc...). Currently the permit abruptly ends before a full monitoring period is covered (July 23, 2021). Minor impact because the permit coverage for the reissuance ends 23 days short of a full five years and no pro-rating of permit fees is allowed. Also added NAICS code to the seafood processing classification sentence. No impact.
9VAC25-115-30 Authorization to Discharge		Authorization to discharge does not include a no exposure exclusion.	Included a no exposure exclusion for stormwater. This is consistent with the Industrial Stormwater General Permit (9VAC25-151-50 D and the EPA Multi-sector General Permit. This allows facilities who have all industrial materials under cover and unexposed to stormwater to get a “no exposure certification” and relief from stormwater requirements for a five year term. Added to a new subsection D.
9VAC25-115-30 Authorization to Discharge		Continuation of permit coverage requires	Removed the specific date and provide that a complete registration statement must be submitted at least 60 days prior to permit expiration or as specified by the Board. Changed subsection D to E. No impact.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
		submittal of complete registration statement before July 23, 2016.	
9VAC25-115-30 Authorization to Discharge		Alternatives for addressing owner covered under expiring or expired permit who has violated permit.	Made non-substantive edits to remove reference to specific years. No impact.
9VAC25-115-40 Registration Statement		Registration statement deadlines and required submittals. Deadline 30 days prior expiration of permit, commencement of discharge or adding a new process.	Changed 30 days to 60 days to be consistent with the industrial stormwater general permit, and allowed for a later date established by the Board. Permittees will have to submit a registration statement and other notifications to DEQ sooner. The regulation also allow for DEQ to accept a late submittal.
9VAC25-115-40 Registration Statement		Late registration statement will be accepted after July 23, 2016 but authorization will not be retroactive. Existing covered facilities that submit a registration after June 24, 2016 but before July 24, 2016 are authorized to discharge.	Removed the July 23, 2016 date and replaced with after the expiration date of this permit. Removed the sentence pertaining to submission of registration after June 24, 2016. No impact as these changes just make the language more generic without dates that must be updated.
9VAC25-115-40 Registration Statement		Registration statement required information is listed.	Same information but added latitude and longitude and State Corporation Commission entity identification number (if applicable). Some impact as the registrants will be required to find latitude longitude via a phone application or via the DEQ

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			online VEGIS database. https://www.deq.virginia.gov/connectwithdeq/vegis.aspx
9VAC25-115-40 Registration Statement		Registration statement shall be delivered to the department by postal or electronic mail.	Clarified that it shall be delivered to the department's regional office by postal or electronic mail. Added that once the 9VAC25-31-1020 (Electronic Reporting) date is established for this industry, registration statements shall be submitted electronically. Three months' notice shall be given by the department about this requirement. Some impact because once electronic reporting dates are established and technology is developed at the department, the permittees will have no choice but to file registrations statements electronically. This may be difficult if the registrant has no available internet access (even via a public library) or computer/internet skills. Waivers are available under very limited circumstances.
9VAC25-115-50 General Permit Part I		Effective and expiration dates July 24, 2016 – July 23, 2021	Updated to next term July 24, 2021 – June 30, 2026. Some impact as this is not quite a full five year term and there is no pro-rating of fees. However, most permits today are placed at the end of the month to facilitate electronic discharge monitoring reporting. Since permits cannot be more than five years per federal and state regulations, the end date was backed up 23 days to June 30, 2026 instead of moved forward to August 1, 2026.
9VAC25-115-50 General Permit Part I		The authorized discharge shall be in accordance with the cover page, Part I- Effluent Limitations, Monitoring Requirements, Part II-SWPPP and Part III- Conditions Applicable to all VPDES permits.	Added that the discharge must also be in accordance with the information submitted with the registration statement and Part I Special Conditions. This ensures the authorization is further conditioned on such information.
9VAC25-115-50 General Permit Part I B		Special condition #9 requires an amended registration statement must be submitted 30 days prior to commencing	Changed to 60 days prior to commencing operation of a new process unless a later date is approved by the board. Some impact in that the notification period is moved up so additional planning is required by the permittee. However, DEQ is also given flexibility to adjust that date.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
		operation of a new process.	
9VAC25-115-50 General Permit Part II Stormwater Management		Stormwater requirements applied to SIC 2091 and 2092 was listed under the SWPPP provisions.	Restated that stormwater management requirements apply to those in SIC 2091 and 2092 at the opening of Part II since new sections A, B and C are added before the SWPPP provisions (explained below). No impact.
9VAC25-115-50 General Permit Part II Stormwater Management		Part II Subsection A does not exist.	Subsection A was added to include visual quarterly monitoring, routine quarterly inspections (moved from another location in Part II) and nonstormwater allowances and annual inspections. This was added to make seafood processor stormwater requirements consistent with other stormwater regulated industries in Virginia. Significant impact to SIC 2091 and 2092 (about 60% of the industry in VA) because they must now include quarterly visual monitoring and annual nonstormwater inspections. Routine quarterly inspections were included in the existing 2016 permit; however, the wording has been updated to be consistent all other stormwater regulated industries in Virginia.
9VAC25-115-50 General Permit Part II Stormwater Management		Part II Subsection B does not exist.	Subsection B was added to include corrective actions that must be taken if monitoring and inspections indicate stormwater pollution. Corrective actions were required as part of routine inspections in the existing 2016 permit; however, now corrective actions must also be done for visual monitoring and any event that indicates stormwater pollution. Corrective actions are also more detailed to indicate due dates for SWPPP updates and control measure modifications. Also added was that corrective actions shall be documented, retained with the SWPPP and certified by appropriate personnel. Significant impact for SIC 2091 and 2092 because they could potentially require corrective actions more often and documentation procedures are more rigorous.
9VAC25-115-50 General Permit Part II Stormwater Management		SWPPP requirements and due dates.	SWPPP requirements and due dates updated to be consistent with other stormwater regulated industries in Virginia. Removed the general location map from the site description as this information was already part of the site map requirements. Added "locations of vents and stacks from cooking, drying, and similar operations; dry product vacuum transfer lines; animal holding pens; spoiled product; and broken product container storage area as part of the site description to be consistent with EPA's 2015 MSGP.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>Eliminating and minimizing exposure was expanded to include additional examples on how to accomplish this.</p> <p>Spill prevention and response procedures were expanded to include “procedures for plainly labeling containers (e.g., used oil, spent solvents, fertilizers and pesticides, etc.) that could be susceptible to spillage or leakage to encourage proper handling and facilitate rapid responses if spills or leaks occur” to be consistent with EPA’s 2015 MSGP.</p> <p>Routine quarterly inspections was expanded and moved up to Part II A 2.</p> <p>Employee training must be annual and include pest control training.</p> <p>Comprehensive annual site evaluations were eliminated and consolidated with routine facility inspections.</p> <p>Allowable nonstormwater discharges were moved and updated to Part II A 3.</p> <p>All other amendments in Part II C are considered minor.</p> <p>Some impact to these changes and additions because permittees will have to revise their SWPPP to be in conformance with these changes. The agency intends to provide a SWPPP template to help the industry make these changes.</p>
<p>9VAC25-115-50 Part III Conditions Applicable to All Permits</p>		<p>Part III contains conditions applicable to all permits.</p>	<p>Added under reporting, that once the 9VAC25-31-1020 (Electronic Reporting) date is established for this industry, discharge monitoring reports shall be submitted electronically. Three months’ notice shall be given by the department about this requirement.</p> <p>Some impact because once electronic reporting dates are established and technology is developed at the department, the permittees will have no choice but to file discharge monitoring reports electronically. This may be difficult if the registrant has no available internet access (even via a public library) or computer/internet skills. Waivers are available under very limited circumstances.</p> <p>Added under reports of noncompliance, a permittee shall promptly submit any facts or incorrect information submitted with a registration statement or any report to the department. This is for consistency with the VPDES and NPDES permit regulations.</p> <p>General permits are beginning to add this requirement into these conditions. Minor impact since permittees need to be aware of this new requirement if they discover an error on a registration statement on which permit coverage was based.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			Other changes made in Part III are minor and were done to be consistent with other general permits. No impact.

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.

This regulation will have no direct impact on the institution of the family or family stability.