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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| Agency name | State Water Control Board |
| Virginia Administrative Code (VAC) Chapter citation(s) | 9VAC25-120 |
| VAC Chapter title(s) | Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges from Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests |
| Action title | Amend and Reissue the Existing General Permit Regulation |
| Date this document prepared | August 31, 2020 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), 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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

This general permit regulation establishes limitations, monitoring requirements and other special conditions for point source discharge from Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests to surface waters in order to maintain surface water quality.

This regulation action is proposed in order to amend and reissue the existing general permit which expires on February 25, 2023.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

Board: State Water Control Board

EPA (U.S. EPA): United States Environmental Protection Agency
DEQ: Department of Environmental Quality
NOIRA: Notice of Intended Regulatory Action
NPDES: National Pollutant Discharge Elimination System
TMDL: Total Maximum Daily Load
USC: United States Code
VAC: Virginia Administrative Code
VPDES: Virginia Pollutant Discharge Elimination System

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, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "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 Pollutant Discharge Elimination System permit shall not exceed five years." This general permit expires on February 25, 2023 and must be reissued in order to make coverage available for Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests that discharge to surface waters after February 25, 2023.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency'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

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

This proposed regulatory action is essential to protect the health, safety or welfare of citizens by establishing permitting requirements for the protection of water quality for discharges from Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests. The existing general permit expires on February 25, 2023 and must be reissued to cover existing and new Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests. Some issues that may need to be addressed include:

- Reviewing the quantification levels required and significant figures for reporting purposes;
- Clarifying when certain parameters shall be monitored;
- Updating the registration statement including latitude and longitude and State Corporation Commission entity number (where applicable);
- Requiring online registrations and electronic discharge monitoring report submittals (when this becomes available by DEQ for this industry);
- Reviewing effluent limitations and monitoring frequencies based on past compliance history;
- Reviewing TMDL requirements;
- Consider expanding coverage to include additional activities; and
- Reviewing special conditions to ensure they are updated and protective of water quality.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The general permit will establish limitations and monitoring requirements for point source discharges from existing and new Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests. The effluent limits and special conditions in the general permit will be reviewed to ensure that the permit is still protective of water quality. The primary issue that needs to be addressed is that the existing general permit expires on February 25, 2023, and must be reissued in order to continue making it available after that date.

Amendments may be identified following the submittal of public comments on this Notice and by the technical advisory committee during deliberations of this general permit regulation.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There are two alternatives for compliance with federal and state requirements to permit discharges from Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests. One is to issue individual VPDES permits to each establishment and each owner must submit an application for a VPDES permit with the corresponding fees. The other is to reissue this general VPDES permit to cover this category of dischargers and owners may register for coverage under the general permit with the

corresponding fees (which are less than an individual permit). Therefore, the general permit is the less intrusive and less costly alternative for small businesses. General permits also require fewer DEQ staff resources to issue.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The State Water Control Board is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. The State Water Control Board 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) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

This NOIRA is not being used to announce a periodic review or a small business impact review.

Anyone wishing to submit written comments may do so by mail or email to **Alison Thompson P.O. Box 1105, Richmond, Virginia 23218, phone: 703-583-3834 (for questions), alison.thompson@deq.virginia.gov**. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall (<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 before midnight on the last day of the public comment period.

Public Hearing at Proposed Stage

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar (<https://www.virginia.gov/connect/commonwealth-calendar>).

Technical Advisory Committee

A technical advisory committee will be involved in the development of the proposed regulation.

The Board is using a technical advisory committee to develop a proposal. Persons interested in assisting in the development of a proposal should notify the Department’s 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). Any persons who want to be on the advisory committee are encouraged to attend the public meeting mentioned above. The primary function of the advisory committee 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 committee will be sent to all applicants.