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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9 VAC25-880
Regulation title(s)	General VPDES Permit Regulation for Discharges of Stormwater from Construction Activities, 9VAC25-880 (VAR10)
Action title	Amend and Reissue the Construction Stormwater General Permit
Date this document prepared	September 1, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

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

This regulatory action is proposed in order to amend and reissue the existing general permit which expires on June 30, 2019. The general permit governs the discharge of stormwater from construction activities equal to or greater than 1 acre of land disturbance or less than 1 acre within a common plan of development. This regulatory action is needed in order for existing and new construction activity projects to be covered under this general permit regulation.

In addition, a periodic/small business impact review of this regulation will be conducted as part of this regulatory action. Please see the Agency Background Document located at www.townhall.virginia.gov for the specific details on the conduct of the review.

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.

Construction General Permit: CGP
DEQ: Department of Environmental Quality
ESC: Erosion and Sediment Control
EPA (U.S. EPA): United States Environmental Protection Agency
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
VSMP: Virginia Stormwater Management Program

Legal basis

Please identify (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should 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's overall regulatory authority.

The basis of this regulation is §62.1-44.15:25 of the Code of Virginia which authorizes the State Water Control Board under the Virginia Stormwater Management Act to issue, deny, revoke, terminate or amend stormwater permits and adopt regulations for the control of stormwater discharges from regulated construction activities to surface waters. These discharges are defined as stormwater discharges associated with large construction activity and stormwater discharges associated with small construction activity.

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 describe 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, please explain any potential issues that may need to be addressed as the regulation is developed.

The proposed regulatory action protects water quality in the Commonwealth of Virginia which is essential to the health, safety and welfare of Virginia's citizens and is needed in order to establish appropriate and necessary permitting requirements for the discharges of stormwater from small and large construction activities. These discharges are considered point source discharges and thus are subject to regulation under the VPDES permit program; however, the programmatic and technical stormwater requirements implemented by this permit are contained in the Virginia Stormwater Management Program regulations (9VAC 25-870 et. seq.). The proposed action authorizes the discharge of stormwater associated with large and small construction activities and establishes the best management practices and control measures from these activities. This action also implements the post development water quality and quantity technical design criteria as required in the Virginia Stormwater Management Program regulation (9 VAC25-870 et. seq.). The primary issue that needs to be addressed is that the existing general permit

expires on June 30, 2019 and must be reissued to continue to authorize stormwater discharge from construction activities through general permit coverage.

Substance

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

Changes to the existing general permit include changing the permit effective dates of the general permit to July 1, 2019, through June 30, 2024, revisions to provide clarity to permit requirements and correct typographical errors. Additional amendments may be identified following the submittal of public comments on this notice, through the work of the technical advisory committee, or to comply with federal regulations and watershed plans.

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.

DEQ is authorized to require individual permit coverage to authorize the discharge of stormwater from construction activities when the discharges do not meet the criteria for CGP approval and coverage. One alternative to promulgating a regulation for the construction general permit (CGP) is the issuance of individual permits to authorize the discharge of stormwater from all construction activities equal to or greater than 1 acre of land disturbance or less than 1 acre within a common plan of development. However, more than 1000 requests for permit coverage or permit modifications are processed each year. Authorizing discharges through individual permits for 1000+ is not achievable without significant increases in staffing. Additionally, the procedural requirements for issuing individual permits established in the VPDES and VSMP regulations could significantly delay development and redevelopment activities.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including 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. Please include one of the following choices: (1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; (2) a panel will not be used; or (3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: (1) ideas to be considered in the development of this 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: projected reporting, recordkeeping and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

In addition, please see the periodic review/small business impact review announcement section below for details on specific comments requested for the conduct of the review of this regulation being conducted as part of this regulatory action.

Anyone wishing to submit written comments may do so by mail, email or fax to Jaime Bauer, DEQ, Office of Stormwater Management, P.O. Box 1105, Richmond, VA 23218, phone 804/698-4416, fax 804/698-4032, email jaime.bauer@deq.virignia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site <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 website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>).

Periodic review/small business impact review announcement

If you wish to use this NOIRA to announce a periodic review (§ 2.2-4017 & EO-17 (2014)) and a small business impact review (§ 2.2-4007.1) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete this section.

In addition, pursuant to Executive Order 17 (2014) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; (iii) designed to achieve its intended objective in the most efficient, cost-effective manner; (iv) is clearly written and easily understandable; (v) overlaps, duplicates, or conflicts with federal or state law or regulation; and (vi) technology, economic conditions, or other factors have changed in the area affected by the regulation since the last review.

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 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 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.

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.

This regulation is not anticipated to have a direct impact on the institution of the family or family stability.