



## Exempt Action Proposed Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9 VAC25-115
<b>Regulation title</b>	General VPDES Permit for Seafood Processing Facilities
<b>Action title</b>	Amend and Reissue the Existing Regulation
<b>Document preparation date</b>	May 5, 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 rulemaking is to reissue the general permit that expires on July 23, 2011. It will continue the existence of the general permit that establishes limitations and monitoring requirements for wastewater discharges from seafood processing facilities. As with an individual VPDES permit, the effluent limits in the general permit are set to protect the quality of the waters receiving the discharges. Substantive changes proposed are: added two reasons authorization to discharge cannot be granted, added language to allow for 'administrative continuances' of coverage, added three new special conditions, updated the storm water pollution prevention plan section and modified due dates in the conditions applicable to all permits section.

### 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.*

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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.*

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This rulemaking is proposed in order to amend and reissue the existing general permit which expires on July 23, 2011. The goal of the regulatory action is to continue the existence of the general permit that establishes limitations and monitoring requirements for point source discharges from seafood processing facilities.

**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.)*

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The general permit will establish limitations and monitoring requirements for point source discharges from seafood processing facilities. As with an individual VPDES permit, the effluent limits in the general permit will be set to protect the quality of the waters receiving the discharges. The primary issue that needs to be addressed is that the existing general permit expires on July 23, 2011 and must be reissued in order to continue making it available after that date. Substantive changes proposed are: added two reasons authorization to discharge cannot be granted, added language to allow for 'administrative continuances' of coverage, added three new special conditions, updated the storm water pollution prevention plan section and modified due dates in the conditions applicable to all permits section.

**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.

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The advantages to the public and the agency are that a Virginia Pollutant Discharge Elimination System general permit will continue to be available to seafood processors to enable them to discharge safely to surface waters. The regulatory action poses no disadvantages to the public or 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.

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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.

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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.

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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](mailto: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](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 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 changes will impart a particular economic impact on the seafood processing industry. There are currently 64 seafood processors 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.*

These discharges are point sources of pollutants and thus are subject to regulation under the VPDES permit program. There are two alternatives for compliance with federal and state requirements to permit discharges. One is to issue individual VPDES permits to each treatment works. The other is to reissue the general VPDES permit to cover this category of discharger.

### 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 move deadlines for submittal of registration statements and ownership changes from 180 days to 30 days. This is a less stringent deadline for existing permittees but still within existing agency practices and implementation guidance. The proposal also includes an allowance for continuance of permit coverage in instances where a permittee has submitted a timely registration and is

in compliance with their existing permit. This will allow the permittee to legally discharge if the permit is not reissued on time by the Department.

**Public comment**

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

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
John B. Graham III, president, Graham & Rollins, Inc., Hampton	Agrees with quarterly discharge monitoring reports and the annual site inspection/evaluation implemented at his facility. Although Mr. Graham’s industry struggles with resource issues and regulatory constraints he recommends DEQ continue the General Permitting as it has been done the previous eight years.	The agency intends to continue the permit. The quarterly reports and annual site inspection/evaluation implementation are not proposed to be changed.
James Casey, President, Casey’s Seafood Inc., Newport News,	The general permit with the quarterly discharge monitoring reports and the annual site evaluation has worked well for his facility for the past eight years. He recommends that the general permit continue in the future.	The agency intends to continue the permit. The quarterly reports and annual site inspection/evaluation implementation are not proposed to be changed.
Heather T. Lusk, H.M. Terry Co., Inc., Willis Wharf	Ms. Lusk requested to serve on the technical advisory panel for the General VPDES Permit Regulation for Seafood Processing.	Ms. Lusk was invited to serve on the panel.

**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.