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Exempt Action Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9VAC25-120
Regulation title(s)	General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation For Discharges From Petroleum Contaminated Sites, Groundwater Remediation and Hydrostatic Tests
Action title	Amend and Reissue Existing Regulation
Date this document prepared	June 14, 2017

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Administrative Process Act (APA), the agency is still 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, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Discharges from Petroleum Contaminated Sites, Ground Water Remediation, and Hydrostatic Tests has existed since 1992. This general permit contains effluent limitations, monitoring requirements and special conditions for discharges of petroleum-contaminated wastewater, chlorinated hydrocarbon contaminated wastewater, and wastewater from hydrostatic tests. The proposed changes to the regulation were made to make this general permit similar to other general permits issued recently and in response to Technical Advisory Committee suggestions and staff requests to clarify and update permit limits and conditions.

Substantive changes to the existing regulation include:

- Including “associated distribution equipment” as components that can be hydrostatically tested under general permit coverage;

- Requiring the permittees to notify a Municipal Separate Storm Sewer System (MS4) owner of the existence of the discharge at the time of registration under the general permit and include a copy of that notification with the registration statement;
- Clarification that dewatering projects “shall be managed to control the volume and velocity of the discharge, including peak flow rates and total volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion”.
- Requiring that hydrostatic discharge flows “be managed to control the volume and velocity of the discharge, including peak flow rates and total volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion”.
- Clarification that total residual chlorine data below the quantification level of 0.1 mg/L shall be reported as “<QL”.

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.

- APA: Administrative Process Act
- BMP: Best Management Practices
- CFR: Code of Federal Regulations
- DEQ: Department of Environmental Quality
- EPA: (U.S. EPA): United States Environmental Protection Agency
- MS4: Municipal Separate Storm Sewer System
- NPDES: National Pollutant Discharge Elimination System
- O&M: Operations and Maintenance
- QL: Quantification Level
- TAC: Technical Advisory Committee
- USC: United States Code
- VAC: Virginia Administrative Code
- VPDES: Virginia Pollutant Discharge Elimination System

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’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

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal 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 for point source discharges from petroleum contaminated sites, groundwater remediation, and hydrostatics tests to surface waters, which expires on February 25, 2018. The goal of the proposed regulation is to continue the general permit which establishes standard language for control of these point source discharges through effluent limitations, monitoring requirements and special conditions to ensure protection of the environment and public health, safety and welfare.

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 changes to the existing regulation include adding "associated distribution equipment" as components that can be hydrostatically tested, requiring the permittees to notify a MS4 owner of the existence of the discharge at the time of registration under the general permit and include a copy of that notification with the registration statement, clarifying that dewatering and hydrostatic testing projects shall control discharges to minimize downstream channel and stream bank erosions, and clarification that total residual chlorine data below the quantification level of 0.1 mg/L shall be reported as "<QL".

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 there are no disadvantages to the public or the Commonwealth, please indicate.

The advantages to the public and the agency are that a VPDES general permit will continue to be available to facilities with eligible discharges enabling them to discharge to surface 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 proposal which is 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 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.

There are no localities particularly affected by the proposed regulation as the regulation applies statewide.

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 federal and state requirements to permit wastewater point source discharges to surface waters. One is to issue VPDES individual permits to each facility. The other is to reissue the VPDES general permit to cover this category of discharger. A VPDES general permit is the least burdensome and costly alternative to achieve the purpose of the regulation.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response. If there was no NOIRA comment period, delete this section.

Commenter	Comment	Agency response
Megan Addington	Permit Needs To End - Recycling Needs to Begin There are ways to recycle the byproducts of industrial waste and they need to be implemented. Our waterways need to stop being polluted. Our people need to stop	DEQ recognizes the need to recycle industrial process byproducts to the extent practicable. The proposed regulation has been drafted to authorize discharges protective of human health and the environment.

	being poisoned slowly. Other states do it and the significant impact and potential for catastrophe is just too high in our community.	
Kenneth Carbaugh AOSE, Carbaugh Environmental Inc	<p>Stop co-mingling of septage with industrial waste, petroleum and other VOCs</p> <p>Provisions for wastewater classification and proper disposal must not permit the co-mingling or homogenization of septic wastewater and industrial products that cannot be effectively removed from discharged effluent whether it be to a waterway, ditch or soil absorption area. Regulation not taking the separation of these different waterwater components is violating the Clean Water Act in my opinion and puts ground and surface water resources at great risk. Proper treatment of these different wastes must be addresses in collection and treatment before disposal or removal from the site entirely. Economic ramifications need be addressed to permit small businesses from going under and leaving a site without any remediation taking place. Perhaps a look into some funding or subsidies from the LUST program should be examined and duplicated in the some of a gasoline or VOC product tax sold in VA to help cover costs to the businesses and protect the citizens of Virginia from pollution in our drinking and recreational waters.</p>	The proposed regulation does not authorize the discharge of septage or septic wastewater.
Mary-Stuart Torbeck, John Diehl, Trieste Lockwood, Michelle Wharton, Michael O'Connor, and Bill Dougherty	These individuals requested to be considered for membership on the TAC	DEQ approved each of these individuals for membership on the 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, the impacts of 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 of this regulatory proposal and 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 by mail, email or fax to Matthew Richardson, P.O. Box 1105, Richmond, Virginia 23218, matthew.richardson@deq.virginia.gov, phone (804) 698-4195, fax (804) 698-4032. 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.

Family impact

Please 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.

Periodic review/small business impact review report of findings

This section may be used to report the results of a periodic review/small business impact review. Otherwise, delete this section.

Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to

which technology, economic conditions, or other factors have changed in the area affected by the regulation.

No public comments were received regarding this regulation that pertained to small business impacts.

DEQ staff believes this regulation is necessary for the protection of public health, safety, and welfare; and is clearly written and easily understandable. DEQ staff believes there is a continued need for the regulation as it allows small businesses with eligible discharges to utilize a general permit to continue discharging wastewater. The general permit provides a less burdensome option for this type of discharge when compared to other permitting options. No public comments were received regarding this regulation that pertained to small business impacts. DEQ staff attempted to draft this regulation in the least complex manner that allowed for the effective protection of human health and the environment. DEQ staff does not believe this regulation duplicates or conflicts with other regulations or laws that pertain to this type of wastewater discharge.

This regulation was last evaluated in 2012. Based on the discharge type, it is not apparent that any technological or economic conditions have change significantly enough to affect the drafting of this regulation.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is 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 action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the pre-emergency regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
		The title of the regulation is "General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation For Discharges From Petroleum Contaminated Sites, Groundwater Remediation and Hydrostatic Tests"	Changed the title to "Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation For Discharges From Petroleum Contaminated Sites, Groundwater Remediation and Hydrostatic Tests" to be consistent with other VPDES General Permits titles.
9VAC25-120-10. Definitions.			Added definition of "Board" means the State Water Control Board
9VAC25-120-10. Definitions.		Requirement is fundamentally the same as the 2013 regulation	Deletion of "or both" to be consistent with Virginia Register of Regulations <i>Form, Style and Procedure manual for Publication of Virginia Regulations</i>
9VAC25-120-15. Applicability of incorporated references		This section updates all Title 40 Code of Federal Regulations (CFR) within the document to be those published as of July 1, 2012. This is a recommendation from the DEQ Office of Policy so dates do not need	Simplified this paragraph to match other general permits and changed the date to July 1, 2018.

based on the dates that they became effective.		to be added for each CFR reference.	
9VAC25-120-20. Purpose		This section detailed the discharges governed by this regulation.	Added "associated distribution equipment" to petroleum storage tank systems to clarify that those components were eligible for hydrostatic testing. Made other minor clarifications which assist the regulated community in determining what equipment is covered for hydrostatic testing.
9VAC25-120-50. Effective date of the permit.		Effective dates of the permit are for the expiring permit term (2013 – 2018).	Effective dates updated throughout regulation (2018-2023).
9VAC25-120-60. Authorization to discharge. Subsection D.		Requirement is the same as the 2013 regulation.	Effective dates updated throughout regulation (2018-2023).
9VAC25-120-70. Registration statement. Subdivision B.		Requirement is the same as the 2013 regulation	Made clarification that short term projects were projects 14 <u>consecutive</u> days or less in duration. Added that "distribution system components" are included in equipment eligible for hydrostatic testing. Updated proposed effective date to 2018. Clarified that sort term project dischargers are not required to submit a notice of termination of <u>permit coverage</u> .
9VAC25-120-70. Registration statement. Subdivision C.		Requirement is the same as the 2013 regulation	Effective dates updated throughout regulation (2018-2023).
9VAC25-120-70. Registration statement. Subdivision D.		Requirement is the same as the 2013 regulation	Updated dates in subsection
9VAC25-120-70. Registration statement. Subdivision E.		Registration statement information includes the requirement to notify the owner of an MS4 within 30 days of coverage under the general permit.	Made effective date changes and minor clarifications to language. Required that estimates of both <u>average and maximum</u> flow rates be provided. Required that <u>all related</u> analytical data be provided with any characterization of wastewater or contamination. Requirement changed so that the notification to the MS4 owner occurs at the time of registration under the permit and that notification must be included with the registration. Clarified that any pollution complaint number <u>associated with the project</u> be provided.
9VAC25-120-80. General permit.		Effective dates of the permit are for the expiring permit term (2013 – 2018).	Updated the permit dates to 2018- 2023
9VAC25-120-80. General permit.		Stated that "[d]ischarge shall be in accordance with this cover page, Part I - Effluent Limitations and Monitoring Requirements and Part II - Conditions Applicable to All VPDES Permits, as set forth herein."	Updated language to be consistent with other general permits to: "[d]ischarge shall be in accordance with <u>the information submitted with the registration statement</u> , this cover page, Part I - Effluent Limitations and Monitoring Requirements and Part II - Conditions Applicable to All VPDES

<p>9VAC25-120-80. General permit. Part I A 1.</p>		<p>Requires Effluent Limitations and Monitoring Requirements for short term projects</p>	<p>Permits, as set forth herein in this general permit.” Clarified that short term projects are 14 <u>consecutive calendar</u> days in duration or less. Changed sampling frequency requirement from once per “project term” to once per “discharge” Replaced requirement that dewatering projects shall be managed to “ensure that they are discharging to an adequate channel or pipe and do not cause erosion in the receiving stream” with “control the volume and velocity of the discharge, including peak flow rates and total volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion”.</p>
<p>9VAC25-120-80. General permit. Part I A 2.</p>		<p>Requirement is fundamentally the same as the 2013 regulation</p>	<p>Reformatted subsection numbering. Replaced requirement that hydrostatic testing projects shall be managed to “ensure that they are discharging to an adequate channel or pipe and do not cause erosion in the receiving stream” with “control the volume and velocity of the discharge, including peak flow rates and total volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion”. Replaced “initiation” with “execution” as requested by enforcement staff Updated referenced EPA Method dates. Clarification that total residual chlorine data below the quantification level of 0.1 mg/L shall be reported as “<QL”.</p>
<p>9VAC25-120-80. General permit. Part I A 3.</p>		<p>Requirement is fundamentally the same as the 2013 regulation</p>	<p>Reformatted subsection numbering. Updated referenced EPA Method dates. Replaced “first year” with “first twelve months of permit coverage” to clarify requirements. Replaced “initiation” with “execution” as requested by enforcement staff Added “in each year of permit coverage” to clarify requirements. Changed wording from “shall” to “may” to allow flexibility in relaxing monitoring frequency for demonstrating full compliance with effluent limitations.</p>
<p>9VAC25-120-80. General permit. Part I A 4.</p>		<p>Requirement is fundamentally the same as the 2013 regulation</p>	<p>Reformatted subsection numbering. Updated referenced EPA Method dates. Replaced “first year’s results” with “first twelve months of permit coverage results” to clarify requirements. Replaced “initiation” with “execution” as requested by enforcement staff Changed wording from “shall” to “may” to allow flexibility in relaxing monitoring frequency for demonstrating full compliance with effluent limitations.</p>

9VAC25-120-80. General permit. Part I A 5.		Requirement is fundamentally the same as the 2013 regulation	Replaced “first year” with “first twelve months of permit coverage” to clarify requirements. Replaced “initiation” with “execution” as requested by enforcement staff Changed wording from “shall” to “may” to allow flexibility in relaxing monitoring frequency for demonstrating full compliance with effluent limitations.
9VAC25-120-80. General permit. Part I B 6.		Special Conditions	Replaced “municipal separate storm water system” with “MS4”
9VAC25-120-80. General permit. Part II H		Requirement the same as the 2013 Regulation	Made grammatical change for “affects” to “effects”
9VAC25-120-80. General permit. Part II J 1 c		Requirement the same as the 2013 Regulation	Changed wording from “application” to “registration” for clarification.
9VAC25-120-80. General permit. Part II K 1 a		Requirement the same as the 2013 Regulation	Changed wording from “application” to “registration” for clarification.
9VAC25-120-80. General permit. Part II L		Requirement is fundamentally the same as the 2013 regulation	Made clarification of language as requested by enforcement staff
9VAC25-120-80. General permit. Part II W		Inspection and entry. Regulation stated that “[t]he time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging.”	Changed wording from “and” to “or”. “[t]he time for inspection shall be deemed reasonable during regular business hours, <u>and</u> <u>or</u> whenever the facility is discharging.”
9VAC25-120-80. General permit. Part II X.		Requirement is fundamentally the same as the 2013 regulation	Made clarification of language as requested by enforcement staff
9VAC25-120-80. General permit. Part II Y.		Requirement is fundamentally the same as the 2013 regulation	Made clarification of language as requested by enforcement staff
9VAC25-120 Documents Incorporated By Reference			Updated referenced website and document dates.

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) 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 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.