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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-115
VAC Chapter title(s)	VPDES General Permit Regulation for Seafood Processing Facilities
Action title	CH 115- 2026 Amendment and Reissuance of the Existing Regulation
Date this document prepared	February 26, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 of seafood processing wastewater from seafood processing facilities to surface waters to maintain surface water quality. The general permit also regulates stormwater quality from seafood processing sites operating under SIC codes 2091 and 2092 (Canned and Cured Fish and Seafood and Prepared Fish or Frozen Fish and Seafoods) to maintain surface water quality.

This regulatory action is proposed to amend and reissue the existing general permit which expires on June 30, 2026.

In addition, a periodic and small business impact review of this regulation will be conducted as part of this regulatory action.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

Board: State Water Control Board
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
SIC: Standard Industrial Classification
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 the ORM procedures, “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 § 62.1-44.15 (5a) of the Code of Virginia 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 June 30, 2026, and must be reissued in order to make coverage available for seafood processors that discharge to surface waters after June 30, 2026.

The periodic review of this regulation is mandated by the ORM procedures and § 2.2-4007.1 of the Code of Virginia.

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 1342) 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.

40 CFR parts 122, 123 and 124 implement the NPDES permit program under § 402. These provisions cover basic EPA permitting requirements, what a State must do to obtain approval to operate its program in lieu of a Federal program and minimum requirements for administering the approved State program, and procedures for EPA processing of permit applications and appeals. Section 122.1 requires permits for the discharge of “pollutants” from any “point source” into “waters of the United States.” Section 122.3 specifically states that seafood processing facilities are not excluded from NPDES requirements.

The general permit also regulates stormwater quality from seafood processing sites operating under SIC codes 2091 and 2092 (Canned and Cured Fish and Seafood and Prepared Fish or Frozen Fish and Seafoods) to maintain surface water quality.

Changes to this chapter of the Virginia Administrative Code are exempt from Article 2 of the Administrative Process Act (§2.2-4006 A 8 of the Code of Virginia).

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 needed to establish permitting requirements for discharges from seafood processing facilities to protect the health, safety and welfare of citizens. The existing general permit expires on June 30, 2026, and must be reissued to cover existing and new seafood processing discharges. Some issues that may need to be addressed include: updating the stormwater management requirements; determining whether other types of seafood processing need to be added to the general permit, whether any Total Maximum Daily Load (TMDL) requirements need to be added; and any other issues that arise as a result of this notice of intent and during the technical advisory committee meetings. Issuing a general permit as opposed to an individual permit is the less intrusive and less costly alternative for small businesses. General permits also require fewer DEQ staff resources to issue.

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 establishes limitations and monitoring requirements for point source discharges from seafood processing facilities. The effluent limits, special conditions and stormwater management requirements 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 June 30, 2026, and must be reissued to continue making it available after that date. Some issues that may need to be addressed include; updating the stormwater management requirements, determining whether other types of seafood processing need to be added to the general permit, identifying any TMDL

requirements that need to be added, and determining whether the operations and maintenance manual should address shellfish cage cleaning. 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 seafood products facilities. One is to issue individual VPDES permits to each establishment and require that each owner 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 provide that 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.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

In addition, pursuant to the ORM procedures and § 2.2-4007.1 of the Code of Virginia, the Board 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; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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 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 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.

Anyone wishing to submit written comments may do so by mail, email or phone to **Morgan Emanuel, Regulatory and Guidance Analyst, DEQ Office of Water Planning, P.O. Box 1105, Richmond, Virginia 23218, phone: 804-494-9635 and morgan.emanuel@deq.virginia.gov**. Comments may also be submitted through the Public Forum feature of the [Virginia Regulatory Town Hall website](http://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 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. Notice of the hearing will be posted on the [Virginia Regulatory Town Hall website](http://www.townhall.virginia.gov) (<http://www.townhall.virginia.gov>) and on the [Commonwealth Calendar website](https://www.virginia.gov/connect/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 proposed regulation should notify DEQ'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). The primary function of the advisory committee is to develop recommended regulation amendments for DEQ's consideration through the collaborative approach of regulatory negotiation and consensus. Multiple applications from a single company, organization, group, or other entity count as one member for purposes of participation on the advisory committee. Notification of the composition of the technical advisory committee will be sent to all applicants.