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Exempt Action: Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-193
VAC Chapter title(s)	Virginia Pollutant discharge Elimination System (*VPDES) General Permit for Concrete Products Facilities
Action title	Update and amend the regulation that expires on December 31, 2023 in order to continue to offer general permit coverage for this industry.
Date this document prepared	October 27, 2022

This information is required for executive branch review pursuant to 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. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to 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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The regulation specifies requirements for concrete products facilities to discharge process wastewater and industrial stormwater to protect water quality. The most significant amendments to this regulation are to reissue the permit for the next five year term and updating the stormwater requirements. This regulatory action is proposed to amend and reissue the existing general permit, which expires on December 31, 2023.

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, internal staff review, 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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”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 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 December 31, 2022 and must be reissued in order to make coverage available for concrete products facilities that discharge to surface waters after that date. If this permit is not re-issued in a timely manner, no new coverage is available to any new facility owner or operator and such owners or operators would be required to obtain individual VPDES permits, which require more time to develop and issue, and impose significantly greater burden and costs on permittees and increased administrative burden on DEQ.

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.

- DEQ: Department of Environmental Quality
- DMR: Discharge Monitoring Report
- EPA (U.S. EPA): United States Environmental Protection Agency
- NPDES: National Pollutant Discharge Elimination System
- SCC: State Corporation Commission
- SWCB: State Water Control Board
- SWPPP: Stormwater Pollution Prevention Plan
- TMDL: Total Maximum Daily Load
- TDS: Total Dissolved Solids
- TSS: Total Suspended Solids
- TAC: Technical Advisory Committee
- USC: United States Code
- VAC: Virginia Administrative Code
- VPDES: Virginia Pollutant Discharge Elimination System

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must 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 or promulgating entity’s overall regulatory authority.

The promulgating entity is the State Water Control Board. The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia (State Water Control Law). 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.

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

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

This proposed regulatory action is needed in order to establish and update permitting requirements for discharges from concrete products facilities in order to protect the health, safety and welfare of citizens. The existing general permit expires on December 31, 2022 and must be reissued to cover existing and new concrete products facilities. The goal is to update the permit and the regulation to be consistent with other VPDES general permits and protect water quality.

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 provisions include adding new definitions for "corrective action" and "measurable storm event" in section 10, clarifying that consistency with a TMDL is based on an applicable TMDL that is approved prior to the term of the general permit in section 50, and clarifying registration questions and adding electronic submission registration requirements in section 60. In the permit requirements of section 70, Part I, dust suppression allowances have been clarified and TMDL requirements have been updated and clarified. Many of the stormwater management requirements of section 60, Part II have been updated to reflect the requirements of the VPDES General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity (9VAC25-151) including adding a section on corrective actions. In section 70, Part III, these conditions applicable to all permits a requirement has been added to submit electronic discharge monitoring reports when these are made available by the department.

Issues

Please identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The advantages to the public and the agency of reissuing this permit are that a VPDES general permit will continue to be available to facilities with eligible discharges enabling them to discharge to surface waters in a manner that is protective of those waters without the increased cost and more complicated

application process associated with issuing an individual permit. There are no known disadvantages to the public, agency or regulated community.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change that is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected:
None

Localities Particularly Affected:
None

Other Entities Particularly Affected:
None

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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

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.

Public Comment Received

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
Brian Parker, Vulcan Construction materials	Add Walter Beck and Brian Parker (as alternate) to the TAC membership.	The individuals were asked to participate on the TAC.
Cliff Bocchicchio, Titan America, LLC	Add Cliff Bocchicchio to the TAC membership.	The individual was asked to participate on the TAC.
Tom Foley, Vulcan Materials-Mideast Division	Add Tom Foley to the TAC membership.	The individual was asked to participate on the TAC.

<p>Matthew DiBella Greensite Concrete Washout LLC</p>	<p>Add Matt DiBella to the TAC membership.</p> <p>The current regulations regarding the treatment and discharge of concrete wash water at concrete facilities are satisfactory. While regulations exist to monitor concrete washout on construction sites, the enforcement of this code is extremely inconsistent. This continues to be the most significant environmental issue the industry faces.</p> <p>As an example, I refer to the route 66 project in northern Virginia. All washout pits are temporary; Hay bales are lined with plastic but this doesn't deal with issue of the contaminated water, which needs to be removed and treated. The pits are too small for the volume of work and constantly overflowing or the water is pumped out on the side of the road to make more space. SWPP regulations call for "sealed containers", but the temporary pits are constantly leaking contaminated water or being cut open to drain the water, and should never be allowed on state and county projects. Also, when temporary pits are used, the concrete hardens with the plastic liner and all that concrete and plastic ends up in landfills. There's no reason for the concrete industry to be producing this much waste when there's a cost-effective way to recycle and reuse these materials.</p> <p>Too many times I've witnessed and reported these temporary pits being poorly managed and other violations occurring but not once have these infractions been penalized with a stop work order, fines, or even a substantial change in remediation efforts. Evidence of the problem is simply covered up with dirt or washed away by a flush truck and everyone continues to work pollute the water table and stream valleys because there's never any consequences. At least fifty temporary pits have been installed on route 66 adjacent to some of our most valuable stream valleys and unfortunately, we aren't doing our part on site to protect them.</p> <p>There are several companies that offer steel, water tight containers and remove the contaminated water with vacuum trucks so the solids can be reduced or eliminated and the pH can be lowered to an acceptable level. After proper treatment, the water can be</p>	<p>The individual was asked to participate on the TAC.</p> <p>The comments were discussed at the concrete TAC meeting and ultimately, the group concurred that this was a problem that the construction project owner or general contractor's responsibility to manage. The ready-mix producers train their people on this issue and instruct them to call our dispatch office if the contractor is not providing such facilities or if it is not adequate, properly located or safe.</p> <p>DEQ staff thinks that this concern needs further attention but better addressed through the General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880) and that NOIRA was published March 28, 2022. These concerns are applicable to that permit and should also be discussed in that TAC. DEQ was interested in pursuing the enforcement issues particularly related to the VDOT projects.</p>
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Commenter	Comment	Agency response
	<p>safely recirculated into the storm water system. The hardened concrete residue is all taken to recycling facilities where it can be reused instead of taking up space in landfills. This standard is being followed by many of the national residential homebuilders but it should be a construction industry standard for commercial construction and public works projects as well.</p> <p>The biggest objection the industry currently has to using leak proof steel containers for concrete washout is the cost, however, the cost is extremely minimal, about 2%. Companies constantly tell me if they include using a steel container for concrete washout in their budget, they won't get the bid. If it became the industry standard, this concern could be eliminated with little impact on profits. For every \$58,000 spent on concrete deliveries, it costs only \$700 to keep several tons of concrete out of landfills and over 200 gallons of toxic wash water from contaminating the environment. The industry can clearly afford to take this step. The amount of waste and pollution generated from temporary pits is unacceptable but will continue without enforcement of more stringent on-site regulations.</p>	

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 and the impacts of the regulated community.

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. The agency/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) 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 Elleanore Daub, P.O. Box 1105, Richmond, Virginia 23218, phone: 804-659-2655 (for questions), elleanore.daub@deq.virginia.gov or Fax: 804-698-4178 (**please insure recipient [Elleanore Daub] is on fax or cover page of fax**). 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://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. If the regulatory change will be 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 change. Please include citations to the specific section(s) of the regulation that are changing.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-193	NA	The term “board” is generally used throughout the regulation when referencing permit requirements.	Throughout the regulation, the term “board” has been replaced with the term “department” resulting from changes to Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657) which address the authority of the SWCB to issue and enforce permits. All references to the “board” in reference to permit requirements has been changed to “department.” No impact.
9VAC25-193-10. Definitions.	NA	No definition for “corrective action.”	Added definition for “corrective action.” This definition was added to clarify this requirement in the regulation.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-193-15. Applicability of incorporated references based on the dates that they became effective.	NA	Effective date for the Title 40 CFR is July 1, 2018	Effective date for the Title 40 CFR changed to July 1, 2022. No impact.
9VAC25-193-40. Effective date of the permit.	NA	Effective date of permit is January 1, 2019 and expiration is December 31, 2023.	Effective date of permit is changed to January 1, 2024 and expiration to December 31, 2028. Updated to cover a new permit term. If these dates are not changed, no existing or new permittees can obtain coverage under the general permit.
9VAC25-193-50. Authorization to discharge.	NA	Owners are not eligible for coverage if the discharge is not consistent with the assumptions and requirements of an approved TMDL.	Specified that an approved TMDL is one that is approved prior to the term of this general permit. No impact.
9VAC25-193-60 C 2	NA	Requires facility contact if different from owner.	Requires a facility, owner and permit contact. This change is to be consistent with e-reporting electronic registrations. The permittee will need to provide some additional contact information on the registration. The contacts may be the same person in some cases.
9VAC25-193-60 C 11	NA	A schematic drawing of the facility is required.	Clarified that the schematic drawing was for existing facilities and new facilities that had commenced discharge. No impact.
9VAC25-193-60 C 14	NA	Information regarding representative and substantially identical outfalls is required and includes the size of the drainage area in square feet.	Clarified that the size of the drainage area can be in acres or square feet and includes the total pervious and impervious area within the property boundary. Minor impact if the drainage area was calculated differently in previous years then the permittee would have to recalculate the drainage area.
9VAC25-193-60 C 15	NA	An indication of whether a SWPPP has been prepared is required.	Clarified that the date of the plan or the most recent update or review of the plan is required. No impact.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-193-60 C 18	NA	An SCC entity identification number is required.	Clarified that the SCC entity number is needed if the facility is required to obtain an entity identification number by law. No impact.
9VAC25-193-60 C 19	NA	A certification is required and includes a statement that duly authorized agents of DEQ may enter the property.	A certification signature is still required but the statement that permission is granted to duly authorized agents of the DEQ to enter the property is deleted. No impact since this required is already in Part III W of the permit.
9VAC25-193-60 E	NA	Registration statements shall be delivered to DEQ by either postal or electronic mail.	Following three months prior notification from the department, registration statements shall be electronically submitted to the department.
9VAC25-193-70	NA	Effective and expiration dates of the permit are January 1, 2024 – December 31, 2028.	Effective and expiration dates of the permit are updated to January 1, 2024 – December 31, 2028. The impact is that existing and new concrete products facilities can continue coverage or get new coverage under this permit instead of having to apply for an individual permit. General permits are less expensive to obtain.
9VAC25-193-70 B 14	NA	Settled wastewater may be used for dust suppression as a best management practice but run-off or ponding cannot occur.	<p>Specified that dust suppression water may be discharged if it is treated. There is no prohibition to ponding and discharge may occur if the dust suppression water is treated. The TAC discussed how potable water was often used for dust suppression (uncontaminated potable water is an allowable nonstormwater discharge), and wondered whether discharge of water from dust suppression into a stormwater basin would constitute a direct discharge and be in violation of this condition. The construction general permit (9VAC25-880-70) allows treated dust suppression water to be discharged. The condition was amended to recognize that allowance.</p> <p>No impact to permittees although DEQ inspectors will have to be made aware that ponding is no longer prohibited and dust suppression water may be discharged if treated.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-193-70 B 16	NA	Discharges to waters with TMDL shall implement measures and controls that are consistent with the assumptions and requirements of the TMDL.	<p>The TMDL requirement is expanded and clarified to mean these are TMDLs that have been approved prior to the term of the permit and that the department will provide written notification that the facility is subject to a TMDL requirement and that if the TMDL establishes a numerical WLA for that facility, the owner shall monitor and implement measures to meet the allocation. Also, at permit reissuance, the permittee shall submit a demonstration that the WLA is met.</p> <p>There will be an impact because now there are specific monitoring requirements for any facilities that have a numeric WLA in a TMDL. Currently all TMDLs applicable to these facilities are for TSS (sediment) and the facilities already monitor for TSS as part of the water quality limitations. There is a TDS TMDL currently under development that may present additional monitoring requirements for some concrete facilities in the future.</p>
9VAC25-193-70 Part II	NA	Stormwater management requirements are in Part II. Contains collection, analysis and rainfall data requirements, representative outfall instructions, quarterly visual, monitoring requirements, hazardous substances requirements, SWPPP deadlines and contents including routine facility inspections, maintenance of BMPs, allowable nonstormwater discharge allowances and monitoring requirements, and SWPPP review and signature requirements.	Stormwater management requirements have been updated and re-ordered to match the order and language in the 2019 ISW general permit. For example, monitoring requirements (visual and benchmark) have been moved to the beginning of Part II Corrective actions, control measure “considerations” and eliminating and minimizing exposure requirements have been added. Also, routine facility inspections have been moved out of the “Stormwater Controls” and into its own subdivision of “Contents of the SWPPP.” Other changes are being proposed because of TAC stakeholder suggestions. This includes, deletion of the requirement to report duration of rainfall event on the DMR. Signature and SWPPP review and maintaining and updated SWPPP subsections have been moved to the end of Part II.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-193-70 Part III C	NA	No electronic reporting DMR requirement.	<p>Added that once the 9VAC25-31-1020 (Electronic Reporting) date is established for this industry discharge monitoring reports shall be submitted electronically. Three months' notice shall be given by the department about this requirement.</p> <p>Some impact because once electronic reporting dates are established and technology is developed at the department, the permittees will be required submit discharge monitoring reports electronically. This may be difficult if the registrant has no available internet access (even via a public library) or computer/internet skills. Waivers are available under very limited circumstances.</p>
9VAC25-193-70 Part III I 3		Contains immediate notification requirements for noncompliance which may adversely affect state waters or may endanger public health.	This subsection amended to reflect more recent reporting requirements after discussions with DEQs Pollution Response Program (PREP) staff who requested all after hours reporting be done online via the PREP portal. This portal automatically notifies regional offices and logs the report in the database. This may have an impact on concrete industries that have no immediate internet access who will have to find internet access within 24-hours to report a noncompliance event if it occurs outside of normal working hours.
9VAC25-193-70 Part III L		Requires the permittee to comply with standards for sewage sludge use and disposal under § 405(d) of the Clean Water Act.	<p>Removed references to sewage sludge requirements since these industrial permittees do not discharge sewage or create sewage sludge under this permit.</p> <p>No impact.</p>

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please 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.

There is no potential impact of the proposed regulatory action on the institution of the family and family stability.