



Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-32-10 et seq.
Regulation title	Virginia Pollution Abatement Permit Regulation
Action title	Amend the Virginia Pollution Abatement (VPA) permit regulation related to Animal Feeding Operations (AFOs)
Date this document prepared	February 7, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The State Water Control Board is amending the Virginia Pollution Abatement (VPA) Permit Regulation in order to facilitate consistency with the other regulations which governs the pollutant management activities at Animal Feeding Operations (AFOs). The VPA permit regulation governs the pollutant management activities of animal wastes at AFOs. The VPA permit regulation contains obsolete definitions which are not consistent with the existing general permit for AFOs as well as related federal definitions. The proposed amendments include language to establish technical requirements for end-users of animal waste which is transferred off the farm. The proposed amendments specify that the technical requirements for end-users will address proper storage, appropriate land application practices and recordkeeping.

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. The identification should include a reference to the agency/board/person's overall regulatory authority, as well as a specific provision authorizing the promulgating entity to regulate this specific subject or program; and a description of the extent to which the authority is mandatory or discretionary.

Town Hall Agency Background Document

Virginia Code § 62.1-44.15 (5) authorizes the State Water Control Board to permit the management and discharge of sewage, industrial wastes and other wastes into or adjacent to state waters; and the alteration otherwise of the physical, chemical or biological properties of state waters. The Virginia Pollution Abatement Regulation defines the procedures and requirements to be followed in connection with VPA permits issued by the Board pursuant to the State Water Control Law.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail 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.

The primary purpose of this action is to amend the Virginia Pollution Abatement (VPA) permit regulation in order to facilitate consistency with the other regulations which governs the pollutant management activities at AFOs. The VPA permit regulation governs the pollutant management activities of animal wastes at AFOs. The VPA permit regulation contains obsolete definitions which are not consistent with the existing general permit for AFOs as well as related federal definitions.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. Note, more detail about all provisions or changes is provided in the "Detail of changes" section.

The proposed amendments include amendments to definitions, terms and procedures in the VPA Permit Regulation in order to bring consistency to the regulations which govern AFOs. Additionally, the proposed amendments include language to establish technical requirements for end-users of animal waste which is transferred off the farm. The language specifies that the technical requirements for end-users will address proper storage, appropriate land application practices and recordkeeping.

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 indicate.

The primary advantage of the proposed regulatory action is to bring consistency to the regulations which govern AFOs. Establishing and maintaining consistency among the regulations which govern AFOs is an advantage for the public, the regulated community, as well as the Commonwealth. There are no disadvantages of the proposed regulatory action.

Requirements more restrictive than federal

Please identify and describe any requirements 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.

There are no applicable federal requirements for AFOs that do not discharge. The VPA Permit Regulation is a state program with requirements included in the regulation necessary to meet the state statutory 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.

This permit regulation affects the entire state: no particular localities are identified to be disproportionately impacted by this regulatory action.

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 State Water Control 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 agency/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 **Betsy Bowles, P.O. Box 1105, Richmond, Virginia 23218, phone 804-698-4059, fax 804-698-4032 and betsy.bowles@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. 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 and notice of the hearing will be published in the *Virginia Register of Regulations*, posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>), and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). 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 requirements creates the anticipated economic impact.

It is not anticipated that the amendment of this regulation will cause any economic impacts in the Commonwealth.

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.

One alternative is to not amend the VPA permit regulation. However, not amending the VPA permit regulation may broaden the differences between the regulations which govern the AFOs thereby increasing the possibility of inconsistencies between the requirements in the general permit and the individual permit. The amendments are necessary to obtain consistency among the regulations which govern AFOs.

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 regulation governs the pollutant management activities of animal wastes at AFOs. The amendments are necessary to obtain consistency among the regulations which govern AFOs. Establishing technical requirements for end-users of animal waste allows flexibility is an alternative to requiring animal waste end-users to obtain coverage under the general permit or an individual VPA permit.

Town Hall Agency Background Document

Public comment

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

One written comment was submitted by one organization. Agency Response to NOIRA Comments: The comment received for the NOIRA was provided to the members of the Technical Advisory Committee for consideration during the draft regulation development process.

Commenter	Affiliation	Comment
Ann Jennings	Chesapeake Bay Foundation	This email is in response to the current and pending public notices regarding the VPA General Permit Regulations for AFOs and [VPA] Permit Regulations related to AFOs. I understand that the State Water Control Board will use one technical advisory committee to develop proposals for both of these actions. I am, therefore, writing to request the Chesapeake Bay Foundation's participation in the technical advisory committee.

Family impact

Please assess the 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.

It is not anticipated that an amendment to this regulation will have any impacts on the family and family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. 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.

The proposed changes to the regulation are outlined on the following pages.

Regulation Section	Action	Changes at Proposed Stage	Rationale
9VAC25-32-10. (Definitions)	Added definition	Added Agricultural storm water definition to read: "Agricultural storm water discharge " means a precipitation-related discharge of manure, litter, or process wastewater which has been applied on land areas under the control of an animal feeding operation or under the control of a poultry waste end-user or poultry waste broker in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater.	Added the definition for consistency with other regulations which govern animal feeding operations.
	Added definition	Added Animal feeding operation definition to read: "Animal feeding operation" means a lot or facility where the following conditions are met: 1. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and 2. Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility. Two or more animal feeding operations under common ownership are a single animal feeding operation for the purposes of determining the number of animals at an operation, if they adjoin each other, or if they use a common area or system for the disposal of wastes.	Added the definition to clarify the use of the term as used in this regulation.
	Added definition	Added Animal waste definition to read: "Animal waste" means liquid, semi-solid, and solid animal manure, poultry waste and process wastewater, compost or sludges associated with livestock and poultry animal feeding operations including the final treated wastes generated by a digester or other manure treatment technologies.	Added the definition to make it consistent with other regulations which govern animal feeding operations.
	Added definition	Added Animal waste end-user definition to read: "Animal waste end-user" means any recipient of transferred animal waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial use for an operation under his control.	Added the definition to make it consistent with other regulations which govern animal feeding operations.

Regulation Section	Action	Changes at Proposed Stage	Rationale
9VAC25-32-10. (Definitions)	Added definition	Added Animal waste fact sheet definition to read: "Animal waste fact sheet" means the document that details the requirements regarding utilization, storage, and management of animal waste by end-users. The fact sheet is approved by the department.	Added the definition to make it consistent with other regulations which govern animal feeding operations.
	Added definition	Added Beneficial use definition to read: "Beneficial use" means a use that is of benefit as a substitute for natural or commercial products and does not contribute to adverse effects on health or environment.	Added the definition to clarify other terms used in the regulation.
	Added definition	Added Confined poultry feeding operation definition to read: "Confined poultry feeding operation" means any confined animal feeding operation with 200 or more animal units of poultry. This equates to 20,000 chickens or 11,000 turkeys regardless of animal age or sex.	Added the definition to make it consistent with other regulations which govern animal feeding operations.
	Added definition	Added Fact sheet definition to read: "Fact sheet" means the document that details the requirements regarding utilization, storage, and management of poultry waste by poultry waste end-users and poultry waste brokers. The fact sheet is approved by the department, in consultation with the Department of Conservation and Recreation.	Added the definition to make it consistent with other regulations which govern animal feeding operations.
	Added definition	Added Poultry grower definition to read: "Poultry grower" or "grower" means any person who owns or operates a confined poultry feeding operation.	Added the definition to make it consistent with other regulations which govern animal feeding operations.
	Added definition	Added Poultry waste definition to read: "Poultry waste" means dry poultry litter and composted dead poultry.	Added the definition to make it consistent with other regulations which govern animal feeding operations.
	Added definition	Added Poultry waste broker definition to read: "Poultry waste broker" or "broker" means a person who possesses or controls poultry waste that is not generated on an animal feeding operation under his operational control and who transfers or hauls poultry waste to other persons. If the entity is defined as a broker they cannot be defined as a hauler for the purposes of this regulation.	Added the definition to make it consistent with other regulations which govern animal feeding operations.

Regulation Section	Action	Changes at Proposed Stage	Rationale
9VAC25-32-10. (Definitions)	Added definition	Added Poultry waste end-user definition to read: "Poultry waste end-user" means any recipient of transferred poultry waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial end use for an operation under his control.	Added the definition to make it consistent with other regulations which govern animal feeding operations.
	Added definition	Added Poultry waste hauler definition to read: "Poultry waste hauler" or "hauler" means a person who provides transportation of transferred poultry waste from one entity to another, and is not otherwise involved in the transfer or transaction of the waste, nor responsible for determining the recipient of the waste. The responsibility of the recordkeeping and reporting remains with the entities to which the service was provided: grower, broker, and end-user.	Added the definition to make it consistent with other regulations which govern animal feeding operations.
	Added definition	Added definition to read: "Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.	Added the definition to make it consistent with other regulations which govern animal feeding operations.
	Added definition	Added Waste storage facility definition to read: "Waste storage facility" means a waste holding pond or tank used to store manure prior to land application, or a lagoon or treatment facility used to digest or reduce the solids or nutrients.	Added the definition to make it consistent with other regulations which govern animal feeding operations.
	Added definition	Added 300 animal units definition to read: "300 animal units" means 300,000 pounds of live animal weight, or the following numbers and types of animals: a. 300 slaughter and feeder cattle; b. 200 mature dairy cattle (whether milked or dry cows); c. 750 swine each weighing over 25 kilograms (approximately 55 pounds); d. 150 horses; e. 3,000 sheep or lambs; f. 16,500 turkeys; g. 30,000 laying hens or broilers.	Added the definition to make it consistent with other regulations which govern animal feeding operations.

Regulation Section	Action	Changes at Proposed Stage	Rationale
9VAC25-32-10. (Definitions)	Deleted definition	Deleted Concentrated animal feeding operations definition which reads: "Concentrated confined animal feeding operation" means an animal feeding operation at which: 1. At least the following number and types of animals are confined: a. 300 slaughter and feeder cattle; b. 200 mature dairy cattle (whether milked or dry cows); c. 750 swine each weighing over 25 kilograms (approximately 55 pounds); d. 150 horses; e. 3,000 sheep or lambs; f. 16,500 turkeys; g. 30,000 laying hens or broilers; or h. 300 animal units; and 2. Treatment works are required to store wastewater, or otherwise prevent a point source discharge of wastewater pollutants to state waters from the animal feeding operation except in the case of a storm event greater than the 25-year, 24-hour storm.	This definition of Concentrated animal feeding operations is obsolete and causes confusion. The federal definition uses the same term with a different meaning.
	Amended definition	Amended Confined animal feeding operations definitions to read: "Confined animal feeding operation", for the purposes of this regulation, has the same meaning as an "animal feeding operation."	Amended the definition to make the regulation consistent with other regulations which govern AFOS.
9VAC25-32-140. (Public notice of VPA permit action and public comment period)	Amended subdivision A.1	Amended subdivision A. 1 to read: 1. Except for animal feeding operations as defined in 9VAC25-32-10 , when the modifications are to the nutrient management plan.	Amended subdivision to make the regulation for public notice for AFOs consistent with the VPDES regulation which governs AFOs.

Regulation Section	Action	Changes at Proposed Stage	Rationale
<p>9VAC25-32-250. (Concentrated Animal Feeding Operations)</p>	<p>Amended section title and language</p>	<p>Amended section to read:</p> <p>A. All animal feeding operations shall maintain no point source discharge of pollutants to surface waters except in the case of a storm event greater than the 25-year, 24-hour storm. Animal feeding operations having 300 or more animal units utilizing a liquid manure collection and storage system or having 200 or more animal units of poultry are pollutant management activities subject to the VPA permit program. Two or more animal feeding operations under common ownership are a single animal feeding operation for the purpose of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes.</p> <p>B. Case-by-case determination.</p> <ol style="list-style-type: none"> 1. The board may determine that any animal feeding operation which does not otherwise qualify for coverage under the VPA general permit and has not been required to obtain a VPDES permit be required to obtain an individual VPA permit upon determining that it is a potential or actual contributor of pollution to state waters. In making this determination the following factors shall be considered: <ol style="list-style-type: none"> a. The size of the operation; b. The location of the operation relative to state waters; c. The means of conveyance of animal wastes and process waters into state waters; d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into state waters; e. The compliance history and the ability to make corrections in order to comply with the VPA general permit conditions; f. The means of storage, treatment, or disposal of animal wastes; g. Other relevant factors. 2. A VPA permit application shall not be required for an animal feeding operation subject to subdivision 1 of this subsection until the board has conducted an on-site inspection of the operation and determined that the operation shall be regulated under the VPA permit program. 	<p>Amended the section to make the regulation consistent with the other regulations which govern AFOs. Removed the obsolete terms and procedures.</p>

Regulation Section	Action	Changes at Proposed Stage	Rationale
<p>NEW 9VAC25-32-255. (Requirements for end-users of animal waste and poultry waste)</p>	<p>Added new section</p>	<p>Added new section to read:</p> <p>A. Technical requirements for end-users of animal waste or poultry waste will be established in general permit regulations or individual permits. Technical requirements for end-users of animal waste or poultry waste shall address but not be limited to the following;</p> <ol style="list-style-type: none"> 1. Proper waste storage; 2. Appropriate land application practices; and 3. Recordkeeping. <p>B. End-users of animal waste or poultry waste shall comply with technical requirements established as set forth by subsection A.</p>	<p>Added new section which includes language regarding the establishment of technical requirements for end-users of animal waste and poultry waste in general permit regulations or individual permits.</p>
<p>FORMS (9VAC25-32)</p>	<p>Amended section to reflect the changes made in 9VAC25-32-250 (amended forms)</p>	<p>Amended VPA Permit application form for animal waste operations: Virginia Pollution Abatement Permit Application, Form B, Animal Waste (rev. 2/13)</p>	<p>Amended the application to reflect the changes made in 9VAC25-32-250 the section specific to Animal Feeding Operations.</p>

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.

AFO - Animal Feeding Operations

Animal waste - "Animal waste" means liquid, semi-solid, and solid animal manure, poultry waste and process wastewater, compost or sludges associated with livestock and poultry animal feeding operations including the final treated wastes generated by a digester or other manure treatment technologies.

Animal waste end-user - "Animal waste end-user" or "end-user" means any recipient of transferred animal waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial use for an operation under his control.

300 A.U. - "300 animal units" means 300,000 pounds of live animal weight, or the following numbers and types of animals:

- a. 300 slaughter and feeder cattle;
- b. 200 mature dairy cattle (whether milked or dry cows);
- c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);
- d. 150 horses;
- e. 3,000 sheep or lambs;
- f. 16,500 turkeys;
- g. 30,000 laying hens or broilers.

VPA - Virginia Pollution Abatement