TENTATIVE AGENDA
STATE WATER CONTROL BOARD MEETING

June 23, 2026

IN PERSON ONLY – General Assembly Building, Senate Room C, 3rd floor
201 North 9th Street, Richmond, VA 23219

Meeting will be Live-Streamed. Go to: www.deq.virginia.gov
Any Updates To Details/Final Arrangements To Be Announced on Virginia Regulatory Town Hall

Convene – 10:00 A.M

Agenda Item	Presenter	Tab
Minutes (April 7, 2026)	Porterfield	A pg 5
Final Exempt Regulations		
Regulations Governing the Discharge of Sewage and Other Wastes from Boats (9VAC25-71) Amendment to add 30 No Discharge Zone (NDZ) designations for Water Bodies in the Northern Neck and make technical corrections to an existing NDZ	Williams	B pg 17
Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity (9VAC25-151)- Amendments in response to Chapter 1080 of the 2026 Acts of Assembly (HB952)	Daniel	C pg 48
Water Withdrawal Reporting (9VAC25-200) - Amendments in response to Chapters 623 and 896 of the 2026 Acts of Assembly (HB496/SB553)	Daniel	D pg 71
Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31 Implementation of Chapters 709 and 710 of the 2026 Acts of Assembly	Daniel	E pg 91
Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) and Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32)- Implementation of Chapters 853 and 854 of the 2026 Acts of Assembly	Daniel	F pg 116
Fees for Permits and Certificates (9VAC25-20) regulation- Implementation of Chapter 933 of the 2026 Acts of Assembly (HB1072 – Del Laufer)	Daniel	G pg 166
Petition for Rulemaking- Petition for rulemaking concerning discharges into dry ditch or intermittent streams for wastewater facilities discharging 1,000 gallons or more each day	Robb	H pg 185
Other Business		

Agenda Item	Presenter	Tab
Revised Project Priority List - Virginia Clean Water Revolving Loan Fund Final Authorization for the 2025 State Revolving Fund Supplemental Appropriation for Hurricanes Helene and Milton and the Hawai'i Wildfires	Mayfield	I pg 220
Report to the Board Regarding Controversial Permits- • Synagro Central LLC – Essex County - VPA00831 • Synagro Central LLC – Orange County - VPA00075 • Synagro Central LLC - Frederick County - VPA01585 • Lexington Golf & Country Club- VWP Individual Permit No. 24-2886 • Arlington County Water Pollution Control Facility - VPDES permit VA0025143 • Mountain View Nursing Home - VPDES permit VA0063347 • Amazon Data Services Inc. – Lake Anna Tech Campus - VPDES permit VA0093319	Robb	
Mountain Valley Pipeline - Update Future Meeting date- to be determined Public Forum *(time not to exceed 45 minutes- no public comment on agenda items or pending regulatory actions during public forum)*	Robinson Porterfield	

ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions on the latest status of the agenda should be directed to Melissa S. Porterfield at (804) 698-4238.

PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions made by the Department of Environmental Quality (Department). These procedures establish the times for the public to provide appropriate comment to the Board for regulatory action and the Department for case decisions for consideration.

For REGULATORY ACTIONS (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For CASE DECISIONS (e.g., issuance and amendment of permits and enforcement orders), the Board adopts public participation procedures in the individual regulations which establish the permit programs. (Note: as of July 1, 2022, the Department takes final action on all case decisions.) As a

general rule, public comment is accepted on a draft permit for a period of 30 days. In some cases a public hearing is held at the conclusion of the public comment period on a draft permit. In other cases there may be an additional comment period during which a public hearing is held, usually 45 days.

In light of these established procedures, the Board accepts public comment on regulatory actions as well as general comments, at Board meetings in accordance with the following:

REGULATORY ACTIONS: Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Also, public comment will be accepted for certain final exempt actions where there has been no public comment period. Persons are allowed up to 3 minutes to address the Board on the emergency regulation and final exempt actions under consideration.

POOLING MINUTES ON REGULATORY ACTIONS: Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

NEW INFORMATION ON A REGULATORY ACTION will not be accepted at the meeting. The Board expects comments and information on a regulatory action to be submitted during the established public comment periods. However, the Board recognizes that in rare instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. Should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda or pending regulatory actions. Those persons wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less. Note, there is no pooling of minutes during the public forum.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Melissa S. Porterfield, Policy Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4238, e-mail: Melissa.porterfield@deq.virginia.gov

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Additional Meeting Information:

- No food or beverages allowed in meeting space.
- Attendees may not erect any signage inside or outside the meeting room or building.

- Attendees are not entitled to be disorderly or disrupt the meeting from proceeding in an orderly, efficient, and effective fashion. Disruptive behavior may result in a recess or removal from the meeting.
- Possession or use of any device that may disrupt the conduct of business is prohibited, including but not limited to: voice-amplification equipment; bullhorns; blow horns; sirens, or other noise-producing devices; as well as signs on sticks, poles or stakes; or helium-filled balloons.
- All attendees are asked to be respectful of all speakers.
- Rules will be enforced fairly and impartially not only to ensure the efficient and effective conduct of business, but also to ensure no interference with the business of the complex, its employees and guests.
- Attendees wishing to record the proceedings are welcome to do so; however, you may not interfere with the business of the meeting, nor impede the view or participation of other meeting attendees and staff.
- No smoking is allowed unless in a designated outside space. This includes tobacco & e-cigarettes.
- No alcohol, fireworks, pyrotechnics, weapons, or any substances/items controlled by law are allowed.
- No firearms are allowed in the State's contracted spaces except for firearms carried by law-enforcement officers or authorized security personnel.
- All violators may be subject to removal from the meeting facility.
- Anyone removed from the facility may not reenter.
- Anyone who fails to comply with removal may be charged with trespass.

TAB A

Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

www.deq.virginia.gov

David L. Bulova
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director

MEMORANDUM

To: Members of the State Water Control Board

From : Melissa S. Porterfield

Date: June 3, 2026

Subject: Minutes

Attached are the minutes from your meeting on April 7, 2026. Staff will seek your approval of the minutes at your next meeting.

If you have any questions, please contact me at (804) 698-4238 or melissa.porterfield@deq.virginia.gov.

Commonwealth of Virginia

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STATE WATER CONTROL BOARD MEETING

Bank of America Building 3rd floor Conference Room,
1111 E. Main Street, Richmond, VA 23219

TUESDAY APRIL 7, 2026

Board Members Present:
Lou Ann Jessee-Wallace, Chair
Scott Cameron, Vice-chair
Tommy Branin
Michelle Johnson
Jerry Kilgore
James Patteson
Steve Yob

Board Members Absent:
none

Department of Environmental Quality:
Michael Rolband, Director
Melissa Porterfield
Jill Hrynciw

Office of the Attorney General:
Emily Little, Assistant Attorney General

1. The attached minutes summarize activities that took place at this Board Meeting.

2. The meeting convened at 10:03 a.m. and adjourned at 11:47 a.m.

Commonwealth of Virginia

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Director

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 7, 2026

Minute No. 1- Approval of meeting minutes

The Board voted 6-0 (Branin, Cameron, Johnson, Kilgore, Wallace and Yob) to approve the minutes of the meeting held November 18, 2025. Mr. Patteson abstained from the vote.

Melissa S. Porterfield

Commonwealth of Virginia

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Director

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON April 7, 2026

MINUTE NO. 2 – Reissuance of General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia - 9VAC25-820

Prior to the meeting the Board was provided materials including a briefing memo which included a list of the technical advisory committee membership, the regulation showing final amendments, and the Town Hall Agency background document. Laura Galli from the Office of VPDES Permit, Central Office, presented a summary of the public comments received and significant proposed changes to the regulation. Mr. Chris Pomeroy, representing the Virginia Association of Municipal Wastewater Agencies (VAMWA), addressed the Board and indicated VAMWA supported reissuance of the final general permit regulation presented to the Board.

Board member Steven Yob submitted to DEQ staff a signed transactional disclosure statement pursuant to the Virginia State and Local Government Conflict of Interests Act before participating in/voting on this agenda item. He indicated he has a personal interest affected by the transaction being considered because of his employment as Deputy County Manager for Community Operations by Henrico County. He indicated he was able to participate in this agenda item fairly, objectively, and in the public interest.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously (7-0, Branin, Cameron, Johnson, Kilgore, Patterson, Wallace, and Yob) to approve the final regulation and to receive, consider, and respond to any petitions by any person at any time with respect to reconsideration or revision of this regulation, as provided by the Administrative Process Act.

Jaime B. Robb

Jaime Robb
Water Operations Division Director

Commonwealth of Virginia

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David L. Bulova
Secretary of Natural and Historic Resources

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Director

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 7, 2026

Minute No. 3 - Final Amendments to the Virginia Pollution Abatement (VPA) Permit Regulation: Implementation of Chapter 209 of the 2024 Acts of Assembly (HB 870) – Procedures for Emergency Management of Biosolids to Protect Against the Release of Biosolids into State Waters, and to Account for Increased Intensity, Frequency, and Duration of Storm Events

Prior to the meeting, the Board was provided with materials including a briefing memo which included a list of the regulatory advisory panel membership, the regulations showing the amendments, and the Town Hall agency background documents. Neil Zahradka, Manager of the Office of Land Application Programs in the Water Division, presented a summary of all public comments and changes to the regulation, including changes made since the proposed stage in August 2025. The changes were based on 1) comments the Department received during the public comment period related to emergency action plan updates, and 2) non-substantive changes to improve clarity, consistency, precision of terminology, and improve readability.

Board Decision
Based on the Board Book briefing material and the staff presentation, the Board voted unanimously (7-0, Branin, Cameron, Johnson, Kilgore, Patteson, Wallace and Yob) to approve the staff recommendations to approve the final amendments to the VPA Permit Regulation and authorize publication.

Jaime B. Robb

Jaime B. Robb
Water Operations Director

Commonwealth of Virginia

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David L. Bulova
Secretary of Natural and Historic Resources

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Director

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 7, 2026

MINUTE No. 4 – VIRGINIA WATER PROTECTION PERMIT REGULATION (9VAC25-210) - FAST-TRACK AMENDMENT IN RESPONSE TO CHANGES TO THE LOCAL AND REGIONAL WATER SUPPLY PLANNING REGULATION (9VAC25-780)

Prior to the meeting the Board was provided materials showing the proposed amendments to the regulation. Eric Seavey, Office of Water Withdrawal Permitting Manager, presented a summary of the proposed changes to the regulations.

Board member Steven Yob submitted to DEQ staff a signed transactional disclosure statement pursuant to the Virginia State and Local Government Conflict of Interests Act before participating in/voting on this agenda item. He indicated he has a personal interest affected by the transaction being considered because of his employment as Deputy County Manager for Community Operations by Henrico County. He indicated he was able to participate in this agenda item fairly, objectively, and in the public interest.

Board Decision:
Based on the Board book briefing material and information provided by staff, the Board unanimously voted (7-0) to accept the staff recommendation to:

1. Promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The board's authorization also constitutes its approval of the regulation at the end of the public comment period provided that:
    a. no objection to the use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and
    b. the department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal; and
2. Set an effective date 15 days after close of the 30-day public comment period, provided
    a. the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act; and
    b. the department does not find it necessary to make any changes to the proposal.

Bryant Thomas
Water Resources Division Director

Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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David L. Bulova
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 7, 2026

Minute No. 5 – Virginia Erosion and Stormwater Management Regulation (9VAC25-875) – Fast-track amendment the Virginia Erosion and Stormwater Management (VESM) Regulation to improve the efficiency of permit fee collection

Prior to the meeting, the Board was provided with materials including a briefing memo, the regulation showing the amendments, and the Virginia Regulatory Town Hall Agency Background document. Jaime Robb, Water Operations Division Director, presented a summary of and rationale for amendments to the regulation.

Board member Steven Yob submitted to DEQ staff a signed transactional disclosure statement pursuant to the Virginia State and Local Government Conflict of Interests Act before participating in/voting on this agenda item. He indicated he has a personal interest affected by the transaction being considered because of his employment as Deputy County Manager for Community Operations by Henrico County. He indicated he was able to participate in this agenda item fairly, objectively, and in the public interest.

Board Decision

Based on the Board Book materials and the staff presentation, the Board voted unanimously (7-0, Branin, Cameron, Johnson, Kilgore, Patteson, Wallace and Yob) to:

1) Authorize DEQ to promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization constitutes its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) DEQ does not find it necessary, based on public comments or for any other reason, to make any changes to the amendments.

2) Authorize DEQ to set an effective date no earlier than 15 days after close of the 30-day public comment period or July 2, 2026 whichever is later, provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) DEQ does not find it necessary to make any changes to the amendments.

Jaime B. Robb

Jaime B. Robb
Water Operations Division Director

Commonwealth of Virginia

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Secretary of Natural and Historic Resources

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Director

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 7, 2026

Minute No. 6 - Report to the Board Regarding Controversial Permits:

- Synagro Central LLC – Essex County - VPA00831
- Synagro Central LLC – Orange County VPA00075
- Arlington County Water Pollution Control Facility - VPDES permit VA0025143
- Mountain View Nursing Home - VPDES permit VA0063347
- Amazon Data Services Inc. – Lake Anna Tech Campus - VPDES permit VA0093319
- Lexington Golf & Country Club- VWP Individual Permit No. 24-2886

In accordance with § 10.1-1184.1 B of the Code of Virginia, Jaime Robb provided the Controversial Permit Report to the Board. The report included each permit number, location of the activities, a summary of events prior to the Board meeting and the schedule for the remaining actions to be taken by the Department. The Board was provided with the opportunity to respond to the Department's presentation and provide commentary regarding the permits.

Jaime B. Robb

Jaime B. Robb
Water Operations Division Director

Commonwealth of Virginia

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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 7, 2026

Minute No. 7: Mountain Valley Pipeline – Update

Ms. Davenport presented an update on the status of the project. She reported that the project continues in the post-restoration phase and the ongoing activity for this quarter involves achieving permanent vegetation and maintaining erosion and sediment controls until ground cover is uniform and mature enough to survive. Controls are also being removed where they are no longer needed. She provided an overview of compliance activities from December 11, 2025, to March 11, 2026, and noted for that same period DEQ assessed $1,000 in stipulated penalties.

Melanie D. Davenport

Commonwealth of Virginia

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Secretary of Natural and Historic Resources

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Director

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 7, 2026

Minute No. 8- Future Meeting Date

The Board confirmed June 30, 2026, as a future meeting date.

Melissa S. Porterfield

Commonwealth of Virginia

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Director

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 7, 2026

Minute No. 9- Public Forum

No members of the public addressed the Board during the public forum.

Melissa S. Porterfield

TAB B

Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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David L. Bulova
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director

MEMORANDUM

TO: State Water Control Board Members

FROM: Elizabeth McKercher
Director, Water Planning Division

DATE: May 22, 2026

RE: Final Exempt Action – Proposed amendment to 9VAC25-71 to add 30 specific State Waters in the Northern Neck region to Virginia's list of No Discharge Zone designations and make technical corrections to an existing NDZ

Executive Summary

Staff will request that the State Water Control Board (Board) amend 9VAC25-71 to add thirty (30) No Discharge Zones (NDZs) in Virginia's Northern Neck region to the list of NDZ designations and to provide a technical correction to an existing NDZ. Establishing an NDZ requires submitting a written application to the U.S. Environmental Protection Agency (EPA). Once approved, the NDZ designation prohibits the discharge of all vessel sewage, treated and untreated, within the designated waters.

At the Board's June 2025 meeting, DEQ notified the Board that the Northern Neck NDZ application would be submitted to EPA through the Office of the Secretary of Natural and Historic Resources. EPA issued a final affirmative determination in the May 7, 2026 publication of the Federal Register establishing these 30 NDZs. Amending 9VAC25-71 will align Virginia's regulations with the federal determination.

Background

Federal law prohibits the discharge of untreated sewage from vessels into navigable waters of the United States. EPA regulations at 40 CFR Part 140, issued under Clean Water Act § 312, also establish standards for the discharge of treated sewage. These regulations allow states to further prohibit all vessel sewage discharges—treated or untreated—by requesting NDZ designations for specific waterbodies. States may enforce more stringent vessel sewage requirements only after EPA approves an NDZ.

DEQ coordinates NDZ designation requests in Virginia using a process that includes public involvement, coordination with state agencies, consultation with EPA, and submission of a formal application.

Under § 62.1-44.33 of the Code of Virginia, the State Water Control Board ("the Board") is directed to adopt NDZ regulations and defines NDZs as areas for which EPA has provided an affirmative

determination that there are adequate pump-out facilities. The Board's regulations at 9VAC25-71 list Virginia's NDZs and specify the applicable requirements.

DEQ Guidance Memo 08-2003 (Procedure for Designation of Vessel No Discharge Zones), issued in February 2008, outlines the steps for submitting an NDZ application to EPA. Once EPA publishes an affirmative determination establishing an NDZ, DEQ then proposes an amendment to 9VAC25-71 to add the new NDZ to Virginia's regulatory list (Attachment I). Attachment II provides justification for exempting this action under § 2.2-4006(A)(4)(c) of the Administrative Process Act. Attachment III includes supporting documents, such as EPA's Federal Register notice and a map of the 30 NDZ areas.

Proposed Actions

DEQ will request that the Board amend 9VAC25-71, Regulations Governing the Discharge of Sewage and Other Wastes from Boats, to incorporate the 30 NDZs established by EPA (Attachment II). DEQ will also request an amendment to make technical corrections to an existing NDZ. Consistent with DEQ Guidance Memo 08-2003, § 2.24006(A)(3) and § 2.24006(A)(4)(c) of the Administrative Process Act, this amendment will be processed as a final exempt action because the changes are necessary to conform to federal regulations or a technical correction. The amendment will take effect 30 days after publication in the Virginia Register. Specific NDZ boundaries are included in Attachment I.

Public Participation

DEQ prepared the NDZ application in accordance with EPA's Guidance for Vessel Sewage No-Discharge Zone Applications (Clean Water Act § 312(f)), issued May 2023, and effected a public participation process in accordance with DEQ Guidance Memo 08-2003. Written public comments received during the comment period were summarized and submitted to EPA as part of the final application. The application is available on DEQ's website at: https://www.deq.virginia.gov/our-programs/water/water-quality/implementation/no-discharge-zone-program

The application was posted online, presented during public meetings, and opened for public comment. DEQ held public meetings and a comment period from February 26, 2025, through April 7, 2025. Meetings were held as follows:

- Westmoreland County – February 25, 2025
- Richmond County – February 26, 2025
- Northumberland County – March 5, 2025
- Lancaster County – March 6, 2025

DEQ received six written comments during the comment period. All of the comments received were in support of designating the Northern Neck NDZs. During EPA's Tentative Affirmative Determination Public Comment, two comments were received. One was supportive and the other related to off-shore wind facilities impact on data.

II. Presenter Contact Information:

Contact: Justin Williams, Manager, Office of Watershed & Local Government Assistance

Phone Number: (804) 659-1125

E-mail: Justin.Williams@DEQ.Virginia.gov

III. Attachments

- **Attachment I** –Amended Regulations Governing the Discharge of Sewage and Other Wastes from Boats for Board adoption
- **Attachment II** –Virginia Regulatory Town Hall
- **Attachment III** – Background Materials
  - **Attachment III.A –** Map Depicting Water Bodies to be Included in No Discharge Zone Designation
  - **Attachment III.B** EPA's Final Determination Published in the Federal Register

Attachment I – Amended Regulations Governing the Discharge of Sewage and Other Wastes from Boats for Board Adoption

Project 8663 - Exempt Final- Additional No Discharge Zones

9VAC25-71-70. Listing of designated no discharge zones in the Commonwealth of Virginia.

The following are designated no discharge zones:

1. Smith Mountain Lake in the counties of Bedford, Franklin and Pittsylvania, Virginia, from Smith Mountain Dam (Gap of Smith Mountain) upstream to the 795.0 foot contour (normal pool elevation) in all tributaries, including waters to above the confluence with Back Creek in the Roanoke River arm, and to the Brooks Mill Bridge (Route 834) on the Blackwater River arm.

2. The Lynnhaven River Watershed in the City of Virginia Beach, Virginia, including all contiguous waters south of the Lesner Bridge at Lynnhaven Inlet (latitude 36°54'27.90" N and longitude 76°05'30.90" W) and north of the watershed break point at the intersection of West Neck Creek and Dam Neck Road (latitude 36°47'17.60" N and longitude 76°04'14.62" W).

3. Broad Creek, Jackson Creek, and Fishing Bay Watersheds in lower Middlesex County, Virginia: the Broad Creek Watershed ~~No Discharge Zone~~ is defined as all contiguous waters south of the line formed between the points formed by latitude 37°33'46.3" N and longitude ~~-76°18'45.9"~~ 76°18'45.9" W and north to latitude 37°33'47.4" N and longitude ~~-76°19'24.7"~~ 76°19'24.7" W. The Jackson Creek Watershed ~~No Discharge Zone~~ is defined as all contiguous waters west of the of the line formed between the points formed by latitude 37°32'40" N and longitude ~~-76°19'40.6"~~ 76°19'40.6" W at Stove Point Neck and latitude 37°32'46.8" N and longitude ~~-76°19'15.6"~~ 76°19'15.6" W at the western point of the entrance to the eastern prong of Jackson Creek. The Fishing Bay Watershed ~~No Discharge Zone~~ is defined as all contiguous waters north of the line formed between the points formed by latitude 37°32'01.9" N and longitude ~~-76°21'43.5"~~ 76°21'43.5" W at the southernmost tip of Bland Point and latitude 37°31'29.4" N and longitude ~~-76°19'53.6"~~ 76°19'53.6" W at the southernmost tip of Stove Point. This area includes all of Fishing Bay and encompasses Moore Creek and Porpoise Cove.

4. Sarah Creek in Gloucester County, Virginia, including all contiguous waters north of the line formed between the point formed by latitude 37º14'58.34" N and longitude 76º29'39.17" W and east to latitude 37º15'00.81" N and longitude 76º28'37.84" W.

5. Perrin River in Gloucester County, Virginia, including all contiguous waters north of the line formed between the point formed by latitude 37º 15'43.52" N and longitude 76º25'25.71" W and east to latitude 37º15'50.63" N and longitude 76º25'11.84" W.

6. Rosier Creek in Westmoreland County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 38º16'27.23" N, longitude 76º59'24.14" W and latitude 38º16'46.67" N, longitude 77º0'3.92" W.

7. Mattox Creek and Monroe Bay in Westmoreland County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 38º12'33.30" N, longitude 76º57'5.65" W at Church Point and latitude 38º13'46.74" N, longitude 76º57'46.76" W at Gum Bar Point.

8. Nomini Creek and Currioman Bay in Westmoreland County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 38º9'36.07" N, longitude 76º42'3.20" W at King Copsico Point and latitude 38º9'59.11" N, longitude 76º46'23.59" W.

9. Lower Machodoc Creek in Westmoreland County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 38º9'5.44" N, longitude 76º38'18.06" W and latitude 38º9'33.16" N, longitude 76º41'16.55" W.

10. Ragged Point in Westmoreland County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 38º7'45.59" N, longitude 76º36'14.58" W at Stinking Point and latitude 38º8'51.50" N, longitude 76º36'40.64" W at Ragged Point.

11. Gardner Creek in Westmoreland County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 38º6'46.33" N, longitude 76º36'14.18" W and latitude 38º6'48.35" N, longitude 76º36'8.78" W.

12. Jackson Creek in Westmoreland County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 38º6'23.98" N, longitude 76º35'48.55" W and latitude 38º6'25.24" N, longitude 76º35'49.38" W.

13. Bonum Creek in Westmoreland County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 38º5'44.48" N, longitude 76º34'51.17" W and latitude 38º5'45.28" N, longitude 76º34'54.88" W.

14. Yeocomico River in Westmoreland & Northumberland County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 38º1'35.29" N, longitude 76º30'57.85" W at Thicket Point and latitude 38º2'34.76" N, longitude 76º31'21.61" W at Lynch Point.

15. Judith Sound in Northumberland County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 38º0'18.04" N, longitude 76º27'47.95" W and latitude 38º0'47.92" N, longitude 76º28'15.42" W.

16. Coan River and The Glebe in Northumberland County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 37º59'9.53" N, longitude 76º26'43.69" W at Great Point and latitude 37º59'44.81" N, longitude 76º27'47.45" W at Travis Point.

17. Cod Creek in Northumberland County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 37º58'43.57" N, longitude 76º25'52.50" W at Great Point and latitude 37º59'1.21" N, longitude 76º26'26.30" W.

18. Little Wicomico River in Northumberland County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 37º53'22.85" N, longitude 76º14'8.95" W at Smith Point and latitude 37º53'24.77" N, longitude 76º14'10.38" W at Smith Point.

19. Great Wicomico River and Ingram Bay in Northumberland County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 37º47'13.74" N, longitude 76º18'25.09" W and latitude 37º48'48.13" N, longitude 76º16'56.46" W at Fleeton Point.

20. Cloverdale Creek in Northumberland County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 37º46'22.87" N, longitude 76º18'34.49" W and latitude 37º46'32.09" N, longitude 76º18'21.10" W.

21. Dividing Creek in Lancaster & Northumberland County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 37º43'15.56" N, longitude 76º18'51.19" W and latitude 37º43'48.16" N, longitude 76º18'16.60" W at Hughlett Point.

22. Indian Creek in Lancaster County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 37º40'23.92" N, longitude 76º19'29.17" W and latitude 37º41'21.84" N, longitude 76º18'23.72" W at Bluff Point.

23. Dymer Creek in Lancaster County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 37º39'42.70" N, longitude 76º20'8.66" W and latitude 37º40'17.54" N, longitude 76º19'32.05" W.

24. Tabbs Creek in Lancaster County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 37º39'13.25" N, longitude 76º20'22.09" W and latitude 37º39'21.78" N, longitude 76º20'23.89" W.

25. Antipoison Creek in Lancaster County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 37º37'49.12" N, longitude 76º19'58.58" W and latitude 37º37'56.39" N, longitude 76º19'57.29" W at Clark Point.

26. Windmill Point Resort in Lancaster County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 37º36'52.63" N, longitude 76º17'26.16" W and latitude 37º36'51.80" N, longitude 76º17'24.65" W.

27. Little Oyster and Windmill Point Creek in Lancaster County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 37º37'27.23" N, longitude 76º18'39.78" W and latitude 37º37'13.30" N, longitude 76º18'25.42" W.

28. Mosquito Creek in Lancaster County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 37º36'32.11" N, longitude 76º21'32.80" W at Mosquito Point and latitude 37º37'10.70" N, longitude 76º19'24.28" W at Deep Hole Point.

29. Carter Creek in Lancaster County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 37º39'5.44" N, longitude 76º26'44.12" W and latitude 37º39'8.60" N, longitude 76º26'23.42" W at Crab Point.

30. Corrotoman River in Lancaster County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 37º38'55.32" N, longitude 76º27'4.68" W at Orchard Point and latitude 37º38'35.81" N, longitude 76º30'4.03" W.

31. Greenvale Creek in Lancaster County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 37º42'36.86" N, longitude 76º32'40.16" W and latitude 37º42'27.22" N, longitude 76º32'30.44" W.

32. Deep Creek in Richmond County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 37º46'18.77" N, longitude 76º35'10.00" W and latitude 37º46'13.84" N, longitude 76º35'2.90" W.

33. Mulberry Creek in Richmond County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 37º47'12.62" N, longitude 76º37'10.78" W and latitude 37º47'2.69" N, longitude 76º37'5.30" W

34. Lancaster Creek (incl. Morattico) in Richmond County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 37º47'45.85" N, longitude 76º39'4.36" W at Tarpley Point and latitude 37º47'24.22" N, longitude 76º38'5.17" W at Curletts Point.

35. Farnham Creek in Richmond County, Virginia is defined as all contiguous waters landward of the line connecting the points formed by latitude 37º49'31.01" N, longitude 76º40'46.63" W at Wilna Point and latitude 37º49'32.34" N, longitude 76º40'49.44" W.

townhall.virginia.gov

Exempt Action: Final Regulation
Agency Background Document

Agency name	Department of Environmental Quality
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-71
VAC Chapter title(s)	Regulations Governing the Discharge of Sewage and Other Wastes from Boats
Action title	Amendment to add 30 No-Discharge Zone (NDZ) designations in the Northern Neck region; and make technical corrections to an existing NDZ
Final agency action date	June 23, 2026
Date this document prepared	May 12, 2026

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 (1VAC7-10), 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 amendments to 9VAC25-71, Regulations Governing the Discharge of Sewage and Other Wastes from Boats, add No Discharge Zone (NDZ) designations to 30 specific estuarine waters in the Northern Neck region of Virginia (9VAC25-71-70. Listing of designated no discharge zones in the Commonwealth of Virginia). The waters include: Rosier Creek, Mattox Creek and Monroe Bay, Nomini Creek and Currioman Bay, Lower Machodoc Creek, Ragged Point, Gardner Creek, Jackson Creek, Bonum Creek, Yeocomico River, Judith Sound, Coan River and the Glebe, Cod Creek, Little Wicomico River, Great Wicomico River and Ingram Bay, Cloverdale Creek, Dividing Creek, Indian Creek, Dymer Creek, Tabbs

Creek, Antipoison Creek, Windmill Point Resort, Little Oyster and Windmill Point Creek, Mosquito Creek, Carter Creek, Corrotoman River, Greenvale Creek, Deep Creek, Mulberry Creek, Lancaster Creek (inc. Morattico), and Farnham Creek.

The amendment also provides technical corrections to an existing NDZ to remove a redundant "-" in the longitude degrees and correct nomenclature to use consistent terminology within the section.

An NDZ creates an area in a waterbody where discharge of both treated and untreated vessel sewage is prohibited; vessels would instead use pump-out facilities (often located at marinas) or travel outside of the NDZ to discharge treated sewage. See the Purpose section below for more details.

The NDZs were developed in accordance with Clean Water Act Section 312 and § 62.1-44.33 of the Code of Virginia and are exempt from the provisions of Article II of the Virginia Administrative Process Act. This regulatory action is a final exempt action under the Administrative Process Act since the amendments are either necessary to conform to changes in the federal regulations (§2.2-4006 A 4 c) or make a technical correction (§2.2-4006 A 3).

The NDZ application was subject to public participation during its development, as described in the Board Memo and in the Purpose section below. Specifically, DEQ convened public meetings and sought public comment during the application development. Additionally, the Environmental Protection Agency (EPA) requested public comment during its review for affirmative determination.

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."

Section 62.1-44.33 establishes the tidal creeks of the Commonwealth as no discharge zones pending the receipt of an affirmative determination from the EPA that there are adequate facilities for the removal of sewage from vessels and where federal approval has been received allowing a complete prohibition of all treated or untreated discharges of sewage from all vessels.

On May 7, 2026, EPA published its affirmative determination to establish the NDZ in the Federal Register (see 91 FR 24863; available in Attachment III.B.). The EPA affirmative determination is a formal, final decision that adequate, safe, and sanitary pump-out facilities for sewage are reasonably available. Having obtained the final determination, DEQ is requesting the addition of these NDZs into Virginia administrative code 9VAC25-71-70 to conform with federal regulations. This regulatory action is a final exempt action under the Administrative Process Act since the amendments are either necessary to conform to changes in the federal regulations (§2.2-4006 A 4 c) or make a technical correction (§2.2-4006 A 3).

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"No Discharge Zone" (NDZ) means a waterbody or an area of a waterbody into which the discharge of treated and untreated sewage from all vessels is completely prohibited. It is illegal to discharge untreated

sewage from vessels in all waterbodies of the Commonwealth. In a designated No Discharge Zone, it is also illegal to discharge any treated waste from vessels equipped with Marine Sanitation Devices (MSDs) that grind, treat and discharge human sewage.

"Pump-out facilities" means any device, equipment or method of removing sewage from a marine sanitation device. Also, “pump-out facilities” shall include any holding tanks either portable, movable or permanently installed, and any sewage treatment method or disposable equipment used to treat, or ultimately dispose of, sewage removed from boats.

"Sewage" means human body wastes, the wastes from toilets and other receptacles intended to receive or retain human wastes, and liquid-carried human wastes together with such industrial wastes and other liquid as may be present.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) that the agency has “adopted final amendments” to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, “On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)].”

At its meeting on June 23, 2026, the State Water Control Board adopted final amendments to Section 70 of the Regulations Governing the Discharge of Sewage and Other Wastes from Boats (9VAC25-71).

Legal Basis

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.

Clean Water Act Section 312 (33 U.S.C. § 1322) regulates sewage discharges from vessels into U.S. navigable waters and provides for reviews and approval of NDZ applications submitted by states. Section 62.1-44.33 of the Virginia State Water Control Law authorizes the State Water Control Board to promulgate regulations controlling sewage discharge from boats and vessels in state waters. Changes to this chapter of the Virginia Administrative Code are exempt from provisions of Article II of the Virginia Administrative Process Act (§2.2-4006 A 4 c and 2.2-4006 A 3).

Purpose

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’s intended to solve.

The regulatory changes are needed to meet requirements in the federal Clean Water Act and the State Water Control Law to protect public health and welfare by prohibiting the discharge of treated sewage in designated waters by establishing NDZs. These regulatory changes are needed to improve and protect water quality for the culturally and economically important shellfish industry in these waters and for recreational activities such as boating, fishing, and swimming. An NDZ creates an area in a waterbody where no discharge of sewage is permitted; vessels would instead use pump-out facilities (often located at marinas) or travel outside of the NDZ to discharge properly treated sewage. The discharge of untreated

sewage is already prohibited in all waters in accordance with § 62.1-44.33 of the Virginia State Water Control Law. Prohibiting treated sewage discharge will improve water quality by reducing the amount of bacteria, along with preventing discharges of nutrients and treatment chemicals from boats, which will benefit commercial fishing and shellfishing, recreation, and other uses.

The purpose of this regulatory action is to amend 9VAC25-71 to incorporate new No Discharge Zones into 30 specific estuarine waters in the Northern Neck region of Virginia. On May 7, 2026, EPA published its affirmative determination to establish the NDZs in the Federal Register (see 91 FR 24863; available in Attachment III.B.). Following EPA's approval, this regulatory action adds these NDZs into 9VAC25-71-70. This regulatory action to incorporate new NDZs is a final exempt action under the Administrative Process Act (§2.2-4006 A 4 c).

The Code of Virginia at § 62.1-44.33 grants the State Water Control Board the power to promulgate regulations necessary to designate NDZs, provided the Commonwealth has received an affirmative determination from EPA in accordance with federal regulation. An application for the NDZs was developed in accordance with EPA Guidance 842-F-23-001 (Guidance for Vessel Sewage No-Discharge Zone Applications (Clean Water Act Section 312(f))). The application was also subject to the public participation process contained in DEQ's Guidance Memo 08-2003 (Procedure for Designation of Vessel No Discharge Zones), issued in February 2008. Accordingly, DEQ presented the application during public meetings and sought public comments. The application was then submitted to EPA for formal review and an additional public comment period posted in the Federal Register. EPA then established the new NDZs by publishing its affirmative determination in the Federal Register (91 FR 24863; available in Attachment III.B). Attachment III also contains other background information on the application, including maps of the NDZs and a summary of public comments on the 2025 application.

The purpose is also to make technical corrections to an existing NDZ to remove a redundant "-" in the longitude degrees as the degrees already contain a directional indicator and correct nomenclature to use consistent terminology within the section.

Substance

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.

This regulatory action amends 9VAC 25-71 to add the new NDZs for 30 specific state waters to Virginia's list of designated NDZs so that they conform with federal regulations and to make a technical correction to an existing NDZ to remove a redundant "-" in the longitude degrees and correct nomenclature to use consistent terminology within the section.

Issues

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.

Public: The regulatory change broadly benefits the public by improving the water quality of impaired waters by designating NDZ's which prohibit the discharge of all vessel sewage, treated and untreated. The primary advantage is a reduction in the discharge of bacteria and treatment chemicals to state waters, which will benefit commercial fishing, recreation, and overall water quality. Improved water quality will protect human health and aquatic life, resulting in healthier fisheries, safer and reliable public water

supplies, and contribute to economic benefits from tourism, economic development, commercial and recreational fishing industries. Establishment of an NDZ may disadvantage some vessels who could incur costs, such as installing new equipment or changing operational procedures (e.g., use pump-out stations). The application examined these scenarios and concluded that adequate facilities are available to vessels.

Agency or Commonwealth: The agency and Commonwealth will benefit because the change to the regulation meets legal mandates in state and federal law to improve water quality and meet Water Quality Standards (9VAC25-260), to support all designated uses of waters, and ultimately remove waters from Virginia's 303(d) list of impaired waters

Requirements More Restrictive than Federal

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.

This is a change to align Virginia's NDZs (as specified in Section 70 of 9VAC 25-71) with EPA's approved NDZs for Virginia. This regulatory amendment is not more restrictive than applicable federal requirements.

Public Comment

Summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. Ensure to include all comments submitted: including any 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.

During the development of the NDZ application in 2025, DEQ held public meetings and had a public comment period. DEQ received 6 public comments pertaining to the 2025 application. All of the comments received were in support of designating the Northern Neck NDZs. During EPA's Tentative Affirmative Determination Public Comment, two comments were received. One was supportive and the other related to offshore wind facilities impact on data.

Details of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

The amendments would adopt new No Discharge Zones, adding to the five already in the regulation (9VAC25-71-70.) The action is necessary to agree with EPA's final affirmative determination for these NDZs.

The action is also necessary to make a technical correction to an existing NDZ to remove a redundant "-" in the longitude degrees and correct nomenclature to use consistent terminology within the section.

Current section number	New section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
70	NA	9VAC25-71-70. Listing of designated no discharge zones in the Commonwealth of Virginia currently only lists waters with designated NDZs in the Commonwealth of Virginia. The 30 proposed waters are currently not included in this section as NDZs. 3. Broad Creek, Jackson Creek, and Fishing Bay Watersheds coordinates for longitude include a "-" in front of the degree values. Includes redundant phrase "No Discharge Zone"	Adopting 30 new NDZs in specific waters of the Northern Neck including: Rosier Creek, Mattox Creek and Monroe Bay, Nomini Creek and Currioman Bay, Lower Machodoc Creek, Ragged Point, Gardner Creek, Jackson Creek, Bonum Creek, Yeocomico River, Judith Sound, Coan River and the Glebe, Cod Creek, Little Wicomico River, Great Wicomico River and Ingram Bay, Cloverdale Creek, Dividing Creek, Indian Creek, Dymer Creek, Tabbs Creek, Antipoison Creek, Windmill Point Resort, Little Oyster and Windmill Point Creek, Mosquito Creek, Carter Creek, Corrotoman River, Greenvale Creek, Deep Creek, Mulberry Creek, Lancaster Creek (inc. Morattico), Farnham Creek. Removing unnecessary "-" from Broad Creek, Jackson Creek, and Fishing Bay Watersheds NDZ longitude degrees and removing the redundant phrase "No Discharge Zone".

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.

These amendments meet the requirements of federal and state law and regulation. The regulations under 9VAC25-71 apply to all persons, including small business owners, who discharge treated vessel sewage in Virginia waters. As part of the application process, EPA's review determined that existing pump-out infrastructure is adequate to support vessel sewage disposal needs. The regulatory amendment does not establish any reporting requirement or performance standard that could be lessened or substituted for small business. Any delays in adopting the standards or exemption of small businesses from these requirements will not meet the minimum requirements of federal law and regulation to prohibit the discharge of treated and untreated sewage in an NDZ. No alternative approach to establishing an NDZ was considered because Clean Water Act Section 312 (33 U.S.C. § 1322) regulates sewage discharges

from vessels into U.S. navigable waters and reviews and approves NDZ applications submitted by states. State Water Control Law § 62.1-44.33 grants the State Water Control Board the power to promulgate regulations necessary to designate NDZs, provided the designations receive the necessary approvals from EPA. EPA approved the NDZ application, thereby establishing 30 NDZs. Following EPA's approval, this regulatory action is required to add these NDZs into 9VAC25-71-70. This regulatory action is a final exempt action under the Administrative Process Act (§2.2-4006 A 4 c). As a result, vessels can no longer discharge treated sewage in these waters.

Family Impact

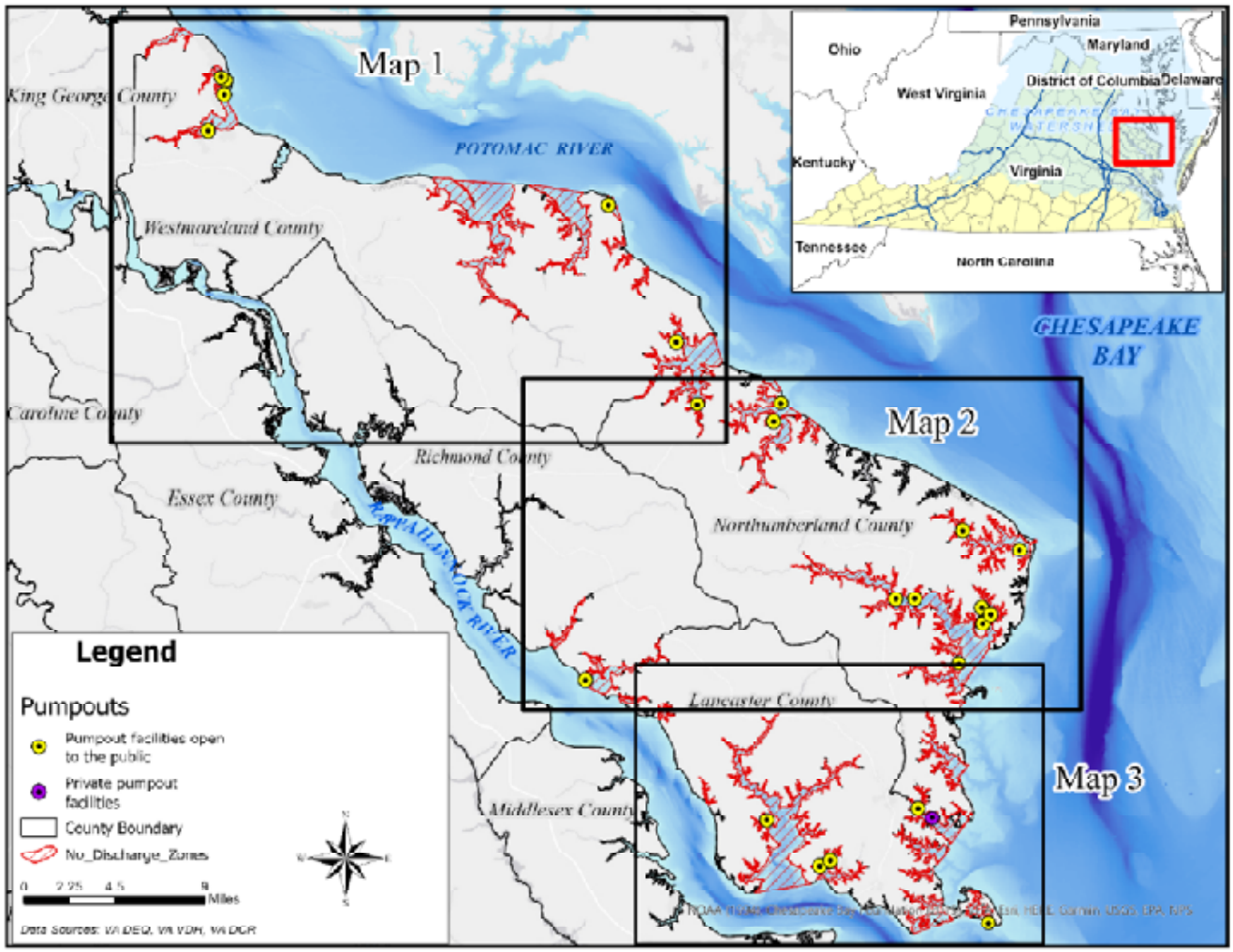
In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, 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.

The amendment of the Regulations Governing the Discharge of Sewage and Other Wastes from Boats is for the protection of public health, safety, and welfare and the Board does not anticipate any direct impact on the institution of the family and family stability.

Attachment III – Background Materials

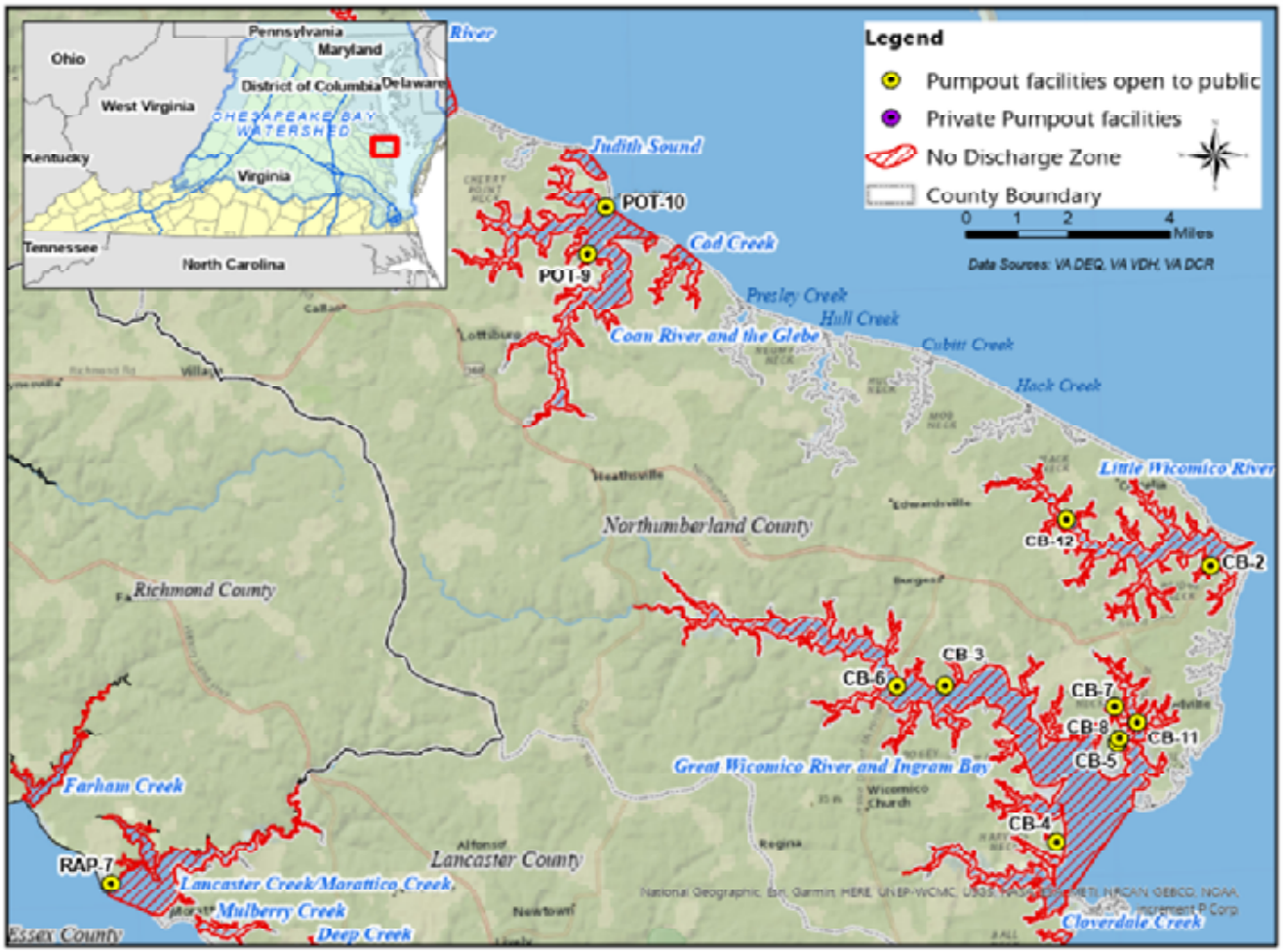
- **Attachment III.A** Maps Depicting Westmoreland County, Northumberland County, Lancaster County, and Richmond County and the 30 No Discharge Zones
- **Attachment III.B** EPA's Final Determination Published in Federal Register

Attachment III.A Maps depicting the 30 No Discharge Zones in the Northern Neck Region of Virginia

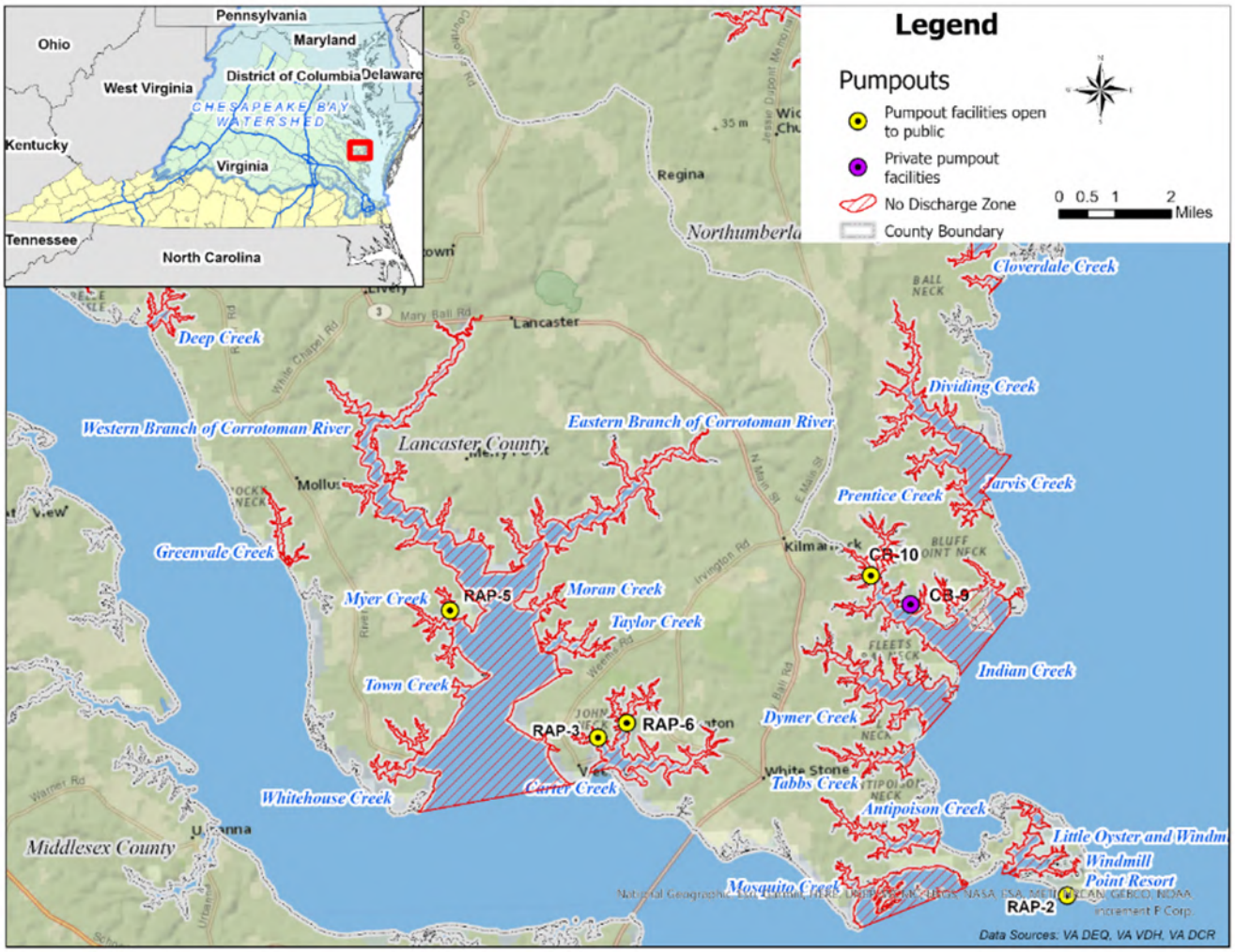


Overview of proposed No Discharge Zone waters in the Northern Neck - a peninsula surrounded by the Potomac River, Chesapeake Bay, and the Rappahannock River. Areas identified as Maps 1, 2, and 3 are shown in greater detail below.

Map 1 displays proposed NDZs in the northwestern part of the peninsula as well as the locations of existing pumpout facilities which have weekend hours. The waters in this area discharge to the Potomac River



Map 2 displays proposed NDZs in the northeastern and southwestern parts of the peninsula as well as the locations of existing pumpout facilities which have weekend hours. Proposed NDZs on the north side discharge to the Potomac River and on the east side discharge to the Chesapeake Bay. This map also displays the southwestern-most proposed NDZs (Farnham, Lancaster, Mulberry, and Deep Creeks) which discharge to the Rappahannock River.



Map 3 displays proposed NDZs in the southeastern part of the peninsula as well as the locations of existing pumpout facilities which have weekend hours. The proposed NDZs on the east side discharge to the Chesapeake Bay and the proposed NDZs on the south side discharge to the Rappahannock River.

Attachment III.B EPA's Final Affirmative Determination as Published in the Federal Register (Vol. 91, No. 88 / May 7, 2026)

https://www.federalregister.gov/d/2026-09042

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R03–OW–2025–2004; FRL–12999–02–R3]

Virginia; Waters of the Northern Neck Peninsula Vessel Sewage No-Discharge Zone; Final Affirmative Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final determination.

SUMMARY: The U.S. Environmental Protection Agency (EPA), Region 3, has determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for waters within Virginia's Northern Neck peninsula to support the designation of a vessel sewage no-discharge zone for such waters. Pursuant to the Clean Water Act section 312, this notice constitutes the EPA's final affirmative determination on the application submitted by Virginia on September 10, 2025. Following this final affirmative determination, Virginia may designate certain waters within Richmond, Lancaster, Northumberland, and Westmoreland Counties as a vessel sewage no-discharge zone in accordance with State law.

FOR FURTHER INFORMATION CONTACT: Byron Riggins, Wetlands Branch, Water Division (3WD10), U.S. Environmental Protection Agency, Region 3, Four Penn Center, 1600 John F Kennedy Blvd., Philadelphia, PA 19103–2852; telephone number: (215) 814–5146; email address: *riggins.byron@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On September 10, 2025, the Commonwealth of Virginia submitted an application to the U.S. Environmental Protection Agency (EPA), Region 3, for a determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for certain waters of Northern Neck peninsula, so that Virginia may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters. This application for a no-discharge zone was made pursuant to Clean Water Act section 312(f)(3).

The proposed no-discharge zone encompasses various waterbodies in the rural watersheds of Virginia's Coastal Plain, specifically on the Northern Neck peninsula, in the counties of Richmond, Lancaster, Northumberland, and Westmoreland. Virginia's application includes maps that depict the waterbodies included in the proposed no-discharge zone, as well as tables that specify the geographic coordinates of the zone's boundaries. In its application, Virginia certified that the protection and enhancement of the quality of these waters require greater environmental protection than is afforded by the applicable Federal standard. This certification was based on a need to protect extensive shellfish harvest and aquaculture acreage from bacterial impairment and to preserve water

quality for recreational activities, such as boating, fishing, and swimming. Virginia also provided information on the vessel population and usage of these waters and identified the pumpout facilities available to service these vessels. Virginia's application is available electronically in Docket ID No. EPA–R03–OW–2025–2004 through *https://www.regulations.gov.*

II. Response to Public Comments

On December 8, 2025 (90 FR 56748), the EPA published a tentative affirmative determination in the **Federal Register** that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters subject to Virginia's proposed no-discharge zone and solicited the public's input during a 30-day comment period.

The EPA received two comments on the tentative affirmative determination. One commenter wrote in support of the designation. The other commenter expressed concern that obtaining data for this area is difficult due to the construction of offshore wind turbines in the Virginia Beach area. The EPA disagrees. Virginia's application included the necessary data and information to demonstrate the adequacy and availability of pumpout facilities to potentially affected vessels in the Northern Neck peninsula. Other matters discussed in this comment are outside the scope of the EPA's responsibility to determine whether adequate facilities are reasonably available for the removal and treatment of sewage from all vessels to which the no-discharge zone would apply.

III. Adequacy and Availability of Pumpout Facilities

In the tentative determination, the EPA outlined the Agency's role in evaluating Virginia's application for a vessel sewage no-discharge zone under Clean Water Act section 312(f)(3), which requires that the Agency determine whether adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters proposed for a no-discharge zone designation.

As set forth in the tentative determination, based on the information provided by Virginia and the EPA's subsequent review, there are an estimated 3,105 recreational and transient vessels and 50 commercial vessels operating within the waters of the Northern Neck that are expected to require pumpout services. These vessels may be serviced by 24 publicly accessible sewage pumpout facilities, as well as one private facility. Information about these facilities is provided in Table 1 [1] of this document. During peak usage, such as a holiday weekend, the EPA estimates that 1,292 vessels are expected to require access to pumpout facilities, and up to 1,456 vessels may be served by available pumpout facilities. This estimate is based on the number of vessels that can be serviced per hour by each available facility and the hours of operation of each facility. As such, the EPA determined that adequate pumpout facilities are reasonably available to meet the expected demand during peak usage. Additionally, the EPA finds that the cost for recreational vessels to access these facilities is minimal, with most publicly accessible facilities (19 of the 24 facilities) charging 10 dollars or less per pump out.

Because commercial vessels incur additional types of costs associated with accessing pumpout facilities that recreational vessels do not, the EPA compared the volume of sewage produced by commercial vessels with the volume that can be received by available pumpout facilities and considered the costs associated with accessing and using those facilities. As described in the tentative affirmative determination, the EPA's screening analysis showed that demand for pumpout services is never expected to exceed capacity in the waters proposed for designation, indicating that sufficient pumpout capacity is available for commercial vessels. Because capacity significantly exceeds demand, the EPA expects that this capacity surplus would be sufficient when both recreational and commercial vessels access the facilities during peak usage. The EPA also considered the various costs incurred by commercial vessels to determine how the proposed no-discharge zone would impact baseline operating costs. The EPA estimates that the increase in baseline operating costs would be 0.2 percent for working vessels (*e.g.,* tugboats), 1.8 percent for commercial fishing vessels, 2.3 percent for excursion vessels, and 1.3 percent for offshore vessels. This increase is largely attributable to lost revenue due to the time it takes to pump out sewage from a vessel; therefore, savings may be achieved if vessel operators are able to time pumpout activities to minimize cost impacts. The EPA also used conservative values in estimating the increase in costs, as such, the true percent increases are likely to be lower.

Finally, the EPA verified that the treatment of waste from pumpout facilities is in conformance with Federal law. As discussed in the EPA's tentative affirmative determination, seven wastewater treatment plants (WWTPs) receive sewage from the available pumpout facilities. The Virginia Department of Environmental Quality reviews and issues Virginia Pollutant Elimination Discharge System permits to the WWTPs to ensure compliance with applicable regulations. While two of the facilities (Reedville WWTP and Town of Colonial Beach WWTP) had permit violations within the last five years, Virginia confirmed that Reedville WWTP is currently in compliance with a consent order intended to bring the facility into compliance. For the Town of Colonial Beach WWTP, the EPA determined that, upon implementation of appropriate corrective actions, the facility could be operated consistent with Federal, State, and local requirements. Based on a review of design capacities and average actual flows, the EPA does not expect that any of the WWTPs would exceed capacity due to increased volumes that may result from establishment of a no-discharge zone.

IV. Determination

Based on the EPA's review of both the information provided in Virginia's application and the comments received on the EPA's tentative determination, the EPA Region 3 hereby makes a final determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are available for the waters of the Northern Neck peninsula, including waters in Richmond, Lancaster, Northumberland, and Westmoreland Counties.

[1] Table 1 of the tentative determination incorrectly included information for only 20 of the 25 facilities identified in Virginia's application. This transcription error has been resolved in this final determination.

TABLE 1—LIST OF PUMPOUT FACILITIES

Name	Location	Contact information	Operating schedule	Water depth (feet)	Fee
Blue Compass Marina at Horn Harbor (CB–3).	836 Horn Harbor Rd., Burgess, VA 22432.	804–453–3351	Apr–Oct: 8 a.m.–9 p.m. (M–F); 9:30 a.m.–4 p.m. (S & Su); Nov–Mar: 11 a.m.–4 p.m. (W–Su); 24/7 call ahead service.	7	Free.
Buzzard Point Dry Storage & Marina (CB–7).	468 Buzzard Point Rd., Reedville, VA 22539.	804–453–3545	Late Mar–Dec: 8 a.m.–5 p.m. (M–S); 8 a.m.–4 p.m. (Su).	8.5	$5.
Carter's Cove Marina (RAP– 3).	347 Carters Cove Drive, Weems, VA 22576.	804–438–5299	Apr–Nov: 9 a.m.–5 p.m.	5	Free ($5 for non-slip holders).
Chesapeake Boat Basin (CB–10).	1686 Waverly Ave., Kilmarnock, VA 22482.	804–436–	8 a.m.–5 p.m. (M–S); 8 a.m.–3 p.m. (Su); Closed Sun & Mon in Jan & Feb.	13	$5.
Coan River Marina (POT–9)	3170 Lake Rd., Lottsburg, VA 22511.	804–529–6767	Apr–Oct: 8:30 a.m.–5 p.m. (M–F); 9:30 a.m.–2 p.m. (S); Nov–Mar: 9:30 a.m.–4 p.m. (M–F).	7	$10 ($5 for portable toilets).
Cockrell's Marine Railway Inc. (CB–12).	309 Railway Dr., Heathsville, VA 22473.	804–453–3560	6:00 a.m.–6:00 p.m.	5	$5–20 (holding tank size de-pendent).
Coles Point Marina (POT–6)	190 Plantation Drive, Hague, VA 22469.	804–472–4011	Apr–Oct: 9 a.m.–5 p.m. (M–Th); 8 a.m.–7 p.m. (F & S); 9 a.m.–4 p.m. (Su); Nov–Mar: 9 a.m.–5 p.m. (M–S); 9 a.m.–12 p.m. (Su).	6	$20.
Colonial Beach Yacht Center (POT–5).	1787 Castlewood Drive, Colonial Beach, VA 22443.	804–224–7230	Apr–Oct: 10 a.m.–4 p.m. (daily except T); Nov–Mar: 10 a.m.–4 p.m. (F–Su).	5	$5.
Fairport Marina (CB–8)	252 Polly Cove Rd., Reedville, VA 22539.	804–453–5002	9 a.m.–5 p.m. (M, T, S, Su); 9 a.m.–10 p.m. (W–F).	8	$5–10 (holding tank size de-pendent).
Indian Creek Country & Yacht Club (CB–9).	362 Club Drive, Kilmarnock, VA 22482.	804–435–	Private (members & guests only)	6	Free for members & guests.
Ingram Bay Marina (CB–4)	545 Harveys Neck Rd., Heathsville, VA 22473.	804–580–	9 a.m.–5 p.m.	6	$5.
Jenning's Boatyard Inc. (CB–5).	169 Boatyard Road, Reedville, VA 22539.	804–453–	8 a.m.–5 p.m. (M–F); 8 a.m.–12 p.m. (S)	9	$5.
Lewisetta Marina (POT–10)	369 Church Lane, VA 22511.	804–529–	7 a.m.–5 p.m.	9	$5.
Monroe Bay & Winkie Doodle Marinas (POT–7).	551 Lafayette Street, Westmoreland, VA 22443.	804–224–7544	Apr–Oct: 8 a.m.–8 p.m.	5.5	Free.
Olverson's Lodge Creek Ma- rina (POT–8).	1161 Melrose Rd., Lottsburg, VA22511.	804–529–5071	8 a.m.–5 p.m. (M–S); 8 a.m.–2 p.m. (Su)	10	$5.
Reedville Marina—Crazy Crab Restaurant (CB–11).	902 Main St., Reedville, VA 22539.	804–453–	Apr–Oct: 9 a.m.–5 p.m.	14	$5.
Smith Point Marina (CB–2) ...	989 Smith Point Rd., Reedville, VA 22539.	804–453–4077	Apr–Dec: 8 a.m.–4 p.m.; Nov–Mar: 8 a.m.– 4 p.m. (M–F).	4.5	Free; ($10 for non-slip hold-ers).
Stepp's Harbor View Marina (POT–2).	277 Harbor View Circle, Colonial Beach, VA 22443.	804–224–7230	Apr–Nov: 9 a.m.–5 p.m.	8	$10.
The Boat House Marina (POT–3).	829 Robin Grove Lane, Colonial Beach, VA 22443.	804–224–7644	8 a.m.–4 p.m. (T–S)	6	Free.
Tides Inn & Lodge (RAP–6)	480 King Carter Drive, Irvington, VA, 22480.	804–438–	Mid-Mar–Dec: 8 a.m.–7 p.m.; Jan–Mid-Mar: 8 a.m.–4 p.m.	8	Free.
Tiffany Yacht Company (CB–6).	2355 Jessie Dupont Memorial Highway, Burgess, VA 22432.	804–453–3464	7:30 a.m.–4:30 p.m. (M–F); 7:30 a.m.–12 p.m. (S).	10	$20+ (holding tank size de-pendent).
Whelan's Marina & Campground (RAP–7).	3993 Hales Point Rd, Farham, VA 22460.	804–394–9500	Apr–Oct: 8 a.m.–5 p.m. (M–F); 8 a.m.–1 p.m. (S); Nov–Mar: 8 a.m.–5 p.m. (M–F).	3	Free.
White Point Marina (POT–4)	175 Marina Drive, Kinsale, VA 22488.	804–472–	Mar 15–Nov 15: 7:30 a.m.–4 p.m. (M–F); 7:30 a.m.–5 p.m. (S & Su).	8	$5.
Windmill Point Marina (RAP–2).	40 Windjammer Lane, White Stone, VA 22578.	804–436–	9 a.m.–5 p.m. (on call 24/7)	6.5	$20.
Yankee Point Marina (RAP–5).	1303 Oak Hill Rd., Lancaster, VA 22503.	804–462–7635	May 1–Sept 30: 8 a.m.–4:30 p.m. (M–Th); 7 a.m.–6 p.m. (S & Su); Oct 1–Apr 30: 8 a.m.–4:30 p.m. (M–F); 9 a.m.–4 p.m. (S).	8.5	$10+ (holding tank size de-pendent).

Amy Van Blarcom-Lackey, *Regional Administrator, Region III.*

[FR Doc. 2026–09042 Filed 5–6–26; 8:45 am]

BILLING CODE 6560–50–P

Office of Regulatory Management

Economic Review Form

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-71-70
VAC Chapter title(s)	Regulations Governing the Discharge of Sewage and Other Wastes from Boats
Action title	Amend 9VAC25-71-70 to add 30 No Discharge Zone (NDZ) designations in Northern Neck region of Virginia; and make technical corrections to an existing NDZ
Date this document prepared	May 15, 2026
Regulatory Stage (including Issuance of Guidance Documents)	Final Exempt Action (APA §§ 2.2-4006 A 3 and A 4 c)

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

(1) Direct & Indirect Costs & Benefits (Monetized)	**Introduction**: This action amends 9VAC257170 to designate 30 No Discharge Zones (NDZs) in the Northern Neck region of Virginia and corrects a minor technical error to an existing NDZ. It is currently illegal to discharge untreated sewage from boats in all waterbodies of the Commonwealth (§ 62.144.33 A). NDZs prohibit the discharge of both treated and untreated sewage from vessels. Vessels must instead use pump-out facilities or discharge treated sewage outside the NDZ boundaries. This action is required to align with EPA's May 7, 2026, affirmative determination under Clean Water Act § 312 and to implement Va. Code § 62.144.33. The State Water Control Board adopted these amendments on June 23, 2026, as a final exempt action under APA § 2.24006 A 3 and A 4 c. The action to correct the technical error does not affect costs or benefits and therefore is not discussed in this document. Direct Costs: No direct costs are expected. The amendment only codifies NDZ boundaries and does not impose new technology, reporting, or fee requirements on agencies, localities, marinas, or boaters. Indirect Costs: Some boaters may incur operational changes (e.g., trip planning to use pump-outs, time/fuel to reach pump-out facilities, scheduling pump-out use). EPA provided an affirmative determination that confirmed that adequate, safe, and sanitary pump-out facilities are reasonably available in the NDZ areas. Pump-out fees typically range from $0–$20+ depending on tank size and marina policy, with most publicly accessible facilities charging $10 or less and several offering free service. On peak holiday weekends, approximately1,262 vessels may need pump-outs; facilities can service up to approximately 1,456 vessels based on hours and service rates, indicating that capacity exceeds demand. EPA's screening analysis estimates small increases in commercial vessel operating costs of ~0.2% (working/tug vessels), ~1.8% (commercial fishing), ~2.3% (excursion), and ~1.3% (offshore)—primarily from lost time during pump-outs; actual impacts may be lower if operators optimize scheduling. These costs could be mitigated if commercial vessel operators time pump-out activities to minimize cost impacts. Direct Benefits: The amendment does not have any direct benefits that can be monetized since the regulation only lists NDZ boundaries and does not mandate any direct measures to meet prohibitions. Adding the

	NDZ to the regulations prevents treated sewage discharges into waterbodies and contributes to efforts to improve water quality. Indirect Benefits: Marinas/pump-out providers may see increased pump-out use tied to NDZ compliance (typical fees $0–$20), resulting in modest revenue. Although benefits cannot be monetized at this time, preventing sewage discharges is expected to improve water quality, protect public health and water supplies, support aquatic life and fisheries, and strengthen tourism and local economic development and produce edible and marketable natural resources, such as commercial and recreational shellfishing and fishing industries. Improved local water quality supports marina business environment.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Per vessel pump-out cost by vessel users. $0-$20+	(b) Per vessel pump-out revenue at marinas. $0-$20+
(3) Net Monetized Benefit	Not Applicable	
(4) Other Costs & Benefits (Non-Monetized)	Indirect Benefits: Helps Virginia meet Water Quality Standards (9VAC25-260) and supports long-term efforts to remove waters from the 303(d) impaired list by reducing vessel-related pollutant inputs in NDZ waters. Expected to yield public health co-benefits and economic gains via improved shellfish waters, safer recreation, and tourism.	
(5) Information Sources	2024 Application for Federal No Discharge Zone Designation Under Clean Water Act Section 312(F)(3) for Waters of the Northern Neck, Virginia including data and information gathered on pump-out costs and number of available pump-outs from marinas	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	Maintaining the status quo would leave EPA-approved NDZs out of the regulation, which would be inconsistent with Va. Code § 62.1-44.33 and EPA's 2026 determination. Direct Costs: No direct economic costs arise from maintaining the status quo since the regulation does not directly mandate any requirements. Indirect Costs: Indirect costs cannot be monetized at this time.

	Direct and Indirect Benefits: Under the status quo, some boaters would avoid pumpout-related costs. Costs savings, as identified earlier, would be by avoiding the typical fee for pump-outs with range $0–$20+, depending on tank size and marina policy. Commercial vessels may not incur an increased operating cost ranging from ~0.2% to ~2.3%, primarily by avoiding lost time during pump-outs; actual benefits may be lower if operators were to optimize scheduling.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not Applicable	(b) Per vessel pump-out cost saved by vessel users. $0-$20+ if no NDZ established
(3) Net Monetized Benefit	$0-$20+ Per vessel pump-out cost saved by vessel users	
(4) Other Costs & Benefits (Non-Monetized)	Maintaining the status quo would not improve water quality in the impaired water bodies. The status quo would not meet Va. Code § 62.1-44.33 which establishes tidal creeks as NDZs contingent on EPA approval, which was received on May 7, 2026. Indirect Costs: Continued discharges of treated sewage in the proposed NDZ waters could worsen pathogen and nutrient inputs, undercutting shellfish protections and recreational water quality. Poor water quality may cause indirect costs on human health and aquatic life, resulting in poor fisheries, less reliable public water supplies, and negative economic costs to tourism, economic development, and commercial and recreational fishing industries. Failing to list EPA approved- NDZs risks misalignment with federal determination and Virginia law (Va. Code § 62.1-44.33), leading to potential programmatic or legal consequences.	
(5) Information Sources	2024 NDZ application including data and information gathered on pump-out costs and number of available pump-outs from marinas. DEQ NDZ Program procedures, documents, and staff	

Table 1c: Costs and Benefits under Alternative Approach(es)

(1) Direct & Indirect Costs & Benefits (Monetized)	No alternative approach to establishing the NDZ's exists. EPA has provided their affirmative determination, and this regulatory action would align with the federal determination. State Law § 62.1-44.33 establishes the tidal creeks of the Commonwealth as no discharge zones pending the receipt of an affirmative determination from the EPA.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits

	(a) Not Applicable	(b) Not Applicable
(3) Net Monetized Benefit	Not Applicable	
(4) Other Costs & Benefits (Non-Monetized)	Not Applicable	
(5) Information Sources	2024 NDZ application. DEQ NDZ Program procedures, documents, and staff.	

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: No direct monetized costs identified. Indirect Costs: No indirect monetized costs identified. Direct Benefits: No direct monetized costs identified Indirect Benefits: Cleaner waters that support shellfish, recreation, tourism, and local waterfront economies.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not Applicable	(b) Not Applicable
(3) Other Costs & Benefits (Non-Monetized)	Not Applicable	
(4) Assistance	Not Applicable	
(5) Information Sources	2024 NDZ application. DEQ NDZ Program procedures, documents, and staff.	

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	No direct costs to families are expected. Families who own or use boats in NDZs may incur pump-out fees similar to those described in Table 1a. Fees can be avoided by utilizing pump-out services at one of the marinas that offers free pump-outs or by discharging properly treated sewage in waters outside the NDZ boundary. Benefits include safer recreational waters and reduced pathogen exposure. Direct and indirect benefits through safer recreational waters and reduced pathogen exposure.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Per vessel pump-out cost by family with boat operating in an NDZ. $0–$20+	(b) Not Applicable
(3) Other Costs & Benefits (Non-Monetized)	Improved water quality will protect human health and aquatic life, resulting in healthier fisheries and safer, more reliable public water supplies. These improvements will also contribute to economic benefits from tourism and economic development and produce edible and marketable natural resources, such as commercial and recreational shellfishing and fishing industries.	
(4) Information Sources	2024 NDZ application including data and information gathered on pump-out costs and number of available pump-outs from marinas. DEQ NDZ Program procedures, documents, and staff.	

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Similar to those described in 1a. No direct costs expected. Indirect Costs: Similar to those described in 1a for commercial vessels. Direct and Indirect Benefits: Marinas/pump-out providers may see increased pump-out use tied to NDZ compliance (typical fees $0–$20), resulting in modest revenue. Improved local water quality supports marina business environment.

(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Per vessel pump-out cost by commercial vessel users. $0-$20+	(b) Per vessel pump-out revenue at marinas. $0-$20+
(3) Other Costs & Benefits (Non-Monetized)	Not Applicable	
(4) Alternatives	None	
(5) Information Sources	2024 NDZ application including data and information gathered on pump-out costs and number of available pump-outs from marinas. DEQ NDZ Program procedures, documents, and staff.	

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Total Net Change in Requirements
9VAC25-71-70	**(M/A):**	**0**	0	0	0
	(D/A):	**0**	0	0	0
	(M/R):	**5**	30[1]	0	+30
	(D/R):	**0**	0	0	0
				Grand Total of Changes in Requirements:	**(M/A):0**
					(D/A):0
					(M/R):+30
					(D/R):0

Key:

Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:

(M/A): Mandatory requirements mandated by federal and/or state statute affecting the agency itself

(D/A): Discretionary requirements affecting agency itself

(M/R): Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies

(D/R): Discretionary requirements affecting external parties, including other agencies

[1] This final exempt regulatory action incorporates the 30 NDZs established by EPA into Virginia's regulations, and maintains consistency with federal requirements.

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved*	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
9VAC25-71-70	Adds 30 new No Discharge Zones (NDZs) where discharge of treated sewage is prohibited	$0	Per vessel pump-out cost by vessel users. $0-$20+	$0-$20+ cost increase for vessel users who use pump-outs

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved*	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden
9VAC25-71-70	Adds 30 new No Discharge Zones (NDZs) where discharge of treated sewage is prohibited	Vessels must instead use pump-out facilities or discharge treated sewage outside the NDZ boundaries

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	Original Word Count	New Word Count	Net Change in Word Count
NA	NA	NA	NA

*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the appropriate chart(s).

TAB C

Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

www.deq.virginia.gov

David L. Bulova
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director

MEMORANDUM

TO: State Water Control Board Members

FROM: Jaime B. Robb, Director, Water Operations Division

DATE: May 28, 2026

SUBJECT: Final Exempt Action: Amendments to 9VAC25-151 in Response to Chapter 1080 of the 2026 Acts of Assembly

At the June 23, 2026, meeting of the State Water Control Board (Board), the Department of Environmental Quality (Department) will present the Board with final amendments to the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity (9VAC25-151, Industrial Stormwater General Permit). These amendments are necessary to implement Chapter 1080 of the 2026 Acts of Assembly.

Background

Section 62.1-44.19:21 of the Code of Virginia provides that facilities with coverage under the Industrial Stormwater General Permit Regulation, 9VAC25-151, may "acquire, use, and transfer credits for compliance with any waste load allocations established as effluent limitations in a Virginia Pollutant Discharge Elimination System (VPDES) permit." Section 62.1-44.19:13 of the Code of Virginia provides the definition of "nutrient credit or credit" that governs usage of those terms in §62.1-44.19:21 of the Code of Virginia, and defines "Nutrient credit" or "credit" to mean "a nutrient reduction that is certified pursuant to this article and expressed in pounds of phosphorus or nitrogen either (i) delivered to tidal waters when the credit is generated within the Chesapeake Bay Watershed or (ii) as otherwise specified when generated in the Southern Rivers watersheds. 'Nutrient credit' does not include point source nitrogen credits or point source phosphorus credits as defined in this section."

Chapter 1080 of the 2026 Acts of Assembly (HB952, Del. Lopez) expands the Chesapeake Bay Total Maximum Daily Load (TMDL) compliance options by allowing permittees covered under the Industrial Stormwater General Permit to use nutrient credits generated by point sources for the purpose of nutrient reduction compliance for calendar years 2025 and 2026 if certain criteria are met.

Amendments

The Industrial Stormwater General Permit governs all stormwater discharges associated with industrial activity from facilities in industrial sectors specified in the general permit. This includes stormwater discharges, through a point source to surface waters, or through a municipal or nonmunicipal separate storm sewer system to surface waters. Pursuant to 9VAC25-151-70, the authorized discharge shall be in accordance with the effluent limitations, monitoring requirements and special conditions in Part I of the general permit, the conditions applicable to all VPDES Permits in Part II, the Stormwater Pollution Prevention Plan requirements in Part III, the sector-specific requirements in Part IV, and, specific to this regulatory action, the Chesapeake Bay Total Maximum Daily Load (TMDL) Compliance requirements in Part V (9VAC25-151-400). Permittees that are required to demonstrate compliance with the Chesapeake Bay TMDLs may do so through reductions provided by one or more of the BMPs found in the Virginia Stormwater BMP Clearinghouse, implementation of site-specific BMPs, or acquisition of nonpoint source credits.

These amendments expand the Chesapeake Bay TMDL compliance options by allowing permittees to use nutrient credits generated by point sources for the purpose of nutrient reduction compliance for calendar years 2025 and 2026 if the following criteria are met:

1. The point source credits are generated and applied for purposes of compliance for the same calendar year;
2. The point source credits are acquired no later than September 1, 2026, for calendar year 2025 or June 1, 2027, for calendar year 2026;
3. The point source credits are generated in the same locality or tributary, except that permittees located in the Eastern Coastal Basin may also acquire credits from the Potomac and Rappahannock tributaries;
4. The credits are either point source nitrogen or point source phosphorus credits generated by point sources covered by the general permit issued pursuant to § 62.1-44.19:14 of the Code of Virginia; and
5. The permittee reports evidence of having obtained such credits to the Department within 30 days of the deadlines specified for calendar years 2025 and 2026.

Consistent with Chapter 1080 of the 2026 Acts of Assembly, these provisions are only applicable for calendar years 2025 and 2026. A copy of Chapter 1080 of the 2026 Acts of Assembly is attached to this memorandum.

Attorney General Certification

The Office of the Attorney General will be sent the regulations for certification of authority to adopt the amendments.

Staff Recommendation

Board Memo
May 28, 2026
Amendments to Implement Chapter 1080 of the 2026 Acts of Assembly

At the meeting scheduled for June 23, 2026, the Department will request that the Board adopt these amendments as final regulations, authorize their publication, and affirm that the Board will receive, consider and respond to petitions by any interested persons at any time with respect to reconsideration or revision.

Present Contact Information

Name: Nelson Daniel
Phone: 804-659-1752
Email: david.daniel@deq.virginia.gov

Attachments

- Draft Virginia Regulatory Townhall Document (TH-09): Amendments in Response to Chapter 1080 of the 2026 Acts of Assembly
- Chapter 1080 of the 2026 Acts of Assembly (HB952, Delegate Lopez)
- Amended Regulatory Text (RIS Project 8647)
- ORM Economic Review Form

townhall.virginia.gov

Exempt Action: Final Regulation
Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-151
VAC Chapter title(s)	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity
Action title	Amendments in response to Chapter 1080 of the 2026 Acts of Assembly (HB952)
Final agency action date	June 23, 2026
Date this document prepared	May 7, 2026

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 VPDES General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity (9VAC25-151, Industrial Stormwater General Permit) governs all stormwater discharges associated with industrial activity from facilities in industrial sectors specified in the general permit. This includes stormwater discharges, through a point source to surface waters, or through a municipal or nonmunicipal separate storm sewer system to surface waters. Pursuant to 9VAC25-151-70, the authorized discharge shall be in accordance with the effluent limitations, monitoring requirements and special conditions in Part I of the general permit, the conditions applicable to all VPDES Permits in Part II, the Stormwater Pollution Prevention Plan requirements in Part III, the sector-specific requirements in Part IV, and, specific to this

regulatory action, the Chesapeake Bay Total Maximum Daily Load (TMDL) Compliance requirements in Part V (9VAC25-151-400). Permittees that are required to demonstrate compliance with the Chesapeake Bay TMDLs may do so through reductions provided by one or more of the BMPs found in the Virginia Stormwater BMP Clearinghouse, implementation of site-specific BMPs, or acquisition of nonpoint source credits.

Chapter 1080 of the 2026 Acts of Assembly (HB952, effective July 1, 2026) expands the Chesapeake Bay TMDL compliance options by allowing permittees covered under the Industrial Stormwater General Permit to use nutrient credits generated by point sources for the purpose of nutrient reduction compliance for calendar years 2025 and 2026, subject to conditions specified in the legislation. These conditions include:

(1) Credits being generated and applied for purposes of compliance for the same calendar year;
(2) Credits being acquired no later than September 1, 2026, for calendar year 2025 or June 1, 2027, for calendar year 2026;
(3) Credits being generated in the same locality or tributary, except that permittees in the Eastern Coastal Basin may also acquire credits from the Potomac and Rappahannock tributaries;
(4) Credits being either point source nitrogen or point source phosphorus credits generated by point sources covered by the general permit issued pursuant to § 62.1-44.19:14 of the Code of Virginia; and
(5) The permittee reporting evidence of having obtained such credits to the Department of Environmental Quality within 30 days of the deadlines specified in clause (2).

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."

Chapter 1080 of the 2026 Acts of Assembly (HB952) allows permittees covered under the Industrial Stormwater General Permit to use nutrient credits generated by point sources for the purpose of compliance with nutrient reduction requirements for calendar years 2025 and 2026 if certain criteria are met. This regulatory action amends the Industrial Stormwater General Permit so that it is consistent with the change to Virginia law.

This regulatory amendment is exempt from the state administrative procedures for adoptions of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 of the Code of Virginia because it is necessary to conform to changes in Virginia statutory law where no agency discretion is involved. These amendments must be submitted to the Virginia Registrar for publication within 90 days of the effective date of the Act.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) that the agency has "adopted final amendments" to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, "On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)]."

On June 23, 2026, the State Water Control Board adopted final amendments to amend the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity (9VAC25-151).

In adopting these amendments, the State Water Control Board affirmed that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to require the Department of Environmental Quality to prioritize enforcement actions relating to certain industrial stormwater permittees under the Chesapeake Bay Watershed Nutrient Exchange Program; work group; report.

[H 952]

Approved

Be it enacted by the General Assembly of Virginia:

1. *§ 1. That for the purposes of industrial stormwater general permit nutrient reduction compliance for calendar years 2025 and 2026 pursuant to subsection D of § 62.1-44.19:21 of the Code of Virginia, the term "nutrient credit" shall include nutrient credits generated by point sources in accordance with the requirements of Article 4.02 (§ 62.1-44.19:12 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia; however, the permittee may use point source credits for compliance purposes only if (i) such credits are generated and applied for purposes of compliance for the same calendar year; (ii) such credits are acquired no later than September 1, 2026, for calendar year 2025 or June 1, 2027, for calendar year 2026; (iii) such credits are generated in the same locality or tributary, except that permittees in the Eastern Coastal Basin may also acquire credits from the Potomac and Rappahannock tributaries; (iv) such credits are either point source nitrogen or point source phosphorus credits generated by point sources covered by the general permit issued pursuant to § 62.1-44.19:14 of the Code of Virginia; and (v) the permittee reports evidence of having obtained such credits to the Department of Environmental Quality within 30 days of the deadlines specified in clause (ii). The Department of Environmental Quality shall (a) prioritize timely and appropriate enforcement actions in the case of any industrial stormwater permittee that fails to comply for calendar years 2025 and 2026 by achieving sufficient onsite nutrient reductions or acquiring sufficient point or nonpoint source nutrient credits and (b) convene a work group to evaluate and recommend conditions and requirements to most effectively address industrial stormwater general permit nutrient reduction compliance in future calendar years and submit a report summarizing such evaluation and recommendations to the Chairs of the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources no later than November 1, 2026.*

Project 8647 - Exempt Final

State Water Control Board

HB952 - point source credits for ISWGP compliance with Ches Bay TMDL, amending 9VAC25-151

Part V

Chesapeake Bay Total Maximum Daily Load Compliance

9VAC25-151-400. Chesapeake Bay total maximum daily load compliance.

A. Chesapeake Bay TMDL Compliance. EPA's Chesapeake Bay TMDL (December 29, 2010) includes wasteload allocations for VPDES permitted industrial stormwater facilities as part of the regulated stormwater aggregate load. EPA used data submitted by Virginia with the Phase I Chesapeake Bay TMDL Watershed Implementation Plan, including the number of industrial stormwater permits per county and the number of urban acres regulated by industrial stormwater permits, as part of their development of the aggregate load. Aggregate loads for industrial stormwater facilities were appropriate because actual facility loading data were not available to develop individual facility wasteload allocations.

Virginia estimated the loadings from industrial stormwater facilities using actual and estimated facility acreage information and total phosphorus (TP) and total nitrogen (TN) loading rates from the Northern Virginia Planning District Commission (NVPDC) Guidebook for Screening Urban Nonpoint Pollution Management Strategies (Annandale, VA November 1979), prepared for the Metropolitan Washington Council of Governments. The loading rates used were as follows:

TP - High (80%) imperviousness industrial; 1.5 lb/ac/yr

TN - High (80%) imperviousness industrial; 12.3 lb/ac/yr

Actual facility area information and TP and TN data collected for facilities subject to Part V of this permit will be used by the department to quantify the nutrient and sediment loads from those VPDES permitted industrial stormwater facilities.

1. Facilities that obtained coverage under the 2019 industrial stormwater general permit that demonstrated compliance with the Chesapeake Bay TMDL loading rates.

Owners shall maintain documentation of their demonstration of compliance with the Chesapeake Bay TMDL loading rates with the SWPPP and shall continue implementing any BMPs that may have been developed as part of that demonstration.

Documentation may include:

a. Calculations submitted to the department indicating that reductions were not necessary;

b. A completed TMDL Action Plan, including a description of the means and methods, such as management practices and retrofit programs that were utilized to meet the required reductions;

c. Other means accepted by the department indicating compliance with the Chesapeake Bay TMDL loading rates.

2. Facilities that obtained coverage under the 2019 industrial stormwater general permit that did not demonstrate compliance with the Chesapeake Bay TMDL loading rates shall submit a demonstration to the department.

a. Owners of facilities that submitted a Chesapeake Bay TMDL action plan during the 2019 industrial stormwater general permit term that did not achieve reductions by the end of the 2019 permit term shall update and resubmit their action plan to the department for approval no later than 60 days following coverage under this general permit. Permittees shall achieve 10% of the remaining reductions by December 31, 2024, and all remaining reductions by December 31, 2025. An annual report shall be submitted to the department by June 30 of each year describing the progress in meeting the interim and final reductions. A final report to demonstrate compliance shall be submitted to the department no later than January 10, 2026. Documentation of compliance with the Chesapeake Bay TMDL loading rates shall be maintained with the SWPPP.

b. Owners of facilities that completed four samples for each outfall for TN and TP during the 2019 industrial stormwater general permit term that did not submit calculations by the end of the 2019 permit term shall utilize the procedures in Part V D to calculate their facility stormwater loads. The permittee shall submit a copy of the calculations, and a Chesapeake Bay TMDL action plan if required under Part V E, no later than 60 days following coverage under this general permit to the DEQ regional office serving the area where the industrial facility is located on a form provided by the department. Reductions, if applicable, shall be achieved by December 31, 2025, and an annual report shall be submitted to the department by June 30 of each year describing the progress in meeting the required reductions until such time that the demonstration is completed. The demonstration shall be submitted to the department no later than January 10, 2026. Documentation of compliance with the Chesapeake Bay TMDL loading rates shall be maintained with the SWPPP.

c. Owners of facilities registered prior to July 1, 2022, that did not complete four samples for each outfall for TN and TP by the end of the 2019 industrial stormwater general permit term shall monitor their discharges for TN and TP to characterize the contributions from their facility's specific industrial sector for these parameters. Total nitrogen is the sum of total Kjeldahl nitrogen (TKN) and nitrite + nitrate and shall be derived from the results of those tests. After the facility is granted coverage under the permit, samples shall be collected during each of the first four quarters of permit coverage. Samples shall be collected and analyzed in accordance with Part V B. Monitoring results shall be reported in accordance with Part V C and Part II C, and retained in accordance with Part II B. Calculations utilizing the procedures in Part V D, and a Chesapeake Bay TMDL action plan if required under Part V E, shall be submitted no later than 60 days following the completion of the fourth quarterly monitoring period to the DEQ regional office serving the area where the industrial facility is located on a form provided by the department. Reductions, if applicable, shall be achieved by December 31, 2025, and an annual report shall be submitted to the department by June 30 of each year describing the progress in meeting the required reductions until such time that the demonstration is completed. The demonstration shall be submitted to the department no later than January 10, 2026. Documentation of compliance with the Chesapeake Bay TMDL loading rates shall be maintained with the SWPPP.

Facilities may use the applicable sampling data collected during the 2019 industrial stormwater general permit term to satisfy all or part of the four monitoring periods requirement in accordance with Part V A 2 c.

d. Owners of facilities registered after June 30, 2022, that did not complete four samples for each outfall for TN and TP by the end of the 2019 industrial stormwater general permit term shall monitor their discharges in accordance with Part V A 3.

Facilities may use the applicable sampling data collected during the 2019 industrial stormwater general permit term to satisfy all or part of the four monitoring periods requirements in accordance with Part V A 3.

3. Facilities that obtain initial coverage under the 2024 industrial stormwater general permit, but are not newly constructed facilities as identified in 9VAC25-151-60 C 13.

Owners of facilities in the Chesapeake Bay watershed that obtain initial coverage under the 2024 industrial stormwater general permit shall monitor their discharges for TN and TP to characterize the contributions from their facility's specific industrial sector for these parameters. Total nitrogen is the sum of total Kjeldahl nitrogen (TKN) and nitrite + nitrate and shall be derived from the results of those tests. After the facility is granted coverage under the permit, samples shall be collected during each of the first four quarters of permit coverage. Samples shall be collected and analyzed in accordance with Part V B. Monitoring results shall be reported in accordance with Part V C and Part II C, and retained in accordance with Part II B. Calculations utilizing the procedures in Part V D and a Chesapeake Bay TMDL action plan if required under Part V E shall be submitted no later than 60 days following the completion of the fourth quarterly monitoring period to the DEQ regional office serving the area where the industrial facility is located on a form provided by the department. Reductions, if applicable, shall be achieved by two years following the end of the fourth quarterly monitoring period, and an annual report shall be submitted to the department by June 30 of each year describing the progress in meeting the required reductions until such time that the demonstration is completed. The demonstration shall be submitted to the department no later than the 10th of the month directly following the two year period. Documentation of compliance with the Chesapeake Bay TMDL loading rates shall be maintained with the SWPPP.

B. Monitoring instructions.

1. Collection and analysis of samples. Sampling requirements shall be assessed on an outfall by outfall basis. Samples shall be collected and analyzed in accordance with the requirements of Part II A.

2. When and how to sample. A minimum of one grab sample shall be taken from the discharge associated with industrial activity resulting from a storm event that results in a discharge from the site providing the interval from the preceding storm event discharge is at least 72 hours. The 72-hour storm interval is waived if the permittee is able to document that less than a 72-hour interval is representative for local storm events during the sampling period. In the case of snowmelt, the monitoring shall be performed at a time when a measurable discharge occurs at the site. For discharges from a stormwater management structure, the monitoring shall be performed at a time when a measurable discharge occurs from the structure.

The grab sample shall be taken during the first 30 minutes of the discharge. If it is not practicable to take the sample during the first 30 minutes, the sample may be taken during the first three hours of the discharge, provided that the permittee explains why a grab sample during the first 30 minutes was impracticable. This information shall be submitted in the department's electronic discharge monitoring report (e-DMR) system and maintained with the SWPPP. If the sampled discharge commingles with process or

nonprocess water, the permittee shall attempt to sample the stormwater discharge before it mixes with the nonstormwater.

3. Storm event data. For each monitoring event, except snowmelt monitoring, along with the monitoring results, the permittee shall identify the date of the storm event sampled; rainfall total (in inches) of the storm event that generated the sampled runoff; and the interval between the storm event sampled and the end of the previous storm event discharge. For snowmelt monitoring, the permittee shall identify the date of the sampling event.

4. Monitoring periods. Quarterly monitoring shall be conducted in each of the following three-month periods: January through March, April through June, July through September, and October through December.

5. Documentation explaining a facility's inability to obtain a sample (including dates and times the outfalls were viewed or sampling was attempted), of no rain event, or of deviation from the 72-hour storm interval shall be submitted with the e-DMR and maintained with the SWPPP. Acceptable documentation includes National Climatic Data Center (NCDC) weather station data, local weather station data, facility rainfall logs, and other appropriate supporting data.

6. Representative outfalls may be used in accordance with Part I A 2 f.

C. Reporting monitoring results.

1. Reporting to the department. The permittee shall follow the reporting requirements and deadlines in Table 400-1 if required by Part V A 2 or A 3:

Table 400-1
Monitoring Reporting Requirements

Quarterly Chesapeake Bay TMDL Monitoring	Submit the results by January 10, April 10, July 10, and October 10

2. Permittees shall submit results for each outfall associated with industrial activity according to the requirements of Part II C.

3. Significant digits. The permittee shall report at least the same number of significant digits as a numeric effluent limitation or TMDL wasteload allocation for a given parameter; otherwise, at least two significant digits shall be reported for a given parameter. Regardless of the rounding convention used by the permittee (i.e., five always rounding up or to the nearest even number), the permittee shall use the convention consistently and shall ensure that consulting laboratories employed by the permittee use the same convention.

D. Calculation of facility loads.

Permittees required to collect nutrient and sediment data in accordance with Part V A 2 or A 3 shall analyze the data collected to determine if pollution reductions are required. The permittee shall average the data collected at the facility for each of the pollutants of concern (POC) (e.g., TP and TN) and compare the results to the loading rates for TP and TN presented in Part V A.

The following formula may be used to determine the loading rate:

$$L = 0.226 \times P \times Pj \times (0.05 + (0.9 \times Ia)) \times C$$

where:

L = the POC loading rate (lb/acre/year)

P = the annual rainfall (inches/year) - The permittee may use either actual annual average rainfall data for the facility location (in inches/year), the Virginia annual average rainfall of 44.3 inches/year, or another method approved by the department.

Pj = the fraction of annual events that produce runoff - The permittee shall use 0.9 unless the department approves another rate.

Ia = the impervious fraction of the facility impervious area of industrial activity to the facility industrial activity area.

C = the POC average concentration of all facility samples (mg/L) - Facilities with multiple outfalls shall calculate a weighted average concentration for each outfall using the drainage area of each outfall.

For total phosphorus, all daily concentration data below the quantitation level (QL) for the analytical method used shall be treated as half the QL. All daily concentration data equal to or above the QL for the analytical method used shall be treated as it is reported.

For total nitrogen, if none of the daily concentration data for the respective species (i.e., TKN, nitrate, or nitrite) are equal to or above the QL for the respective analytical methods used, the daily TN concentration value reported shall equal one half of the largest QL used for the respective species. If one of the data is equal to or above the QL, the daily TN concentration value shall be treated as that data point is reported. If more than one of the data is above the QL, the daily TN concentration value shall equal the sum of the data points as reported.

Calculations shall be submitted to the department within 60 days from the end of the last monitoring period that satisfies the monitoring requirements in Part V A 2 or A 3. Calculations shall be submitted to the DEQ regional office serving the area where the industrial facility is located, on a form provided by the department, and maintained with the facility's SWPPP.

Alternative calculations may be accepted on a case by case basis by the department to accommodate facilities with outfalls that rarely discharge.

E. Chesapeake Bay TMDL action plan requirements. For permittees required to submit calculations in accordance with Part V D, if the calculated facility loading rate for TP or TN is above the loading rates for TP or TN presented in Part V A, then the permittee shall develop and submit a Chesapeake Bay TMDL action plan to the department.

The Chesapeake Bay TMDL action plan shall be submitted on a form provided by the department to the regional office serving the area where the industrial facility is located within 60 days following the completion of the fourth quarterly monitoring period. A copy of the current Chesapeake Bay TMDL action plan and all facility loading rate calculations shall be maintained with the facility's SWPPP. The Chesapeake Bay TMDL action plan shall include:

1. A determination of the total pollutant load reductions for TP and TN (as appropriate) necessary to reduce the annual loads from industrial activities. This shall be determined by multiplying the industrial average times the difference between the TMDL loading rates listed in Part V A and the actual facility loading rates calculated in accordance with Part V D. The reduction applies to the total difference calculated for each pollutant of concern; and

2. The means and methods, such as management practices and retrofit programs that will be utilized to meet the required reductions determined in Part V E 1 and a schedule to achieve those reductions by the applicable deadline set in Part V A 2 or A 3. Pollutant reductions may be achieved using a combination of the following alternatives:

a. Reductions provided by one or more of the BMPs found through the Virginia Stormwater BMP Clearinghouse at http://www.deq.virginia.gov/our-programs/water/stormwater/stormwater-construction/bmp-clearinghouse, or BMPs approved by the Chesapeake Bay Program. Any BMPs implemented to provide the required pollutant reductions shall be incorporated in the SWPPP and be permanently maintained by the permittee;

b. Implementation of site-specific BMPs followed by a minimum of four stormwater samples collected in accordance with sampling requirements in Part V B that demonstrate pollutant loadings have been reduced below those calculated under Part V D. Any BMPs implemented to provide the required pollutant reductions shall be incorporated in the SWPPP and be permanently maintained by the permittee; ~~or~~

c. Acquisition of nonpoint source credits certified by the board as perpetual in accordance with § 62.1-44.19:20 of the Code of Virginia~~.~~: or

d. Notwithstanding the applicable deadline set in Part V A 2 or A 3, to meet the required reductions determined in Part V E 1, for calendar years 2025 and 2026, the permittee may acquire and use nutrient credits generated by point sources in accordance with the requirements of Article 4.02 (§ 62.1-4419:12 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia for compliance purposes only if:

(1) Such point source credits are generated and applied for purposes of compliance for the same calendar year;

(2) Such point source credits are acquired no later than September 1, 2026, for calendar year 2025 or June 1, 2027, for calendar year 2026;

(3) Such point source credits are generated in the same locality or tributary, except that permittees located in the Eastern Coastal Basin may also acquire credits from the Potomac and Rappahannock tributaries;

(4) Such credits are either point source nitrogen or point source phosphorus credits generated by point sources covered by the general permit issued pursuant to § 62.1-44.19:14 of the Code of Virginia; and

(5) The permittee reports evidence of having obtained such credits to the Department within 30 days of the deadlines specified in 9VAC25-151-400 E 2 d (2).

Office of Regulatory Management

Economic Review Form

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-151
VAC Chapter title(s)	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity
Action title	Amendments to Chapter 1080 of the 2026 Acts of Assembly
Date this document prepared	May 1, 2026
Regulatory Stage (including Issuance of Guidance Documents)	Final exempt

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

(1) Direct & Indirect Costs & Benefits (Monetized)	**Background:** The VPDES General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity (9VAC25-151) governs all stormwater discharges associated with industrial activity from facilities in industrial sectors specified in the general permit. This includes stormwater discharges, through a point source to surface waters, or through a municipal or nonmunicipal separate storm sewer system to surface waters. Pursuant to 9VAC25-151-70, the authorized discharge shall be in accordance with the effluent limitations, monitoring requirements and special conditions in Part I of the general permit, the conditions applicable to all VPDES Permits in Part II, the Stormwater Pollution Prevention Plan requirements in Part III, the sector-specific requirements in Part IV, and, specific to this regulatory action, the Chesapeake Bay Total Maximum Daily Load (TMDL) Compliance requirements in Part V (9VAC25-151-400). Permittees that are required to demonstrate compliance with the Chesapeake Bay TMDLs may do so through reductions provided by one or more of the BMPs found in the Virginia Stormwater BMP Clearinghouse, implementation of site-specific BMPs, or acquisition of nonpoint source credits. Chapter 1080 of the 2026 Acts of Assembly (HB952) allows permittees to use nutrient credits generated by point sources for the purpose of industrial stormwater general permit nutrient reduction compliance for calendar years 2025 and 2026, subject to criteria established in the legislation. **Direct Costs:** There are currently 733 facilities with an active Industrial Stormwater General Permit (ISWGP) that are located in the Chesapeake Bay Watershed. 197 of the facilities had to develop TMDL action plans and make nutrient reductions by December 31, 2025, to meet 100 percent of their reduction requirements. Based on reports that were due to DEQ on January 10, 2026, over 100 facilities had not achieved the required nutrient reductions. Under current law, the only form of credits that may be used for compliance with the ISWGP nutrient reduction requirements or an individual VPDES permit for industrial stormwater's nutrient reduction requirements are nonpoint source (i.e., perpetual) credits. These credits, which do not expire, are significantly more expensive than point source (i.e., annual) credits. While the pricing of credits is governed by market principles of supply and

	demand, and varies by nutrient bank and watershed, DEQ has heard reports of nonpoint source credits that cost as much as $35,000 per pound of phosphorous (perpetual, so just a one-time payment is required). In contrast, point source or annual credits typically cost in the $10-$15 per pound range per year. **Indirect Costs:** There are no indirect costs associated with this change in the law and resulting regulation. **Direct Benefits:** This change in law and the resulting regulation will provide facilities that did not meet 100% reductions by December 31, 2025, another alternative to meet compliance for calendar years 2025 and 2026. **Indirect Benefits:** None identified.

(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Direct costs would vary by facility based on the above-mentioned factors.	(b) Facilities that did not meet compliance reductions will have an option available to now be compliant.
(3) Net Monetized Benefit	Indeterminate but positive.	
(4) Other Costs & Benefits (Non-Monetized)	None identified	
(5) Information Sources	Data on the number of facilities affected was compiled by VPDES Program staff and comes from reports facilities submitted as a condition of their ISWGP. The cost of credits also came from DEQ program staff.	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	This regulatory amendment is in response to state law where no agency discretion is involved. Retaining the status quo is not an option. **Direct Costs:** There are currently more than 100 facilities that have not met the required nutrient reductions. Lacking an alternative option to become compliant with reduction requirements, these facilities could face enforcement actions and the resulting penalties. **Indirect Costs:**

	N/A **Direct Benefits:** N/A **Indirect Benefits:** N/A	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Unable to be estimated, however enforcement actions against noncompliant facilities could potentially result in financial penalties.	(b) None identified
(3) Net Monetized Benefit	None identified	
(4) Other Costs & Benefits (Non-Monetized)	None identified	
(5) Information Sources	See table 1a	

Table 1c: Costs and Benefits under Alternative Approach(es)
This regulatory action is mandated by legislation that becomes effective July 1, 2026, Chapter 1080 of the 2026 Acts of Assembly (HB952 – Del. Lopez). There are no alternative approaches.

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	**Direct Costs:** No direct costs specific to local partners are associated with the regulation. **Indirect Costs:** No indirect costs specific to local partners are associated with the regulation. **Direct Benefits:**

	No direct benefits specific to local partners are associated with the regulation. **Indirect Benefits:** No indirect benefits specific to local partners are anticipated as a result of this regulatory action.

(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None identified	(b) None identified

(3) Other Costs & Benefits (Non-Monetized)	None identified
(4) Assistance	None identified
(5) Information Sources	See Table 1a.

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	**Direct Costs:** No direct costs specific to families are associated with the regulation. **Indirect Costs:** No indirect costs specific to families are associated with the regulation. **Direct Benefits:** No direct costs specific to families are associated with the regulation. **Indirect Benefits:** No indirect benefits to families are anticipated as a result of this regulatory action.

(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None identified.	(b) None identified.
(3) Other Costs & Benefits (Non-Monetized)	None identified.	
(4) Information Sources	See Table 1a.	

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	**Direct Costs:** No direct costs specific to small businesses are associated with the regulation. **Indirect Costs:** No indirect costs specific to small business are associated with the regulation. **Direct Benefits:** No direct benefits specific to small businesses are associated with the regulation. **Indirect Benefits:** No indirect benefits specific to small businesses are anticipated as a result of this regulatory action.
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None identified.	(b) None identified.
(3) Other Costs & Benefits (Non-Monetized)	None identified.	
(4) Alternatives	None identified.	

(5) Information Sources	See Table 1a.

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Total Net Change in Requirements
9VAC25-151-400	**(M/A):**	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	71	0	0	0
	(D/R):	9	1	0	+1
				Grand Total of Changes in Requirements:	**(M/A):** 0
					(D/A): 0
					(M/R): 0
					(D/R): +1

Key:
Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:
(M/A): Mandatory requirements mandated by federal and/or state statute affecting the agency itself
(D/A): Discretionary requirements affecting agency itself
(M/R): Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies
(D/R): Discretionary requirements affecting external parties, including other agencies

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved*	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
9VAC25-151-400	Allows permittees to use nutrient credits generated by point sources for the purpose of ISWGP nutrient reduction compliance for calendar years 2025 and 2026.	The pricing of credits is governed by market principles of supply and demand and varies by nutrient bank and watershed. DEQ has heard	Point source or annual credits typically cost in the $10-$15 per pound range per year.	The pricing of credits will vary, however adding an alternative means by which to become compliant would potentially save permittees thousands of dollars.

		reports of nonpoint source credits that cost as much as a one-time payment of $35,000 per pound of phosphorous.		

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved*	**Description of Regulatory Change**	**Overview of How It Reduces or Increases Regulatory Burden**
9VAC25-151-400	Allows permittees to use nutrient credits generated by point sources for the purpose of ISWGP nutrient reduction compliance for calendar years 2025 and 2026.	Adding an alternative route for facilities that did not meet 100% reductions by December 31, 2025, the opportunity to meet compliance for calendar years 2025 and 2026. The alternative means is directly required by Chapter 1080 of the 2026 Acts of Assembly (HB952 - Del Lopez)

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	**Original Word Count**	**New Word Count**	**Net Change in Word Count**
N/A			

*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the appropriate chart(s).

TAB D

Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

www.deq.virginia.gov

David L. Bulova
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director

MEMORANDUM

TO: State Water Control Board Members

FROM: Bryant Thomas, Water Resources Division Director

DATE: May 28, 2026

SUBJECT: Final Exempt Action: Amendments to 9VAC25-200 in response to Chapters 623 and 896 of the 2026 Acts of Assembly (HB496, Delegate Guzman/SB553, Senator Srinivasan)

At the June 23, 2026, meeting of the State Water Control Board (Board), the Department of Environmental Quality (Department) will present the Board with final amendments to the Water Withdrawal Reporting regulation (9VAC25-200). These amendments are necessary to implement Chapters 623 and 896 of the 2026 Acts of Assembly (HB496, Delegate Guzman/SB553, Senator Srinivasan).

Background

Chapters 623 and 896 of the 2026 Acts of Assembly amend § 62.1-44.38 of the Code of Virginia related to certain water users reporting water usage and water consumption data for domestic, commercial and industrial purposes, and from data centers. The legislation specifies that:

> Any water user required to report water withdrawal and use data pursuant to § 62.1-44.38 of the Code of Virginia that provides water to another person offsite shall include in its report, submitted on its regular reporting schedule, the total volume of potable water and, reported separately, the total volume of reclaimed water provided during each month for each of the following categories: (i) a data center, as that term is defined in subdivision A 43 of § 58.1-3506 of the Code of Virginia, with an air permit issued by the Department and (ii) to the extent available without utility billing system modifications, (a) domestic purposes, (b) commercial and industrial purposes, separately or combined as available, and (c) all other non-categorized purposes. Where monthly data is not available, such data may be submitted based on the total volumes provided during each quarter.

The legislation further provides that "reclaimed water" means water that has been treated and repurposed from wastewater or non-potable sources. Reclaimed water volumes shall not be aggregated with potable water volumes in any public reporting, summary, or planning document produced by the Board. In addition, the reporting requirement becomes effective on January 1, 2027.

Copies of Chapters 623 and 896 of the 2026 Acts of Assembly are attached to this memorandum.

Amendments

The Water Withdrawal Reporting regulation (9VAC25-200, effective November 23, 2022), contains the requirements for reporting of water withdrawal usage information from any user that withdraws surface water or groundwater in excess of 10,000 gallons per day for any use other than crop irrigation, or in excess of 1 million gallons in any single month for crop irrigation. The existing regulation does not require the water withdrawal report to include the volume of water provided to another person offsite. This regulatory action amends the Water Withdrawal Reporting regulation as follows so that it is consistent with the change to Virginia statutory law:

9VAC25-200-10: The definition of "Department" is being added for clarity.

9VAC25-200-40 B: Added the requirement that effective January 1, 2027, water users subject to the existing water withdrawal reporting requirements, and that also provide water to another person offsite, must report, on their existing reporting schedule, the total volume of potable water and the total volume of reclaimed water provided in each month (or each quarter if monthly data is not available) for specific purposes including:

(i) a data center, as that term is defined in subdivision A 43 of § 58.1-3506 of the Code of Virginia, with an air permit issued by the Department and

(ii) to the extent available without utility billing system modifications

(a) domestic purposes,

(b) commercial and industrial purposes, separately or combined as available, and

(c) all other non-categorized purposes.

Subsection B also added a definition of "reclaimed water" for the purposes of the reporting requirement.

Attorney General Certification

The Office of the Attorney General will be sent the final regulation for certification of statutory authority to adopt the amendments.

Staff Recommendation

At the meeting scheduled for June 23, 2026, the Department will request that the Board adopt these amendments as final regulations, authorize their publication, and affirm that the Board will receive, consider and respond to petitions by any interested persons at any time with respect to recommendations or revision.

Presenter Contact Information

Name: Nelson Daniel, Policy Analyst, Division of Policy
Phone: (804) 659-1752
Email: david.daniel@deq.virginia.gov

Attachments

Attachment A: Agency Background Document (Form TH-09)
Attachment B: Chapters 623 and 896 of the 2026 Acts of Assembly (HB496, Delegate Guzman/SB553, Senator Srinivasan)
Attachment C: Amended Regulatory Text (RIS PROJECT 8648)
Attachment D: Office of Regulatory Management (ORM) Economic Review Form

townhall.virginia.gov

Exempt Action: Final Regulation
Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-200
VAC Chapter title(s)	Water Withdrawal Reporting
Action title	Amendments in response to Chapters 623 and 896 of the 2026 Acts of Assembly (HB496/SB553)
Final agency action date	June 23, 2026
Date this document prepared	May 22, 2026

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.

Chapters 623 and 896 of the 2026 Acts of Assembly (HB 496 and SB 553) amend § 62.1-44.38 of the Code of Virginia to require that water users subject to the existing water withdrawal reporting requirements, and that also provide water to another person offsite, must report, on their existing reporting schedule, the total volume of potable water and the total volume of reclaimed water provided in each month (or each quarter if monthly data is not available) to the following categories:

(1) A data center, as that term is defined in subdivision A 43 of § 58.1-3506 of the Code of Virginia, with an air permit issued by the Department of Environmental Quality; and
(2) To the extent available without utility billing system modifications: domestic purposes, commercial and industrial purposes (separately or combined as available), and all other non-categorized purposes.

The legislation also clarifies the definition of "reclaimed water" for the purposes of the reporting requirement and specifies that the reporting requirement becomes effective on January 1, 2027.

As it is currently effective, the Water Withdrawal Reporting regulation (9VAC25-200), requires the reporting of water withdrawal usage information from any user that withdrawals surface water or groundwater in excess of 10,000 gallons per day for any use other than crop irrigation, or in excess of 1 million gallons in any single month for crop irrigation. The existing regulation does not require the water withdrawal report to include the volume of water provided to another person offsite. This regulatory action amends the Water Withdrawal Reporting regulation so that it is consistent with the change to Virginia statutory law.

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 mandate for this regulatory change is Chapters 623 and 896 of the 2026 Acts of Assembly (HB 496 and SB 553). This regulatory action amends the Water Withdrawal Reporting regulation so that it is consistent with the change to Virginia statutory law.

This regulatory action is exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act pursuant to the provisions of § 2.2-4006 A 4 a of the Code of Virginia because it is necessary to conform to changes in Virginia statutory law where no agency discretion is involved.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) that the agency has "adopted final amendments" to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, "On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)]."

On June 23, 2026, the State Water Control Board adopted final amendments to the Water Withdrawal Reporting regulation (9VAC25-200).

In adopting these amendments, the State Water Control Board affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

CHAPTER 623

An Act to amend and reenact § 62.1-44.38 of the Code of Virginia, relating to certain data from water users; water use consumption for domestic, commercial, and industrial purposes and from data centers.

[H 496]

Approved April 13, 2026

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.38 of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.38. Plans and programs; registration of certain data by water users; advisory committees; committee membership for federal, state, and local agencies; water supply planning assistance.

A. The Board shall prepare plans and programs for the management of the water resources of the Commonwealth in such a manner as to encourage, promote, and secure the maximum beneficial use and control thereof. These plans and programs shall be prepared for each major river basin of the Commonwealth, and appropriate subbasins therein, including specifically the Potomac-Shenandoah River Basin, the Rappahannock River Basin, the York River Basin, the James River Basin, the Chowan River Basin, the Roanoke River Basin, the New River Basin, and the Tennessee-Big Sandy River Basin, and for those areas in the Tidewater and elsewhere in the Commonwealth not within these major river basins. Reports for each basin shall be published by the Board.

B. 1. In preparing river basin plan and program reports enumerated in subsection A, the Board shall (i) estimate current water withdrawals and use for agriculture, industry, domestic use, and other significant categories of water users; (ii) project water withdrawals and use by agriculture, industry, domestic use, and other significant categories of water users; (iii) estimate, for each major river and stream, the minimum instream flows necessary during drought conditions to maintain water quality and avoid permanent damage to aquatic life in streams, bays, and estuaries; (iv) evaluate, to the extent practicable, the ability of existing subsurface and surface waters to meet current and future water uses, including minimum instream flows, during drought conditions; (v) evaluate, in cooperation with the Virginia Department of Health and local water supply managers, the current and future capability of public water systems to provide adequate quantity and quality of water; (vi) estimate, using a data-driven method that includes multiple reasonable assumptions about supply and demand over varying time frames, the risk that each locality and region will experience water supply shortfalls; and (vii) evaluate hydrologic, environmental, economic, social, legal, jurisdictional, and other aspects of each alternative management strategy identified.

2. The Board shall direct the Department of Environmental Quality (the Department) in its facilitation of regional water planning efforts. The Department shall (i) ensure that localities coordinate sufficiently in the development of regional water plans; (ii) provide planning, policy, and technical assistance to each regional planning area, differentiated according to each area's water supply challenges, existing resources, and other factors; and (iii) ensure that each regional plan clearly identifies the region's water supply risks and proposes strategies to address those risks.

3. When preparing drought evaluation and response plans pursuant to subdivision 1, the Board shall recognize the localities that include any portion of the service area of a water supply utility in the Commonwealth that uses the Potomac River as a water supply source as a distinct drought evaluation region. Such plans shall incorporate the provisions of the Metropolitan Washington Water Supply and Drought Awareness Response Plan: Potomac River System (2000), including provisions related to triggers, actions, and messages for the Potomac River drought evaluation region. Nothing in this subdivision regarding the incorporation of such provisions shall be construed to limit the authority of the Governor during a declared drought emergency.

C. The Board may, by regulation, require each water user withdrawing surface or subsurface water or both during each year to register, by a date to be established by the Board, water withdrawal and use data for the previous year including the estimated average daily withdrawal, maximum daily withdrawal, sources of water withdrawn, and volume of wastewater discharge, provided that the withdrawal exceeds one million gallons in any single month for use for crop irrigation, or that the daily average during any single month exceeds 10,000 gallons per day for any other user. Location data shall be provided by each user in a coordinate system specified by the Board. *Any water user required to register water withdrawal and use data pursuant to this subsection that provides water to another person offsite shall include in its report, submitted on its regular reporting schedule, the total volume of potable water and, reported separately, the total volume of reclaimed water provided during each month for each of the following categories: (i) a data center, as that term is defined in subdivision A 43 of § 58.1-3506, with an air permit issued by the Department and (ii) to the extent available without utility billing system modifications, (a) domestic purposes, (b) commercial and industrial purposes, separately or combined as available, and (c) all other non-categorized purposes. Where monthly*

data is not available, such data may be submitted based on the total volumes provided during each quarter. For purposes of this subsection "reclaimed water" means water that has been treated and repurposed from wastewater or non-potable sources. Reclaimed water volumes shall not be aggregated with potable water volumes in any public reporting, summary, or planning document produced by the Board pursuant to this section.

D. The Board shall establish advisory committees to assist it in the formulation of such plans or programs and in formulating recommendations called for in subsection E. In this connection, the Board may include committee membership for branches or agencies of the federal government, branches or agencies of the Commonwealth, branches or agencies of the government of any state in a river basin located within that state and Virginia, the political subdivisions of the Commonwealth, and all persons and corporations interested in or directly affected by any proposed or existing plan or program.

E. The Board shall prepare plans or programs and shall include in reports prepared under subsection A recommended actions to be considered by the General Assembly, the agencies of the Commonwealth and local political subdivisions, the agencies of the federal government, or any other persons that the Board may deem necessary or desirable for the accomplishment of plans or programs prepared under subsection B.

F. In addition to the preparation of plans called for in subsection A, the Board, upon written request of a political subdivision of the Commonwealth, shall provide water supply planning assistance to such political subdivision, including assistance in preparing drought management strategies, water conservation programs, evaluation of alternative water sources, state enabling legislation to facilitate a specific situation, applications for federal grants or permits, or other such planning activities to facilitate intergovernmental cooperation and coordination.

2. That the provisions of this act shall become effective on January 1, 2027.

CHAPTER 896

An Act to amend and reenact § 62.1-44.38 of the Code of Virginia, relating to certain data from water users; water use consumption for domestic, commercial, and industrial purposes and from data centers.

[S 553]

Approved April 13, 2026

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.38 of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.38. Plans and programs; registration of certain data by water users; advisory committees; committee membership for federal, state, and local agencies; water supply planning assistance.

A. The Board shall prepare plans and programs for the management of the water resources of the Commonwealth in such a manner as to encourage, promote, and secure the maximum beneficial use and control thereof. These plans and programs shall be prepared for each major river basin of the Commonwealth, and appropriate subbasins therein, including specifically the Potomac-Shenandoah River Basin, the Rappahannock River Basin, the York River Basin, the James River Basin, the Chowan River Basin, the Roanoke River Basin, the New River Basin, and the Tennessee-Big Sandy River Basin, and for those areas in the Tidewater and elsewhere in the Commonwealth not within these major river basins. Reports for each basin shall be published by the Board.

B. 1. In preparing river basin plan and program reports enumerated in subsection A, the Board shall (i) estimate current water withdrawals and use for agriculture, industry, domestic use, and other significant categories of water users; (ii) project water withdrawals and use by agriculture, industry, domestic use, and other significant categories of water users; (iii) estimate, for each major river and stream, the minimum instream flows necessary during drought conditions to maintain water quality and avoid permanent damage to aquatic life in streams, bays, and estuaries; (iv) evaluate, to the extent practicable, the ability of existing subsurface and surface waters to meet current and future water uses, including minimum instream flows, during drought conditions; (v) evaluate, in cooperation with the Virginia Department of Health and local water supply managers, the current and future capability of public water systems to provide adequate quantity and quality of water; (vi) estimate, using a data-driven method that includes multiple reasonable assumptions about supply and demand over varying time frames, the risk that each locality and region will experience water supply shortfalls; and (vii) evaluate hydrologic, environmental, economic, social, legal, jurisdictional, and other aspects of each alternative management strategy identified.

2. The Board shall direct the Department of Environmental Quality (the Department) in its facilitation of regional water planning efforts. The Department shall (i) ensure that localities coordinate sufficiently in the development of regional water plans; (ii) provide planning, policy, and technical assistance to each regional planning area, differentiated according to each area's water supply challenges, existing resources, and other factors; and (iii) ensure that each regional plan clearly identifies the region's water supply risks and proposes strategies to address those risks.

3. When preparing drought evaluation and response plans pursuant to subdivision 1, the Board shall recognize the localities that include any portion of the service area of a water supply utility in the Commonwealth that uses the Potomac River as a water supply source as a distinct drought evaluation region. Such plans shall incorporate the provisions of the Metropolitan Washington Water Supply and Drought Awareness Response Plan: Potomac River System (2000), including provisions related to triggers, actions, and messages for the Potomac River drought evaluation region. Nothing in this subdivision regarding the incorporation of such provisions shall be construed to limit the authority of the Governor during a declared drought emergency.

C. The Board may, by regulation, require each water user withdrawing surface or subsurface water or both during each year to register, by a date to be established by the Board, water withdrawal and use data for the previous year including the estimated average daily withdrawal, maximum daily withdrawal, sources of water withdrawn, and volume of wastewater discharge, provided that the withdrawal exceeds one million gallons in any single month for use for crop irrigation, or that the daily average during any single month exceeds 10,000 gallons per day for any other user. Location data shall be provided by each user in a coordinate system specified by the Board. *Any water user required to register water withdrawal and use data pursuant to this subsection that provides water to another person offsite shall include in its report, submitted on its regular reporting schedule, the total volume of potable water and, reported separately, the total volume of reclaimed water provided during each month for each of the following categories: (i) a data center, as that term is defined in subdivision A 43 of § 58.1-3506, with an air permit issued by the Department and (ii) to the extent available without utility billing system modifications, (a) domestic purposes, (b) commercial and industrial purposes, separately or combined as available, and (c) all other non-categorized purposes. Where monthly*

data is not available, such data may be submitted based on the total volumes provided during each quarter. For purposes of this subsection "reclaimed water" means water that has been treated and repurposed from wastewater or non-potable sources. Reclaimed water volumes shall not be aggregated with potable water volumes in any public reporting, summary, or planning document produced by the Board pursuant to this section.

D. The Board shall establish advisory committees to assist it in the formulation of such plans or programs and in formulating recommendations called for in subsection E. In this connection, the Board may include committee membership for branches or agencies of the federal government, branches or agencies of the Commonwealth, branches or agencies of the government of any state in a river basin located within that state and Virginia, the political subdivisions of the Commonwealth, and all persons and corporations interested in or directly affected by any proposed or existing plan or program.

E. The Board shall prepare plans or programs and shall include in reports prepared under subsection A recommended actions to be considered by the General Assembly, the agencies of the Commonwealth and local political subdivisions, the agencies of the federal government, or any other persons that the Board may deem necessary or desirable for the accomplishment of plans or programs prepared under subsection B.

F. In addition to the preparation of plans called for in subsection A, the Board, upon written request of a political subdivision of the Commonwealth, shall provide water supply planning assistance to such political subdivision, including assistance in preparing drought management strategies, water conservation programs, evaluation of alternative water sources, state enabling legislation to facilitate a specific situation, applications for federal grants or permits, or other such planning activities to facilitate intergovernmental cooperation and coordination.

2. That the provisions of this act shall become effective on January 1, 2027.

Project 8648 - Exempt Final

State Water Control Board

HB496/SB553 - water users withdrawing surface or groundwater that provide water to a person offsite report the volume of water provided to data centers and other users, amending 9VAC25-200

9VAC25-200-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meaning unless the text clearly indicates otherwise:

"Board" means the State Water Control Board.

"Crop" means a living or once-living plant or part of it which is or could be harvested for value. The term includes conventional farm crops, hay, pasture, nursery and forest crops. Permanent turf and landscapings are not crops and are subject to the 10,000 gallons per day reporting threshold.

"Daily average withdrawal" shall be calculated by dividing the total quantity of water withdrawn in each calendar month by the number of days in that month.

"Department" means the Department of Environmental Quality.

"Gage" means a device or methodology for measuring cumulative volume of water withdrawn. For users subject to the Virginia Department of Health Waterworks Regulations, the gage shall satisfy the provisions of those regulations and shall produce volume determinations within ± 10% of truth. For all other users, the gage shall be consistent with sound generally-accepted engineering practice and shall produce volume determinations within ± 10% of truth.

"Person" means the Commonwealth or any of its political subdivisions; or an individual, corporation, partnership, association, authority, interstate body, or a state; or an agency, municipality, commission, or political subdivision of a state.

"User" means any person making a withdrawal of surface water or groundwater from an original source (e.g., a river, stream, lake, aquifer, or reservoir fed by any such water body), regardless of whether the user himself uses the water thus withdrawn or transfers it to another for use. The purchase of water from a waterworks by a customer of it does not constitute a withdrawal.

"VPDES" means the Virginia Pollutant Discharge Elimination System, which is the Virginia system for the issuance of permits pursuant to the Permit Regulation (9VAC25-31-10), the State Water Control Law and § 402 of the Clean Water Act (33 USC § 1342), authorizing the discharge of pollutants from a point source to surface waters.

9VAC25-200-40. Measuring and reporting requirements.

A. Measuring. Every nonexempt user other than crop irrigators shall have installed and shall operate a gaging device or methodology before commencing withdrawal and shall operate the device or methodology routinely thereafter. The gaging device or methodology shall measure the cumulative volume of water withdrawn at or near the source of withdrawal, or at the water treatment plant. Nonexempt crop irrigators shall comply with these measuring provisions by January 31, 1991, or before commencing withdrawal, whichever is later.

B. Reporting.

1. Every nonexempt user shall file with the board by January 31 of each year a reporting form, as prescribed by the board, completed insofar as it pertains to his withdrawal for the calendar year preceding. The information reported shall include the user's name, address, sources and locations of withdrawal, cumulative volume of water withdrawn each month

of the calendar year, maximum day withdrawal and the month in which it occurred, and method of withdrawal measurement.

2. Nonexempt crop irrigators shall comply with these reporting provisions by January 31, 1992, or before commencing withdrawal, whichever is later.

3. Beginning January 1, 2027, any water user required to report water withdrawal and use data pursuant to this chapter that provides water to another person offsite shall include in its report, submitted on its regular reporting schedule, the total volume of potable water and, reported separately, the total volume of reclaimed water provided during each month for each of the following categories:

a. A data center, as that term is defined in subdivision A 43 of § 58.1-3506 of the Code of Virginia, with an air permit issued by the Department and

b. To the extent available without utility billing system modifications

(1) Domestic purposes,

(2) Commercial and industrial purposes, separately or combined as available, and

(3) All other non-categorized purposes.

Where monthly data is not available, such data may be submitted based on the total volumes provided during each quarter. For purposes of this subdivision, "reclaimed water" means water that has been treated and repurposed from wastewater or non-potable sources.

Office of Regulatory Management

Economic Review Form

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-200
VAC Chapter title(s)	Water Withdrawal Reporting
Action title	Amendments in response to Chapters 623 and 896 of the 2026 Acts of Assembly (HB496/SB553)
Date this document prepared	April 30, 2026
Regulatory Stage (including Issuance of Guidance Documents)	Final Exempt

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

(1) Direct & Indirect Costs & Benefits (Monetized)	**Background:** Chapters 623 and 896 of the 2026 Acts of Assembly (HB496, Delegate Guzman/SB553, Senator Srinivasan), relating to certain data from water users, water use consumption for domestic, commercial, and industrial purposes and from data centers, amend § 62.1-44.38 of the Code of Virginia. The legislation specifies that: Any water user required to register water withdrawal and use data pursuant to this subsection that provides water to another person offsite shall include in its report, submitted on its regular reporting schedule, the total volume of potable water and, reported separately, the total volume of reclaimed water provided during each month for each of the following categories: (i) a data center, as that term is defined in subdivision A 43 of § 58.1-3506, with an air permit issued by the Department and (ii) to the extent available without utility billing system modifications, (a) domestic purposes, (b) commercial and industrial purposes, separately or combined as available, and (c) all other non-categorized purposes. Where monthly data is not available, such data may be submitted based on the total volumes provided during each quarter. The legislation also defines "reclaimed water" as water that has been treated and repurposed from wastewater or non-potable sources and provides that reclaimed water volumes shall not be aggregated with potable water volumes in any public reporting, summary, or planning document produced by the Board pursuant to this section. The legislation specifies that the provisions of the act shall become effective on January 1, 2027. This rulemaking amends the Water Withdrawal Reporting Regulation (9VAC25-200) to be consistent with the change to Virginia statutory law. **Direct Costs:** This legislation amends water withdrawal reporting requirements by requiring certain water users that already report withdrawal and use data to also report the volume of potable and reclaimed water supplied offsite to specific reporting categories. This requirement applies to both unpermitted and permitted water withdrawers. In calendar year 2024, 1,157 facilities reported water withdrawals. Precise economic impacts are unknown, however it is anticipated that water withdrawers may incur costs to extract information from existing billing records to meet the new reporting requirement. This rulemaking does not impose any direct costs on stakeholders. It is anticipated that any costs incurred by the Department of Environmental Quality (Department) will be minimal, however, modifications to the existing reporting form used to collect reporting data will be necessary to capture the additional information required by the amended regulation.

	The Department will incur costs in the form of staff time to update, test, and integrate the modified form into the reporting process, and to provide outreach and training to the regulated community both before and during the upcoming reporting cycle. **Indirect Costs:** There are no indirect costs associated with this change in the law and resulting regulation. **Direct Benefits:** This change in the law and resulting regulation provides additional water usage information for specific categories of water users. This data will benefit the Department's water supply planning process and general efforts to manage the Commonwealth's water resources. In addition, this data will provide increased transparency for stakeholders. The Department is unable to quantify these benefits. **Indirect Benefits:** There are no indirect benefits associated with this change in the law and resulting regulation.

(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Indeterminate direct and indirect costs.	(b) Indeterminate direct and indirect benefits.
(3) Net Monetized Benefit	Indeterminate but positive.	
(4) Other Costs & Benefits (Non-Monetized)	Additional water withdrawal and use information available to manage the resource.	
(5) Information Sources	Department of Planning and Budget, 2026 General Assembly Session, State Fiscal Impact Statement for SB553ER. Published 03/31/2026.	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	This regulatory amendment is in response to Virginia statutory law where no agency discretion is involved. Retaining the status quo is not an option. **Direct & Indirect Costs:** N/A **Direct & Indirect Benefits:**

	N/A	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None identified.	(b) None identified.
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	See Table 1a.	

Table 1c: Costs and Benefits under Alternative Approach(es)
This action is mandated by state statute. There are no alternative approaches.

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	Local partners would be impacted the same as other entities. **Direct Costs:** See Table 1 a. **Indirect Costs:** See Table 1 a. **Direct Benefits:** See Table 1 a. **Indirect Benefits:** See Table 1 a.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See Table 1 a.	(b) See Table 1 a..

(3) Other Costs & Benefits (Non-Monetized)	See Table 1 a.
(4) Assistance	NA
(5) Information Sources	See Table 1a.

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	**Direct Costs:** No direct costs specific to families are associated with the regulation. **Indirect Costs:** No indirect costs specific to families are associated with the regulation. **Direct Benefits:** No direct benefits specific to families are associated with the regulation. **Indirect Benefits:** No indirect benefits specific to families are anticipated as a result of this regulatory action.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None identified.	(b) None identified.
(3) Other Costs & Benefits (Non-Monetized)	(a) None identified.	
(4) Information Sources	See Table 1a.	

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	Small Businesses would be impacted the same as other entities. **Direct Costs:** See Table 1 a. **Indirect Costs:** See Table 1 a. **Direct Benefits:** See Table 1 a. **Indirect Benefits:** See Table 1 a.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None identified.	(b) None identified.
(3) Other Costs & Benefits (Non-Monetized)	None identified.	
(4) Alternatives	This action is mandated by state statute. There are no alternative approaches.	
(5) Information Sources	See Table 1a.	

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Total Net Change in Requirements
9VAC25-200-40	**(M/A):**	**0**	0	0	0
	(D/A):	**0**	0	0	0
	(M/R):	**4**	1	0	+1*
	(D/R):	**0**	0	0	0
				Grand Total of Changes in Requirements:	**(M/A):0**
					(D/A): 0
					(M/R): 5
					(D/R): 0

*****This legislation amends water withdrawal reporting requirements by requiring certain water users that already report withdrawal and use data to also report the volume of potable and reclaimed water supplied offsite to specific reporting categories.

Key:
Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:
(M/A): Mandatory requirements mandated by federal and/or state statute affecting the agency itself
(D/A): Discretionary requirements affecting agency itself
(M/R): Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies
(D/R): Discretionary requirements affecting external parties, including other agencies

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved*	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
9VAC25-200-40	Requires reporting of the volume of potable and reclaimed water supplied offsite to specific	Indeterminate.	Indeterminate.	N/A

	reporting categories.			

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved*	**Description of Regulatory Change**	**Overview of How It Reduces or Increases Regulatory Burden**
N/A	N/A	N/A

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	**Original Word Count**	**New Word Count**	**Net Change in Word Count**
N/A	N/A	N/A	N/A

*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the appropriate chart(s).

TAB E

Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

www.deq.virginia.gov

David L. Bulova
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director

MEMORANDUM

TO: State Water Control Board Members

FROM: Jaime B. Robb, Director, Water Operations Division

DATE: May 28, 2026

SUBJECT: Final Amendments to the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation: Implementation of Chapters 709 and 710 of the 2026 Acts of Assembly – Publicly owned treatment works; monitoring of PFAS.

At the June 23, 2026 meeting of the State Water Control Board (Board), the Department of Environmental Quality (Department) will present the Board with final amendments to Section 200 of 9VAC25-31, Additional conditions applicable to specified categories of VPDES permits, in the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. These amendments are necessary to implement Chapters 709 and 710 of the 2026 Acts of Assembly (HB938 – Del Clark; SB138 – Sen McPike).

Background

Chapters 709 and 710 of the 2026 Acts of Assembly amend §62.1-44.34:32 of the Code of Virginia to require every publicly owned treatment works (POTW) to mandate quarterly discharge monitoring for perfluoroalkyl and polyfluoroalkyl substances (PFAS) by specified categories of industrial users. The industrial users that are subject to discharge monitoring are required to report results of PFAS monitoring to the POTW within 30 days of receipt from the laboratory. Currently, the only requirements for PFAS testing and monitoring that are in State Water Control Board's regulations are at 9VAC25-31-805. The section requires POTWs that receive a wastestream from an industrial user that receives and cleans, repairs, refurbishes, or processes any equipment, parts, or media used to treat any water or wastewater from any off-site manufacturing process that the industrial user knows or reasonably should know uses PFAS chemicals to require the industrial user to test its wastestream for PFAS chemicals prior to and after cleaning, repairing, refurbishing, or processing such items. The categories of industrial users and monitoring requirements specified in Chapters 709 and 710 go beyond those in 9VAC25-31-805, necessitating amendments to the VPDES Permit Regulation to implement the legislation.

Summary of Regulatory Amendments

The Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31), specifically 9VAC25-31-200 (Additional conditions applicable to specified categories of VPDES permits), establishes permit conditions applicable to specific categories of VPDES permit holders. The existing regulation does not address PFAS monitoring obligations for publicly owned treatment works or their industrial users. To implement Chapters 709 and 710 of the 2026 Acts of Assembly, 9VAC25-31-200 will be amended to include a new subsection F dedicated to PFAS monitoring by specified categories of industrial users that discharge to a POTW. This is a substantive new requirement for POTWs and specifies that they:

- Require quarterly discharge monitoring for PFAS by certain categories of existing and new industrial users for an initial characterization period of one year. These include:
    - Any facility manufacturing PFAS, any electroplating or metal finishing facility using PFAS, any semiconductor or circuit board facility using PFAS, any paper or packaging manufacturing facility using PFAS, and any textile mill, tannery, or leather, fabric, or carpet treater using PFAS;
    - Centralized waste treatment industrial facilities;
    - Industrial launderers defined by NAICS (North American Industry Classification System) 812332; and
    - An airport, air base, air station, fire training facility, landfill, or other facility or site that the publicly owned treatment works has a reasonable basis to believe is a source of PFAS;
- May discontinue quarterly discharge monitoring for PFAS by an industrial user with proper monitoring results that are below the method detection level for the first two quarters;
- Require industrial users to continue discharge monitoring where PFAS is detected in quantities above the method detection limit;
- Require any new industrial user within the categories above to monitor their discharge for PFAS beginning within 90 days of the commencement of discharges to the POTW; and
- Report monitoring results to the Department of Environmental Quality on a quarterly basis.

The amendments also specify industrial users are required to report monitoring results for PFAS to the POTW no later than 30 days after receipt from the laboratory and the U.S. Environmental Protection Agency Method 1633 is the applicable test method.

Attorney General Certification

The Office of the Attorney General will be sent the regulation for certification of authority to adopt the amendments.

Staff Recommendation

At your meeting scheduled for June 23, 2026, the Department will request that the Board adopt these amendments as final regulations, authorize their publication, and affirm that the Board will

receive, consider and respond to petitions by any interested persons at any time with respect to reconsiderations or revision.

Presenter Contact Information

Name: Nelson Daniel
Phone: (804) 659-1752
Email: David.Daniel@deq.virginia.gov

Attachments

Attachment A: Draft Virginia Regulatory Town Hall Document (TH-09)
Attachment B: Chapter 709 of the 2026 Acts of Assembly (Chapter 710 is identical)
Attachment C: Text of Final Amendments to the VPDES Permit Regulation: Implementation of Chapters 709 and 710 of the 2026 Acts of Assembly
Attachment D: ORM Economic Review Form

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Exempt Action: Final Regulation
Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-31
VAC Chapter title(s)	Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation
Action title	Implementation of Chapters 709 and 710 of the 2026 Acts of Assembly
Final agency action date	June 23, 2026
Date this document prepared	May 18, 2026

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.

Chapters 709 and 710 of the 2026 Acts of Assembly (HB938 – Del Clark; SB138 – Sen McPike) amend §62.1-44.34:32 of the Code of Virginia to require every publicly owned treatment works (POTW) to mandate quarterly discharge monitoring for perfluoroalkyl and polyfluoroalkyl substances (PFAS) by specified categories of industrial users. The industrial users that are subject to discharge monitoring are required to report results of PFAS monitoring to the POTW within 30 days of receipt from the laboratory. Currently, the only requirements for PFAS testing and monitoring that are in State Water Control Board's regulations are at 9VAC25-31-805. The section requires POTWs that receive a wastestream from an industrial user that receives and cleans, repairs, refurbishes, or processes any equipment, parts, or media used to treat any water or wastewater from any off-site manufacturing process that the industrial user

knows or reasonably should know uses PFAS chemicals to require the industrial user to test its wastestream for PFAS chemicals prior to and after cleaning, repairing, refurbishing, or processing such items. The categories of industrial users and monitoring requirements specified in Chapters 709 and 710 go beyond those in 9VAC25-31-805, necessitating amendments to the VPDES Permit Regulation to implement the legislation.

This final exempt action amends 9VAC25-31-200 by adding a new subsection F which requires PFAS monitoring by certain industrial users discharging to a POTW. This is a substantive new requirement for POTWs and specifies that they:

- Require quarterly discharge monitoring for PFAS by certain categories of existing and new industrial users for an initial characterization period of one year. These include:
    - Any facility manufacturing PFAS, any electroplating or metal finishing facility using PFAS, any semiconductor or circuit board facility using PFAS, any paper or packaging manufacturing facility using PFAS, and any textile mill, tannery, or leather, fabric, or carpet treater using PFAS;
    - Centralized waste treatment industrial facilities;
    - Industrial launderers defined by NAICS (North American Industry Classification System) 812332; and
    - An airport, air base, air station, fire training facility, landfill, or other facility or site that the publicly owned treatment works has a reasonable basis to believe is a source of PFAS.
- May discontinue quarterly discharge monitoring for PFAS by an industrial user with proper monitoring results that are below the method detection level for the first two quarters;
- Require industrial users to continue discharge monitoring where PFAS is detected in quantities above the method detection limit;
- Require any new industrial user within the categories above to monitor their discharge for PFAS beginning within 90 days of the commencement of discharges to the POTW; and
- Report monitoring results to the Department of Environmental Quality on a quarterly basis.

The amendments also specify industrial users are required to report monitoring results for PFAS to the POTW no later than 30 days after receipt from the laboratory and the U.S. Environmental Protection Agency Method 1633 is the applicable test method.

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."

Chapters 709 and 710 of the 2026 Acts of Assembly amend §62.1-44.34:32 of the Code of Virginia to have POTWs require certain industrial users that discharge to the POTW monitor their discharge for PFAS, necessitating this regulatory action to incorporate those statutory requirements into the Virginia Pollutant Discharge Elimination System Permit Regulation (9VAC25-31).

This regulatory amendment is exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 a of the Code of Virginia because it is necessary to conform to changes in Virginia statutory law where no agency discretion is involved.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) that the agency has "adopted final amendments" to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, "On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)]."

On June 23, 2026, the State Water Control Board adopted final amendments to the Virginia Pollutant Discharge Elimination System (VPDES) Permit (9VAC25-31) regulation.

The regulatory action is to be effective as provided in the Administrative Process Act. In adopting these amendments, the State Water Control Board affirmed that it would receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

CHAPTER 709

An Act to amend and reenact § 62.1-44.34:32 of the Code of Virginia, relating to Department of Environmental Quality; industrial wastewater; publicly owned treatment works; PFAS monitoring.

[H 938]

Approved April 13, 2026

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.34:32 of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.34:32. Monitoring of PFAS sources for PFAS assessments.

A. For the purpose of PFAS assessments required pursuant to § 62.1-44.34:30, the Department shall require, after three months' advance notice, the owner or operator of any of the following facilities, if deemed by the Department to be a potentially significant source of PFAS in the public water system's raw water source, to perform and promptly report the results as received of representative quarterly discharge monitoring for an initial characterization period of one year, provided, however, that the Department may discontinue remaining quarterly monitoring by a facility with proper monitoring results that are below the method detection level for the first two quarters:

1. Any facility subject to self-reporting pursuant to § 62.1-44.34:31;

2. Any facility manufacturing PFAS, any electroplating or metal finishing facility using PFAS, any semiconductor or circuit board facility using PFAS, any paper or packaging manufacturing facility using PFAS, and any textile mills, tanneries, or leather, fabric, or carpet treaters using PFAS;

3. Any other facility that the Department has a reasonable basis to believe may use or manufacture PFAS based on the facility or activity type;

4. Any centralized waste treatment industrial facility;

5. Any industrial launderers defined by NAICS 812332;

6. Any facility discharging groundwater remediation wastewaters pursuant to the VPDES General Permit Regulation for Discharges from Groundwater Remediation of Contaminated Sites, Dewatering Activities of Contaminated Sites, and Hydrostatic Tests; and

7. Any airport, air base, air station, fire training facility, landfill, or other facility or site that the Department has a reasonable basis to believe has significant soil or groundwater PFAS contamination significantly impacting finished water levels.

B. *1. Every publicly owned treatment works shall require the following new or existing industrial users of the publicly owned treatment works to perform and report to the publicly owned treatment works no later than 30 days after receipt from the laboratory the results as received of quarterly discharge monitoring for PFAS for an initial characterization period of one year, provided, however, that the publicly owned treatment works may discontinue remaining quarterly monitoring by an industrial user with proper monitoring results that are below the method detection level for the first two quarters:*

a. Any facility manufacturing PFAS, any electroplating or metal finishing facility using PFAS, any semiconductor or circuit board facility using PFAS, any paper or packaging manufacturing facility using PFAS, and any textile mill, tannery, or leather, fabric, or carpet treater using PFAS;

b. Any centralized waste treatment industrial facility;

c. Any industrial launderer defined by NAICS 812332; and

d. Any airport, air base, air station, fire training facility, landfill, or other facility or site that the publicly owned treatment works has a reasonable basis to believe is a source of PFAS.

2. If an industrial user subject to the monitoring requirement in subdivision 1 detects PFAS in any amount above the method detection limit in its initial year of quarterly monitoring, such industrial user shall continue to perform and report to the publicly owned treatment works no later than 30 days after receipt from the laboratory the results as received of quarterly discharge monitoring for PFAS. The publicly owned treatment works may reduce the frequency of required monitoring to annually for any industrial user with proper monitoring results that are below the method detection level for at least two consecutive quarters.

3. For any new industrial user subject to the monitoring requirement in subdivision 1, the publicly owned treatment works shall require monitoring for PFAS using the applicable laboratory test method and submission of the results of such monitoring within 90 days of the commencement of such discharges to the publicly owned treatment works. The new industrial user shall report to the publicly owned treatment works no later than 30 days after receipt from the laboratory the monitoring results as received.

4. A publicly owned treatment works that receives PFAS monitoring results pursuant to this subsection shall report such information received to the Department on a quarterly basis in a format specified by the Department.

C. For purposes of this section, using or use of PFAS (i) means intentionally using or use of PFAS or

PFAS-containing substances as a product ingredient or as a production process aid or additive, such as wetting agents, fume suppressants, photoresists, etchants, cleaners, coatings, surfactants, or flame retardants, and (ii) does not mean using or use of manufacturing equipment that contains PFAS.

~~C.~~ *D.* For purposes of monitoring under ~~subsection~~ *subsections* A *and B*, the applicable laboratory test method is Method 1633 or such other method approved by the EPA that may be allowed by the Department. Monitoring reports shall include all PFAS analytes measured by the test method. For purposes of this section, the Department shall not require, and the facility and its laboratory shall be exempt from, environmental laboratory certification or accreditation requirements specifically for use of Method 1633.

E. The provisions of this section shall not be construed to limit the authority of the Department or the owner or operator of any publicly owned treatment works to which any user discharges wastewater to require monitoring or reporting or otherwise regulate the discharge of the PFAS target analytes or other pollutants under other applicable legal authority.

2. That any publicly owned treatment works shall notify an owner or operator of an industrial user subject to the monitoring requirement in subsection B of § 62.1-44.34:32 of the Code of Virginia, as amended by this act, that discharges pollutants into a publicly owned treatment works of the requirement to submit the initial quarterly monitoring results for PFAS pursuant to subsection B of § 62.1-44.34:32 of the Code of Virginia, as amended by this act, within 30 days of the effective date of this act.

Project 8649 - Exempt Final

State Water Control Board

HB938/SB138 - specified groups of industrial users that send wastewater to a POTW are required to test for PFAS, amending 9VAC25-31

9VAC25-31-200. Additional conditions applicable to specified categories of VPDES permits.

The following conditions, in addition to those set forth in 9VAC25-31-190, apply to all VPDES permits within the categories specified in this section:

A. Existing manufacturing, commercial, mining, and silvicultural dischargers. All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the department as soon as they know or have reason to believe:

1. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

a. One hundred micrograms per liter (100 µg/l);

b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five times the maximum concentration value reported for that pollutant in the permit application; or

d. The level established by the department in accordance with 9VAC25-31-220 F.

2. That any activity has occurred or will occur that would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

a. Five hundred micrograms per liter (500 µg/l);

b. One milligram per liter (1 mg/l) for antimony;

c. Ten times the maximum concentration value reported for that pollutant in the permit application; or

d. The level established by the department in accordance with 9VAC25-31-220 F.

B. Publicly and privately owned treatment works. All POTWs and PVOTWs must provide adequate notice to the department of the following:

1. Any new introduction of pollutants into the POTW or PVOTW from an indirect discharger that would be subject to § 301 or 306 of the CWA and the law if it were directly discharging those pollutants; and

2. Any substantial change in the volume or character of pollutants being introduced into that POTW or PVOTW by a source introducing pollutants into the POTW or PVOTW at the time of issuance of the permit.

3. For purposes of this subsection, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW or PVOTW and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW or PVOTW.

4. When the monthly average flow influent to a POTW or PVOTW reaches 95% of the design capacity authorized by the VPDES permit for each month of any three-month

period, the owner shall within 30 days notify the department in writing and within 90 days submit a plan of action for ensuring continued compliance with the terms of the permit.

a. The plan shall include the necessary steps and a prompt schedule of implementation for controlling any current problem, or any problem that could be reasonably anticipated, resulting from high influent flows.

b. Upon receipt of the owner's plan of action, the department shall notify the owner whether the plan is approved or disapproved. If the plan is disapproved, such notification shall state the reasons and specify the actions necessary to obtain approval of the plan.

c. Failure to timely submit an adequate plan shall be deemed a violation of the permit.

d. Nothing herein shall in any way impair the authority of the department to take enforcement action under § 62.1-44.15, 62.1-44.23, or 62.1-44.32 of the Code of Virginia.

C. Wastewater works operator requirements.

1. The permittee shall employ or contract at least one wastewater works operator who holds a current wastewater license appropriate for the permitted facility. The license shall be issued in accordance with Title 54.1 of the Code of Virginia and Waterworks and Wastewater Works Operators Licensing Regulations (18VAC160-30). Notwithstanding the foregoing requirement, unless the discharge is determined by the department on a case-by-case basis to be a potential contributor of pollution, no licensed operator is required for wastewater treatment works:

a. That have a design hydraulic capacity equal to or less than 0.04 mgd;

b. That discharge industrial waste or other waste from coal mining operations; or

c. That do not utilize biological or physical or chemical treatment.

2. In making this case-by-case determination, the department shall consider the location of the discharge with respect to state waters, the size of the discharge, the quantity and nature of pollutants reaching state waters, and the treatment methods used at the wastewater works.

3. The permittee shall notify the department in writing whenever the permittee is not complying or has grounds for anticipating the permittee will not comply with the requirements of subdivision 1 of this subsection. The notification shall include a statement of reasons and a prompt schedule for achieving compliance.

4. Every sewage treatment works owner shall employ or contract an operator who holds a current wastewater operator license, issued in accordance with Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia, of the appropriate class for the type of facility, as determined by the department, or higher class at the owner's option. If the position of the licensed operator of the appropriate class is unexpectedly vacated due to death, extended illness, firing for cause, resignation, or similar cause, the treatment works owner shall notify the department promptly and in accordance with any specific timeframe directed by the department. The department shall temporarily waive the licensed operator requirement for the interim, provided the owner (i) informs the department in writing of the owner's designation of another licensed operator or professional engineer responsible for interim operations within five days of the vacancy, (ii) informs the department in writing within 10 days of the vacancy arising of the owner's plan to hire a replacement licensed operator of the appropriate class as soon as practicable, (iii) implements the hiring plan diligently, and (iv) provides a monthly report to the department on the implementation and progress of such hiring plan. The

department may revoke the temporary waiver if the department finds that continued operation pursuant to the waiver presents a public health or water quality threat due to statutory, regulatory, or permit violations.

5. Where the facility is equipped with adequate technological capability, the department shall credit remote monitoring of the facility by a licensed operator of the appropriate class as operator attendance toward recommended licensed operator attendance hours, provided that the owner submits and the department approves a remote monitoring plan demonstrating that the facility possesses sufficient technology for the remote operator to adequately monitor the facility and manage onsite operators with a lower license class, mechanics, or other staff to operate the facility under the remote operator's direct supervision. In determining whether to approve a remote monitoring plan for multiple facilities, the department may consider the number of facilities the remote operator is monitoring simultaneously, whether the multiple facilities being monitored remotely are under common ownership, whether the remote operator is employed by the owner of the multiple facilities, and whether occasional in-person attendance is provided, among other factors. The department may cease crediting remote monitoring if the department finds that continued operation pursuant to the remote monitoring plan presents a public health or water quality threat due to statutory, regulatory, or permit violations. The department shall not credit remote monitoring by an operator without the appropriate license class who is operating the waterworks or treatment facility pursuant to a temporary waiver issued under subdivision 4 of this subsection.

D. Lake level contingency plans. Any VPDES permit issued for a surface water impoundment whose primary purpose is to provide cooling water to power generators shall include a lake level contingency plan to allow specific reductions in the flow required to be released when the water level above the dam drops below designated levels due to drought conditions, and such plan shall take into account and minimize any adverse effects of any release reduction requirements on downstream users. This subsection shall not apply to any such facility that addresses releases and flow requirements during drought conditions in a Virginia Water Protection Permit.

E. Concentrated animal feeding operations (CAFOs). The activities of the CAFO shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of manure, litter, or process wastewater to surface waters of the state except in the case of an overflow caused by a storm event greater than the 25-year, 24-hour storm. Agricultural stormwater discharges as defined in subdivision C 3 of 9VAC25-31-130 are permitted. Domestic sewage or industrial waste shall not be managed under the Virginia Pollutant Discharge Elimination System General Permit for CAFOs (9VAC25-191). Any permit issued to a CAFO shall include:

1. Requirements to develop, implement, and comply with a nutrient management plan. At a minimum, a nutrient management plan shall include best management practices and procedures necessary to implement applicable effluent limitations and standards. Permitted CAFOs must have nutrient management plans developed and implemented and be in compliance with the nutrient management plan as a requirement of the permit. The nutrient management plan must, to the extent applicable:

a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;

b. Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, stormwater, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;

c. Ensure that clean water is diverted, as appropriate, from the production area;

d. Prevent direct contact of confined animals with surface waters of the state;

e. Ensure that chemicals and other contaminants handled on site are not disposed of in any manure, litter, process wastewater, or stormwater storage or treatment system unless specifically designed to treat such chemicals and other contaminants;

f. Identify appropriate site-specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to surface waters of the state;

g. Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;

h. Establish protocols to land apply manure, litter, or process wastewater in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and

i. Identify specific records that will be maintained to document the implementation and management of the minimum elements described in this subdivision 1.

2. Recordkeeping requirements. The permittee must create, maintain for five years, and make available to the director upon request the following records:

a. All applicable records identified pursuant to subdivision 1 i of this subsection; and

b. In addition, all CAFOs subject to EPA Effluent Guidelines for Feedlots (40 CFR Part 412) must comply with recordkeeping requirements as specified in 40 CFR 412.37(b) and (c) and 40 CFR 412.47(b) and (c).

A copy of the CAFO's site-specific nutrient management plan must be maintained on site and made available to the director upon request.

3. Requirements relating to transfer of manure or process wastewater to other persons. Prior to transferring manure, litter, or process wastewater to other persons, large CAFOs must provide the recipient of the manure, litter, or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of EPA Effluent Guidelines for Feedlots (40 CFR Part 412). Large CAFOs must retain for five years records of the date, recipient name and address, and approximate amount of manure, litter, or process wastewater transferred to another person.

4. Annual reporting requirements for CAFOs. The permittee must submit an annual report to the director. As of the start date in Table 1 of 9VAC25-31-1020, all annual reports submitted in compliance with this subsection shall be submitted electronically by the permittee to the department in compliance with this subsection and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, the permittee may be required to report electronically if specified by a particular permit. The annual report must include:

a. The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

b. Estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous 12 months in tons or gallons;

c. Estimated amount of total manure, litter, and process wastewater transferred to other persons by the CAFO in the previous 12 months in tons or gallons;

d. Total number of acres for land application covered by the nutrient management plan developed in accordance with subdivision 1 of this subsection;

e. Total number of acres under control of the CAFO that were used for land application of manure, litter, and process wastewater in the previous 12 months;

f. Summary of all manure, litter, and process wastewater discharges from the production area that occurred in the previous 12 months, including for each discharge the date of discovery, duration of discharge, and approximate volume;

g. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner; and

h. The actual crops planted and actual yield for each field, the actual nitrogen and phosphorus content of the manure, litter, and process wastewater, the results of calculations conducted in accordance with subdivisions 5 a (2) and 5 b (4) of this subsection, and the amount of manure, litter, and process wastewater applied to each field during the previous 12 months; and, for any CAFO that implements a nutrient management plan that addresses rates of application in accordance with subdivision 5 b of this subsection, the results of any soil testing for nitrogen and phosphorus taken during the preceding 12 months, the data used in calculations conducted in accordance with subdivision 5 b (4) of this subsection, and the amount of any supplemental fertilizer applied during the previous 12 months.

5. Terms of the nutrient management plan. Any permit issued to a CAFO shall require compliance with the terms of the CAFO's site-specific nutrient management plan. The terms of the nutrient management plan are the information, protocols, best management practices, and other conditions in the nutrient management plan determined by the department to be necessary to meet the requirements of subdivision 1 of this subsection. The terms of the nutrient management plan, with respect to protocols for land application of manure, litter, or process wastewater required by subdivision 4 h of this subsection and, as applicable, 40 CFR 412.4(c), shall include the fields available for land application; field-specific rates of application properly developed, as specified in subdivisions 5 a and b of this subsection, to ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and any timing limitations identified in the nutrient management plan concerning land application on the fields available for land application. The terms shall address rates of application using one of the following two approaches, unless the department specifies that only one of these approaches may be used:

a. Linear approach. An approach that expresses rates of application as pounds of nitrogen and phosphorus, according to the following specifications:

(1) The terms include maximum application rates from manure, litter, and process wastewater for each year of permit coverage, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the department, in pounds per acre, per year, for each field to be used for land application, and certain factors necessary to determine such rates. At a minimum, the factors that are terms shall include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses of a field, such as pasture or fallow fields; the realistic yield goal for each crop or use identified for each field; the nitrogen and phosphorus recommendations from sources specified by the department for each crop or use

identified for each field; credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; and accounting for all other additions of plant-available nitrogen and phosphorus to the field. In addition, the terms include the form and source of manure, litter, and process wastewater to be land applied; the timing and method of land application; and the methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

(2) Large CAFOs that use this approach shall calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application; or

b. Narrative rate approach. An approach that expresses rates of application as a narrative rate of application that results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied, according to the following specifications:

(1) The terms include maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the department, in pounds per acre, for each field, and certain factors necessary to determine such amounts. At a minimum, the factors that are terms shall include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses, such as pasture or fallow fields, including alternative crops identified in accordance with subdivision 5 b (2) of this subsection; the realistic yield goal for each crop or use identified for each field; and the nitrogen and phosphorus recommendations from sources specified by the department for each crop or use identified for each field. In addition, the terms include the methodology by which the nutrient management plan accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied: results of soil tests conducted in accordance with protocols identified in the nutrient management plan, as required by subdivision 1 g of this subsection; credits for all nitrogen in the field that will be plant available; the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied; consideration of multi-year phosphorus application; accounting for all other additions of plant-available nitrogen and phosphorus to the field; the form and source of manure, litter, and process wastewater; the timing and method of land application; and volatilization of nitrogen and mineralization of organic nitrogen.

(2) The terms of the nutrient management plan include alternative crops identified in the CAFO's nutrient management plan that are not in the planned crop rotation. Where a CAFO includes alternative crops in its nutrient management plan, the crops shall be listed by field, in addition to the crops identified in the planned crop rotation for that field, and the nutrient management plan shall include realistic crop yield goals and the nitrogen and phosphorus recommendations from sources specified by the department for each crop. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied shall be determined in accordance with the methodology described in subdivision 5 b (1) of this subsection.

(3) For CAFOs using this approach, the following projections shall be included in the nutrient management plan submitted to the department, but are not terms of the nutrient management plan: the CAFO's planned crop rotations for each field for the

period of permit coverage; the projected amount of manure, litter, or process wastewater to be applied; projected credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; accounting for all other additions of plant-available nitrogen and phosphorus to the field; and the predicted form, source, and method of application of manure, litter, and process wastewater for each crop. Timing of application for each field, insofar as it concerns the calculation of rates of application, is not a term of the nutrient management plan.

(4) CAFOs that use this approach shall calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology required in subdivision 5 b (1) of this subsection before land applying manure, litter, and process wastewater and shall rely on the following data:

(a) A field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a concurrent determination of nitrogen that will be plant available consistent with the methodology required by subdivision 5 b (1) of this subsection, and for phosphorus, the results of the most recent soil test conducted in accordance with soil testing requirements approved by the department; and

(b) The results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

F. Publicly owned treatment works.

1. As used in this subsection, "PFAS" means per- and polyfluoroalkyl substances, as that term is defined in § 62.1-44.34:29 of the Code of Virginia.

2. Every POTW shall require the following new or existing industrial users of the POTW to perform quarterly discharge monitoring for PFAS for an initial characterization period of one year and report the results to the POTW no later than 30 days after receipt from the laboratory, provided, however, that the POTW may discontinue remaining quarterly discharge monitoring by an industrial user with proper monitoring results that are below the method detection level for the first two quarters:

a. Any facility manufacturing PFAS, any electroplating or metal finishing facility using PFAS, any semiconductor or circuit board facility using PFAS, any paper or packaging manufacturing facility using PFAS, and any textile mill, tannery, or leather, fabric, or carpet treater using PFAS;

b. Any centralized waste treatment industrial facility;

c. Any industrial launderer defined by NAICS code 812332; and

d. Any airport, air base, air station, fire training facility, landfill, or other facility or site that the POTW has a reasonable basis to believe is a source of PFAS.

3. If an industrial user subject to the monitoring requirement in subdivision 2 of this subsection detects PFAS in any amount above the method detection limit in its initial year of quarterly monitoring, such industrial user shall continue to perform and report to the POTW no later than 30 days after receiving the discharge monitoring results from the lab. The POTW may reduce the frequency of required monitoring to annually for any industrial user with proper monitoring results that are below the method detection level for at least two consecutive quarters.

4. For any new industrial user subject to the monitoring requirement in subdivision 2 of this subsection, the POTW shall require discharge monitoring for PFAS and submission of the results of such monitoring within 90 days of the commencement of such

discharges to the POTW. The new industrial user shall report to the POTW no later than 30 days after receiving the discharge monitoring results from the laboratory.

5. A POTW that receives PFAS monitoring results pursuant to subdivision 2, 3, or 4 of this subsection shall report such results to the department on a quarterly basis in a format specified by the department.

6. For purposes of discharge monitoring under this subsection, the applicable laboratory test method is Method 1633 or such other method approved by the EPA that may be allowed by the department. Monitoring reports shall include all PFAS analytes measured by the test method. For purposes of this section, the department shall not require, and the facility and its laboratory shall be exempt from, environmental laboratory certification or accreditation requirements specifically for use of Method 1633.

Office of Regulatory Management

Economic Review Form

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-31
VAC Chapter title(s)	Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation
Action title	Implementation of Chapters 709 and 710 of the 2026 Acts of Assembly
Date this document prepared	May 18, 2026
Regulatory Stage (including Issuance of Guidance Documents)	Final Exempt

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes

(1a) Direct & Indirect Costs (Monetized)	**Background:** This regulatory action is the result of Chapters 709 and 710 of the 2026 Acts of Assembly (HB938 – Del Clark; SB138 – Sen McPike). This legislation amended §62.1-44.34:32 of the Code of Virginia to require every publicly owned treatment works (POTW) to mandate quarterly per- and polyfluoroalkyl substances (PFAS) discharge monitoring by specified categories of industrial users who are required to report the results to the POTW within 30 days of receipt from the laboratory. These include:

	- Any facility manufacturing PFAS, any electroplating or metal finishing facility using PFAS, any semiconductor or circuit board facility using PFAS, any paper or packaging manufacturing facility using PFAS, and any textile mill, tannery, or leather, fabric, or carpet treater using PFAS; - Centralized waste treatment industrial facilities; - Industrial launderers defined by NAICS (North American Industry Classification System) 812332; and - An airport, air base, air station, fire training facility, landfill, or other facility or site that the publicly owned treatment works has a reasonable basis to believe is a source of PFAS. Currently, 9VAC25-31-200 (Additional conditions applicable to specified categories of VPDES permits) establishes permit conditions for specific categories of VPDES permit holders but does not address PFAS monitoring obligations for POTWs or their industrial users. To implement Chapters 709 and 710 of the 2026 Acts of Assembly, 9VAC25-31-200 will be amended to include a new subsection F dedicated to PFAS monitoring by specified categories of industrial users that discharge to a POTW. **Direct Costs:** Chapters 709 and 710 of the 2026 Acts of Assembly mandates that POTWs require PFAS monitoring by specified categories of industrial users. Industrial users will bear the cost of quarterly discharge monitoring for PFAS using Environmental Protection Agency (EPA) Method 1633, estimated at $450 to $550 per sample with a 15-day turnaround time. POTWs bear administrative costs associated with requiring, collecting, and reporting industrial user monitoring results to Department of Environmental Quality (DEQ) on a quarterly basis. Virginia has 368 POTWs that may be subject to the requirements of this subsection. Administrative costs to POTWs for requiring collecting, managing, and reporting industrial user PFAS monitoring results to DEQ will vary depending on the number of specified industrial users discharging to each POTW. Direct costs to industrial users for quarterly PFAS monitoring are estimated at $450 to $550 per sample for aqueous samples. Total cost cannot be precisely determined pending data on the number of industrial users in the specified categories discharging to Virginia POTWs. **Indirect costs:** POTWs may incur additional administrative related costs to report industrial user PFAS monitoring results to DEQ. Industrial users detecting PFAS above the method detection limit face ongoing quarterly monitoring costs beyond the initial one-year characterization period.

2 (a). Direct & Indirect Benefits (Monetized)	**Direct benefits:** POTWs and DEQ will gain access to information about PFAS concentrations discharged by industrial users, enabling more informed regulatory decision-making and identification of significant PFAS sources entering the wastewater treatment systems in the Commonwealth. Industrial users with results consistently below the method detection limit may have monitoring frequency reduced to annually by the POTW after two consecutive quarters with results less than the method detection level. **Indirect benefits:** The exemption from the laboratory certification and accreditation requirements specifically for Method 1633 may expand the pool of available laboratories, potentially reducing testing costs and turnaround time for industrial users.
3 (a) Net monetized benefit	The net monetized benefit cannot be determined at this time. Virginia has 368 POTWs that may be subject to the requirements of this subsection; however, total cost cannot be precisely determined pending data on the number of industrial users in the specified categories discharging to POTWs in Virginia. Direct and indirect benefits cannot be monetized given the absence of state or federal PFAS standards for industrial wastewater discharges.
4 (a) Other costs and benefits that cannot be monetized	An indirect benefit of monitoring is expected to be protection of human health and the environment, including public water supplies. Having information about PFAS sources and concentrations can be used for source reduction and focusing resources on PFAS treatment and removal.
5 (a) Information Sources Used	Cost information about PFAS sampling and turnaround time provided by DEQ staff; permit information was provided by DEQ.

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

1 (b) Direct & Indirect Costs (Monetized)	**Direct Costs:** None **Indirect costs:** None
2 (b). Direct & Indirect Benefits (Monetized)	**Direct benefits:** None **Indirect benefits:** None
3 (b) Net monetized benefit	None
4 (b) Other costs and benefits that cannot be monetized	Without mandatory PFAS monitoring of wastewater discharges from industrial users, significant sources of PFAS may go unidentified, leaving a gap in environmental and public health data that cannot be quantified but represents a meaningful limitation on the ability to characterize and address PFAS passing through POTWs to surface waters or into sewage sludge intended for land application.
5 (b) Information Sources Used	Cost information about PFAS sampling and turnaround time provided by DEQ staff; permit information was provided by DEQ.

Table 1c: Costs and Benefits under Alternative Approach(es)
This regulatory action is required by changes to state law as a result of Chapters 709 and 710 of the 2026 Acts of Assembly. No alternatives were considered because of the statutory requirement.

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

<table>
<tr><td>(1) Direct & Indirect Costs & Benefits (Monetized)</td><td colspan="2">Direct Costs: Virginia has 368 POTWs that may be subject to the requirements of this subsection, most of which are owned and operated by localities. Administrative costs to POTWs for requiring, collecting, managing, and reporting industrial user PFAS monitoring results to DEQ will vary depending on the number of specified industrial users discharging to each POTW. Total cost cannot be precisely determined pending data on the number of industrial users in the specified categories discharging to Virginia POTWs.

Indirect Costs: POTWs may incur indirect costs associated with developing internal procedures and staff capacity to implement the new monitoring and reporting framework, including training staff on PFAS monitoring requirements and DEQ reporting formats.

Direct Benefits: See Table 1a.

Indirect Benefits: See Table 1a.</td></tr>
<tr><td>(2) Present Monetized Values</td><td>Direct & Indirect Costs</td><td>Direct & Indirect Benefits</td></tr>
<tr><td></td><td>(a) Direct costs: None
Indirect costs: None</td><td>(b) Direct benefits:
Indirect benefits: None</td></tr>
<tr><td>(3) Other Costs & Benefits (Non-Monetized)</td><td colspan="2">Identification of industrial users discharging PFAS through mandatory monitoring may enable POTWs to pursue source reduction strategies that protect both treatment system performance and the quality of the effluent discharged and sewage sludge generated. Reduction in risks to public health and the environment cannot be quantified but represent a benefit to communities served by POTWs in the Commonwealth.</td></tr>
<tr><td>(4) Assistance</td><td colspan="2">N/A</td></tr>
<tr><td>(5) Information Sources</td><td colspan="2">Cost information about PFAS sampling and turnaround time provided by DEQ staff; permit information was provided by DEQ.</td></tr>
</table>

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	No direct or indirect costs are expected to impact families because the changes do not impose any fees or requirements on households. No direct benefits are expected.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None	(b) None.
(3) Other Costs & Benefits (Non-Monetized)	Families living near effluent discharges from POTWs receiving flow from industrial users or biosolid land application sites may benefit from early identification of industrial users discharging PFAS to POTWs.	
(4) Information Sources	Cost information about PFAS sampling and turnaround time provided by DEQ; permit information was provided by DEQ.	

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	**Direct Costs:** Small businesses operating facilities as an industrial user may be subject to the monitoring requirements in this regulation and will bear the costs of quarterly PFAS discharge monitoring using EPA Method 1633, which is currently estimated to be in the range of $450 to $550 per sample. Small businesses may face a disproportionate cost burden relative to larger industrial users given their more limited resources and administrative capacity to implement new monitoring and reporting requirements. **Indirect Costs:** Small businesses may incur costs for developing internal procedures for sample collection, chain of custody management, and reporting to the POTW within the required 30-day timeframe. **Direct Benefits:** Small businesses with PFAS discharge results consistently below the method detection limit for two consecutive quarters may have monitoring frequency reduced to annually, reducing long-term monitoring costs. **Indirect benefits:** None anticipated.

(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	None	None
(3) Other Costs & Benefits (Non-Monetized)	Small businesses that identify and address PFAS sources in their discharges may benefit from reduced regulatory risk as state and federal PFAS standards develop.	
(4) Alternatives	None. This regulatory effort is an optional choice for localities and does not impose a burden on small businesses.	
(5) Information Sources	Cost information about PFAS sampling and turnaround time provided by DEQ, PFAS staff; permit information was provided by DEQ.	

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions[1]	Subtractions	Total Net Change in Requirements
9VAC25-31-200 F	**(M/A):**	**0**	1	0	1
	(D/A):	**0**	0	0	0
	(M/R):	**0**	8	0	8
	(D/R):	**0**	1	0	1
				Grand Total of Changes in Requirements:	**(M/A): +1**
					(D/A): 0
					(M/R): +8
					(D/R): +1

[1] The implementation of Chapters 709 and 710 of the 2026 Acts of Assembly (HB938 – Del Clark; SB138 – Sen McPike) requires every publicly owned treatment works to mandate quarterly PFAS discharge monitoring by specified categories of industrial users, with results reported to the Publicly Owned Treatment Works (POTW) within 30 days of receipt from the laboratory.

Key:
Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:

(M/A): Mandatory requirements mandated by federal and/or state statute affecting the agency itself
(D/A): Discretionary requirements affecting agency itself
(M/R): Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies
(D/R): Discretionary requirements affecting external parties, including other agencies

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved*	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
9VAC25-31-200 F	Requires POTWs to mandate quarterly PFAS discharge monitoring by specified industrial user categories, with continued monitoring, frequency reduction, and quarterly reporting obligations to the department.	None	Industrial user costs for quarterly PFAS discharge monitoring are estimated at $450-$550 per sample; administrative costs to POTWs for managing and reporting results to DEQ cannot be determined at this time.	Net new cost to regulated community across 368 Virginia POTWs and their specified industrial users; total cost cannot be precisely determined pending data on the number of industrial users in the specified categories discharging to Virginia POTWs; potential long-term cost reduction for industrial users qualifying for annual monitoring frequency reduction.

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved*	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden
9VAC25-31-200 F	Adds a new standalone subsection establishing mandatory PFAS monitoring and reporting requirements for specified industrial users where none previously existed.	Increases regulatory burden on both POTWs and specified categories of industrial users by imposing new mandatory quarterly PFAS discharge monitoring and reporting

	POTWs will require monitoring and reporting by affected industrial users that discharge wastewater to the POTW.	obligations. The increase in stringency is directly required by Chapters 709 and 710 of the 2026 Acts of Assembly.

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	**Original Word Count**	**New Word Count**	**Net Change in Word Count**
N/A			

*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the app

TAB F

Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

www.deq.virginia.gov

David L. Bulova
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director

MEMORANDUM

TO: State Water Control Board Members

FROM: Jaime B. Robb, Water Operations Director

DATE: May 28, 2026

SUBJECT: Final Exempt Action: Implementation of Chapters 853 and 854 of the 2026 Acts of Assembly

At the June 23, 2026, meeting of the State Water Control Board (Board), the Department of Environmental Quality (Department) will present the Board with final amendments to the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) and the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32). These amendments are necessary to implement Chapters 853 and 854 of the 2026 Acts of Assembly (HB1433 - Del. Lopez; SB386 - Sen. Stuart).

Background

Chapters 853 and 854 of the 2026 Acts of Assembly amend § 62.1-44.19:3 of the Code of Virginia to establish per- and polyfluoroalkyl substances (PFAS) testing, reporting, and concentration-based management requirements for owners of treatment works and other permit holders that land apply, market, or distribute sewage sludge in the Commonwealth. The legislation is summarized as follows:

1) Section 62.1-44.19:3 T of the Code of Virginia states that "Beginning January 1, 2027, any owner of a sewage treatment works land applying, marketing, or distributing sewage sludge in the Commonwealth shall collect representative samples of the sewage sludge intended to be land applied, marketed, or distributed and have such samples analyzed by an accredited laboratory for PFAS." This section also specifies the analysis method, the frequency of sampling, and the requirement to report analysis results to the Department and any person land applying the sewage sludge. In addition, the requirements of this section apply to the permit holder intending to land apply, market, or distribute sewage sludge that originates from outside the Commonwealth.

2) Section 62.1-44.19:3 U of the Code of Virginia sets PFAS concentration-based biosolids management requirements after July 1, 2027. Based on perfluorooctanoic acid (PFOA) or perfluorooctane sulfonate (PFOS) concentrations in the sewage sludge, the land application, marketing, and distribution of such material is either: allowable with landowner notification, restricted with landowner notification, or prohibited and alternate treatment, use, or disposal must be arranged.

3) Section 62.1-44.19:3 V of the Code of Virginia sets PFAS concentration-based biosolids management requirements after July 1, 2029. Based on a combined PFOA and PFOS concentration in the sewage sludge, the land application, marketing, and distribution of such material is either: allowable with landowner notification, restricted with landowner notification, or prohibited and alternate treatment, use, or disposal must be arranged.

A copy of Chapter 853 (HB1443) of the 2026 Acts of Assembly is attached to this memorandum. Chapter 854 (SB386) is identical to Chapter 853.

Section 62.1-44.19:3 A 2 of the Code of Virginia states that "Sewage sludge shall be treated to meet standards for land application as required by Board regulation prior to delivery at the land application site." Sewage sludge that has received an established treatment and contains acceptable levels of certain pollutants, such that it is acceptable for land application, marketing or distribution in accordance with the VPDES Permit Regulation or the VPA Permit Regulation, is known as "biosolids." Chapters 853 and 854 of the 2026 Acts of Assembly refer to this material as "sewage sludge." Because of the distinction between "sewage sludge" and "biosolids," further references within this memorandum and within the regulatory action use the term "biosolids" when referring to material intended for land application, marketing, or distribution.

Amendments

Both the VPDES Permit Regulation and VPA Permit Regulation may authorize the land application, marketing, and distribution of biosolids, thus the requirements prescribed by the legislation are added to both regulations.

VPDES Permit Regulation (9VAC25-31):

- **Section 465 of 9VAC25-31 (new section):** Consolidating all the PFAS testing, reporting, and concentration-based management requirements of § 62.1-44.19:3 of the Code of Virginia, as amended by Chapters 853 and 854 of the 2026 Acts of Assembly, into a new section.
- **Section 485 of 9VAC25-31:** Adding subdivision D 4 to add an internal cross reference: "The permit holder shall conduct notification in accordance with 9VAC25-31-465."
- **Section 490 of 9VAC25-31:** Adding subdivision B 9 to add the citation for U.S. Environmental Protection Agency (EPA) Method 1663, which is the PFAS analysis method specified by the legislation.
- **Section 530 of 9VAC25-31:** Adding subsection K to add an internal cross reference: "Any person who land applies, markets, or distributes biosolids must do so in accordance with the requirements in 9VAC25-31-465."

- **Section 540 of 9VAC25-31:** Adding subdivision A 5 to add an internal cross reference: "Biosolids that are land applied, marketed, or distributed must satisfy the requirements in 9VAC25-31-465."

VPA Permit Regulation (9VAC25-32):

- **Section 313 of 9VAC25-32:** Adding subsection L to add an internal cross reference: "Any person who land applies, markets, or distributes biosolids must do so in accordance with the requirements in 9VAC25-32-316."
- **Section 316 of 9VAC25-32 (new section):** Consolidating all the PFAS testing, reporting, and concentration-based management requirements of § 62.1-44.19:3 of the Code of Virginia, as amended by Chapters 853 and 854 of the 2026 Acts of Assembly, into a new section.
- **Section 356 of 9VAC25-32:** Adding subdivision B 5 to add an internal cross reference: "Biosolids that are land applied, marketed, or distributed must satisfy the requirements in 9VAC25-32-316."
- **Section 515 of 9VAC25-32:** Adding subdivision A 4 to add an internal cross reference: "The permit holder shall conduct notification in accordance with 9VAC25-32-316."
- **Section 570 of 9VAC25-32:** Adding subdivision A 6 to add an internal cross reference: "The biosolids product must meet the requirements specified in 9VAC25-32-316."

A copy of the Amended Regulatory Text (RIS PROJECT 8650) is attached to this memorandum.

Attorney General Certification

The Office of the Attorney General will be sent the regulations for certification of authority to adopt the amendments.

Staff Recommendation

At your meeting scheduled for June 23, 2026, the Department will request that the Board adopt these amendments as final regulations, authorize their publication, and affirm that the Board will receive, consider and respond to petitions by any interested persons at any time with respect to reconsiderations or revision as provided in § 2.2-4006 B of the Administrative Process Act.

Presenter Contact Information
Name: Nelson Daniel, Policy Analyst, Division of Policy
Phone: (804) 659-1752
Email: David.Daniel@deq.virginia.gov

Attachments
Attachment A: Draft Virginia Regulatory Town Hall Document (TH-09): Implementation of Chapters 853 and 854 of the 2026 Acts of Assembly (HB1443/SB386)
Attachment B: Chapter 853 of the Virginia Acts of Assembly of the 2026 General Assembly (HB1443) (Chapter 854 (SB386) is identical)
Attachment C: Amended Regulatory Text (RIS PROJECT 8650)
Attachment D: ORM Economic Review Form

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Exempt Action: Final Regulation
Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-31 9VAC25-32
VAC Chapter title(s)	Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32)
Action title	Implementation of Chapters 853 and 854 of the 2026 Acts of Assembly
Final agency action date	June 23, 2026
Date this document prepared	May 12, 2026

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.

Chapters 853 and 854 of the 2026 Acts of Assembly (HB1433 – Del. Lopez; SB386 – Sen. Stuart) amend § 62.1-44.19:3 of the Code of Virginia to establish per- and polyfluoroalkyl substances (PFAS) testing, reporting, and concentration-based management requirements for owners of sewage treatment works and other permit holders that land apply, market, or distribute sewage sludge in the Commonwealth.

The Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) and the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32) contain the requirements for treated sewage sludge that is managed in a manner to meet the required pathogen control and vector attraction reduction, and contains acceptable levels of certain pollutants, such that it is acceptable for land

application, marketing, or distribution (and is thus called “biosolids”). Currently, neither the VPA Permit Regulation nor the VPDES Permit Regulation address PFAS testing, reporting, or concentration-based management requirements for biosolids land application, marketing, and distribution.

To implement Chapters 853 and 854 of the 2026 Acts of Assembly, 9VAC25-31 is being amended to add a new section 9VAC25-31-465 (PFAS requirements) that consolidates all statutory PFAS requirements related to biosolids into a single location within the VPDES Permit Regulation. A parallel new section 9VAC25-32-316 (PFAS requirements) is also being added to 9VAC25-32, to consolidate all statutory PFAS requirements related to biosolids into a single location within the VPA Permit Regulation. In addition to the new sections, references to the PFAS requirements are added where appropriate within both 9VAC25-31 and 9VAC25-32. Together, these amendments implement the statutory mandates of § 62.1-44.19:3 of the Code of Virginia, as amended by Chapters 853 and 854 of the 2026 Acts of Assembly, across both permit frameworks, ensuring all permit holders with biosolids land application, marketing, and distribution obligations are subject to the same PFAS requirements regardless of permit type.

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.”

Chapters 853 and 854 of the 2026 Acts of Assembly amend § 62.1-44.19:3 of the Code of Virginia to establish PFAS testing, reporting, and concentration-based management requirements for owners of sewage treatment works and other permit holders that land apply, market, or distribute biosolids in the Commonwealth.

This regulatory amendment is exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 a of the Code of Virginia because it is necessary to conform to changes in Virginia statutory law where no agency discretion is involved. These amendments must be submitted to the Virginia Register for publication within 90 days of the effective date of the Act.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) that the agency has “adopted final amendments” to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, “On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)].”

On June 23, 2026, the State Water Control Board adopted final amendments to the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) and the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32).

The regulatory action is to be effective as provided in the Administrative Process Act. In adopting these amendments, the State Water Control Board affirmed that it would receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

CHAPTER 853

An Act to amend and reenact § 62.1-44.19:3 of the Code of Virginia, relating to owners of sewage treatment works; land application, marketing, or distribution of sewage sludge; perfluoroalkyl and polyfluoroalkyl substances; testing requirements.

[H 1443]

Approved April 13, 2026

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.19:3 of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.19:3. Prohibition on land application, marketing, and distribution of sewage sludge without permit; ordinances; notice requirement; fees.

A. 1. No owner of a sewage treatment works shall land apply, market, or distribute sewage sludge from such treatment works except in compliance with a valid Virginia Pollutant Discharge Elimination System Permit or valid Virginia Pollution Abatement Permit.

2. Sewage sludge shall be treated to meet standards for land application as required by Board regulation prior to delivery at the land application site. No person shall alter the composition of sewage sludge at a site approved for land application of sewage sludge under a Virginia Pollution Abatement Permit or a Virginia Pollutant Discharge Elimination System. Any person who engages in the alteration of such sewage sludge shall be subject to the penalties provided in Article 6 (§ 62.1-44.31 et seq.). The addition of lime or deodorants to sewage sludge that has been treated to meet land application standards shall not constitute alteration of the composition of sewage sludge. The Department may authorize public institutions of higher education to conduct scientific research on the composition of sewage sludge that may be applied to land.

3. No person shall contract or propose to contract, with the owner of a sewage treatment works, to land apply, market, or distribute sewage sludge in the Commonwealth, nor shall any person land apply, market, or distribute sewage sludge in the Commonwealth without a current Virginia Pollution Abatement Permit authorizing land application, marketing, or distribution of sewage sludge and specifying the location or locations, and the terms and conditions of such land application, marketing, or distribution. The permit application shall not be complete unless it includes the landowner's written consent to apply sewage sludge on his property.

4. The land disposal of lime-stabilized septage and unstabilized septage is prohibited.

5. Beginning July 1, 2007, no application for a permit or variance to authorize the storage of sewage sludge shall be complete unless it contains certification from the governing body of the locality in which the sewage sludge is to be stored that the storage site is consistent with all applicable ordinances. The governing body shall confirm or deny consistency within 30 days of receiving a request for certification. If the governing body does not so respond, the site shall be deemed consistent.

B. The Board, with the assistance of the Department of Conservation and Recreation and the Department of Health, shall adopt regulations to ensure that (i) sewage sludge permitted for land application, marketing, or distribution is properly treated or stabilized; (ii) land application, marketing, and distribution of sewage sludge is performed in a manner that will protect public health and the environment; and (iii) the escape, flow, or discharge of sewage sludge into state waters in a manner that would cause pollution of state waters, as those terms are defined in § 62.1-44.3, shall be prevented.

C. Regulations adopted by the Board, with the assistance of the Department of Conservation and Recreation and the Department of Health pursuant to subsection B, shall include:

1. Requirements and procedures for the issuance and amendment of permits, including general permits, authorizing the land application, marketing, or distribution of sewage sludge;

2. Procedures for amending land application permits to include additional application sites and sewage sludge types;

3. Standards for treatment or stabilization of sewage sludge prior to land application, marketing, or distribution;

4. Requirements for determining the suitability of land application sites and facilities used in land application, marketing, or distribution of sewage sludge;

5. Required procedures for land application, marketing, and distribution of sewage sludge;

6. Requirements for sampling, analysis, recordkeeping, and reporting in connection with land application, marketing, and distribution of sewage sludge;

7. Provisions for notification of local governing bodies to ensure compliance with §§ 62.1-44.15:3 and 62.1-44.19:3.4;

8. Requirements for site-specific nutrient management plans, which shall be developed by persons certified in accordance with § 10.1-104.2 prior to land application for all sites where sewage sludge is land

applied, and approved by the Department of Conservation and Recreation prior to permit issuance under specific conditions, including but not limited to sites operated by an owner or lessee of a Confined Animal Feeding Operation, as defined in subsection A of § 62.1-44.17:1, or Confined Poultry Feeding Operation, as defined in § 62.1-44.17:1.1, sites where the permit authorizes land application more frequently than once every three years at greater than 50 percent of the annual agronomic rate, and other sites based on site-specific conditions that increase the risk that land application may adversely impact state waters;

9. Procedures for the prompt investigation and disposition of complaints concerning land application of sewage sludge, including the requirements that (i) holders of permits issued under this section shall report all complaints received by them to the Department and to the local governing body of the jurisdiction in which the complaint originates and (ii) localities receiving complaints concerning land application of sewage sludge shall notify the Department and the permit holder. The Department shall maintain a searchable electronic database of complaints received during the current and preceding calendar year, which shall include information detailing each complaint and how it was resolved;

10. Procedures for receiving and responding to public comments on applications for permits and for permit amendments authorizing land application at additional sites. Such procedures shall provide that an application for any permit amendments to increase the acreage authorized by the initial permit by 50 percent or more shall be treated as a new application for purposes of public notice and public hearings; and

11. Procedures for addressing administrative, staging, signage, and additional on-site and alternative storage site requirements when routine and on-site storage facility capacity and holding times are anticipated to be exceeded for the purpose of protecting against the release of sewage sludge into state waters, and to account for increased intensity, frequency, and duration of storm events.

D. Prior to issuance of a permit authorizing the land application, marketing, or distribution of sewage sludge, the Department shall consult with and give full consideration to the written recommendations of the Department of Health and the Department of Conservation and Recreation. Such consultation shall include any public health risks or water quality impacts associated with the permitted activity. The Department of Health and the Department of Conservation and Recreation may submit written comments on proposed permits within 30 days after notification by the Department.

E. Where, because of site-specific conditions, including soil type, identified during the permit application review process, the Department determines that special requirements are necessary to protect the environment or the health, safety, or welfare of persons residing in the vicinity of a proposed land application site, the Department may incorporate in the permit at the time it is issued reasonable special conditions regarding buffering, transportation routes, slope, material source, methods of handling and application, and time of day restrictions exceeding those required by the regulations adopted under this section. Before incorporating any such conditions into the permit, the Department shall provide written notice to the permit applicant, specifying the reasons therefor and identifying the site-specific conditions justifying the additional requirements. The Department shall incorporate into the notice any written requests or recommendations concerning such site-specific conditions submitted by the local governing body where the land application is to take place. The permit applicant shall have at least 14 days in which to review and respond to the proposed conditions.

F. The Board shall adopt regulations prescribing a fee to be charged to all permit holders and persons applying for permits and permit modifications pursuant to this section. All fees collected pursuant to this subsection shall be deposited into the Sludge Management Fund. The fee for the initial issuance of a permit shall be $5,000. The fee for the reissuance, amendment, or modification of a permit for an existing site shall not exceed $1,000 and shall be charged only for permit actions initiated by the permit holder. Fees collected under this section shall be exempt from statewide indirect costs charged and collected by the Department of Accounts and shall not supplant or reduce the general fund appropriation to the Department.

G. There is hereby established in the treasury a special fund to be known as the Sludge Management Fund, hereinafter referred to as the Fund. The fees required by this section and by subsection E of § 62.1-44.16 shall be transmitted to the Comptroller to be deposited into the Fund. The income and principal of the Fund shall be used only and exclusively (i) for the Department's direct and indirect costs associated with the processing of an application to issue, reissue, amend, or modify any permit to land apply, distribute, or market sewage sludge or industrial wastes, the administration and management of the Department's sewage sludge and industrial wastes land application programs, including monitoring and inspecting, and the Department of Conservation and Recreation's costs for implementation of the sewage sludge application program and (ii) to reimburse localities with duly adopted ordinances providing for the testing and monitoring of the land application of sewage sludge or solid or semisolid industrial wastes. The State Treasurer shall be the custodian of the moneys deposited in the Fund. No part of the Fund, either principal or interest earned thereon, shall revert to the general fund of the state treasury.

H. All persons holding or applying for a permit authorizing the land application of sewage sludge shall provide to the Board written evidence of financial responsibility, which shall be available to pay claims for cleanup costs, personal injury, and property damages resulting from the transportation, storage, or land application of sewage sludge. The Board shall, by regulation, establish and prescribe mechanisms for meeting

the financial responsibility requirements of this section.

I. Any ~~county, city, or town~~ *locality* may adopt an ordinance that provides for the testing and monitoring of the land application of sewage sludge within its political boundaries to ensure compliance with applicable laws and regulations.

J. The Department, upon the timely request of any individual to test the sewage sludge at a specific site, shall collect samples of the sewage sludge at the site prior to the land application and submit such samples to a laboratory. The testing shall include an analysis of the (i) concentration of trace elements, (ii) coliform count, and (iii) pH level. The results of the laboratory analysis shall be (a) furnished to the individual requesting that the test be conducted and (b) reviewed by the Department. The person requesting the test and analysis of the sewage sludge shall pay the costs of sampling, testing, and analysis.

K. At least 100 days prior to commencing land application of sewage sludge at a permitted site, the permit holder shall deliver or cause to be delivered written notification to the chief executive officer or his designee for the local government where the site is located. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site. This requirement may be satisfied by providing a list of all available permitted sites in the locality at least 100 days prior to commencing the application at any site on the list. This requirement shall not apply to any application commenced prior to October 10, 2005. If the site is located in more than one county, the notice shall be provided to all jurisdictions where the site is located.

L. The permit holder shall deliver or cause to be delivered written notification to the Department at least 14 days prior to commencing land application of sewage sludge at a permitted site. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site.

M. The Department shall randomly conduct unannounced site inspections while land application of sewage sludge is in progress at a sufficient frequency to determine compliance with the requirements of this section, § 62.1-44.19:3.1, or regulations adopted under those sections.

N. Surface incorporation into the soil of sewage sludge applied to cropland may be required when practicable and compatible with a soil conservation plan meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service.

O. The Board shall develop regulations specifying and providing for extended buffers to be employed for application of sewage sludge (i) to hay, pasture, and forestlands or (ii) to croplands where surface incorporation is not practicable or is incompatible with a soil conservation plan meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service. Such extended buffers may be included by the Department as site specific permit conditions pursuant to subsection E, as an alternative to surface incorporation when necessary to protect odor sensitive receptors as determined by the Department or the local monitor.

P. The Board shall adopt regulations requiring the payment of a fee for the land application of sewage sludge, pursuant to permits issued under this section. The person land applying sewage sludge shall (i) provide advance notice of the estimated fee to the generator of the sewage sludge unless notification is waived, (ii) collect the fee from the generator, and (iii) remit the fee to the Department as provided for by regulation. The fee shall be imposed on each dry ton of sewage sludge that is land applied in the Commonwealth. The regulations shall include requirements and procedures for:

1. Collection of fees by the Department;

2. Deposit of the fees into the Fund; and

3. Disbursement of proceeds by the Department pursuant to subsection G.

Q. The Department, in consultation with the Department of Health, the Department of Conservation and Recreation, the Department of Agriculture and Consumer Services, and the Virginia Cooperative Extension Service, shall establish and implement a program to train persons employed by those local governments that have adopted ordinances, pursuant to this section, to test and monitor the land application of sewage sludge. The program shall include, at a minimum, instruction in: (i) the provisions of the Virginia Biosolids Use Regulations; (ii) land application methods and equipment, including methods and processes for preparation and stabilization of sewage sludge that is land applied; (iii) sampling and chain of custody control; (iv) preparation and implementation of nutrient management plans for land application sites; (v) complaint response and preparation of complaint and inspection reports; (vi) enforcement authority and procedures; (vii) interaction and communication with the public; and (viii) preparation of applications for reimbursement of local monitoring costs disbursed pursuant to subsection G. To the extent feasible, the program shall emphasize in-field instruction and practical training. Persons employed by local governments shall successfully complete such training before the local government may request reimbursement from the Board for testing and monitoring of land application of sewage sludge performed by the person. The completion of training shall not be a prerequisite to the exercise of authority granted to local governments by any applicable provision of law.

The Department may:

1. Charge attendees a reasonable fee to recover the actual costs of preparing course materials and

providing facilities and instructors for the program. The fee shall be reimbursable from the Fund established pursuant to this section; and

2. Request and accept the assistance and participation of other state agencies and institutions in preparing and presenting the course of training established by this subsection.

R. Localities, as part of their zoning ordinances, may designate or reasonably restrict the storage of sewage sludge based on criteria directly related to the public health, safety, and welfare of its citizens and the environment. Notwithstanding any contrary provision of law, a locality may by ordinance require that a special exception or a special use permit be obtained to begin the storage of sewage sludge on any property in its jurisdiction, including any area that is zoned as an agricultural district or classification. Such ordinances shall not restrict the storage of sewage sludge on a farm as long as such sludge is being stored (i) solely for land application on that farm and (ii) for a period no longer than 45 days. No person shall apply to the State Health Commissioner or the Department of Environmental Quality for a permit, a variance, or a permit modification authorizing such storage without first complying with all requirements adopted pursuant to this subsection.

S. (Expires July 1, 2030) The permitting requirements of this article shall not apply to any land application of sewage sludge for a research project when such land is owned and operated by an institution of higher education in the Commonwealth. At least 30 days prior to commencing any land application of sewage sludge, the institution of higher education shall notify the Department and the owner of every adjoining property of its intent to land apply such sewage sludge. The institution of higher education shall comply with setback and recordkeeping requirements as outlined in the Virginia Pollution Abatement Permit Regulation (9VAC25-32). As used in this subsection, "institution of higher education" means a public institution of higher education, as that term is defined in § 23.1-100.

T. Beginning January 1, 2027, any owner of a sewage treatment works land applying, marketing, or distributing sewage sludge in the Commonwealth shall collect representative samples of the sewage sludge intended to be land applied, marketed, or distributed and have such samples analyzed by an accredited laboratory for PFAS, as that term is defined in § 62.1-44.34:29, using U.S. Environmental Protection Agency (EPA) Method 1633, an applicable EPA revision, or another method approved by the EPA that may be allowed by the Department. The minimum frequency of such sampling shall be monthly for the initial sampling period from January 1, 2027, through December 31, 2027, and thereafter may be reduced to not less frequently than quarterly upon the approval of the Department. The owner of the sewage treatment works shall provide the concentration results for PFOS and PFOA, as those terms are defined in § 62.1-44.34:29, and all other target analytes from the analysis to the Department and any person land applying sewage sludge from the sewage treatment works within 10 days of receipt of such results. If the sewage treatment works that is the source of the sewage sludge is located outside of the Commonwealth, the permit holder intending to land apply, market, or distribute the sewage sludge in the Commonwealth from such sewage treatment works shall provide analyses to the Department that meet all requirements of this subsection.

U. After July 1, 2027, if the analysis required under subsection T finds:

1. A PFOS or PFOA concentration in the sewage sludge of greater than or equal to 50 micrograms per kilogram annual average on a rolling 12-month basis, such sewage sludge shall not be land applied, marketed, or distributed. The owner of the sewage treatment works shall arrange for alternative treatment, use, or disposal of such sewage sludge until such time as the annual average on a rolling 12-month basis demonstrates a concentration of less than 50 micrograms per kilogram;

2. A PFOS or PFOA concentration in the sewage sludge of greater than or equal to 25 but less than 50 micrograms per kilogram annual average on a rolling 12-month basis, the permit holder shall reduce the application rate to 3 dry tons per acre, not to exceed the application rate required by the nutrient management plan, or submit to the Department for approval an alternative risk management strategy at least two weeks prior to land application in lieu of the reduced land application rate. Such permit holder shall reduce the application rate required in this subdivision until such time as the annual average on a 12-month basis demonstrates a concentration of less than 25 micrograms per kilogram. The permit holder shall send the concentrations for PFOS and PFOA demonstrating compliance with this subdivision and the concentrations for all other target analytes required under subsection T in a reader-friendly format by email or mail to the landowner at every property at which the permit holder intends to land apply such sewage sludge at least two weeks prior to land application. Notwithstanding the provisions of this subdivision, if any single test result exceeds 75 micrograms per kilogram for PFOS or PFOA, the owner of the sewage treatment works shall promptly collect another sample for testing, and if the result of such sample exceeds 75 micrograms per kilogram for PFOS or PFOA, the owner of the sewage treatment works shall arrange for alternative treatment, use, or disposal of such sewage sludge until such time as a subsequent sample result demonstrates a concentration of less than 50 micrograms per kilogram; or

3. A PFOS and PFOA concentration in the sewage sludge of less than 25 micrograms per kilogram annual average on a rolling 12-month basis, the permit holder may land apply, market, or distribute such sewage sludge in accordance with its permit with no additional requirements. The permit holder shall send

the concentrations for PFOS and PFOA demonstrating compliance with this subdivision and the concentrations for all other target analytes required under subsection T in a reader-friendly format by email or mail to the landowner at every property at which the permit holder intends to land apply such sewage sludge at least two weeks prior to land application.

When sewage sludge from two or more sewage sludge treatment works is blended prior to land application, the requirements of subdivisions 1, 2, and 3 shall be applied to the blended sewage sludge without further testing, using a mass-balance calculation.

V. After July 1, 2029, if the analysis required under subsection T finds:

1. A combined PFOS and PFOA concentration in the sewage sludge of greater than or equal to 50 micrograms per kilogram annual average on a rolling 12-month basis, such sewage sludge shall not be land applied, marketed, or distributed. The owner of the sewage treatment works shall arrange for alternative treatment, use, or disposal of such sewage sludge until the annual average on a rolling 12-month basis demonstrates a concentration of less than 50 micrograms per kilogram;

2. A combined PFOS and PFOA concentration in the sewage sludge of greater than or equal to 25 but less than 50 micrograms per kilogram annual average on a rolling 12-month basis, the permit holder shall reduce the application rate to 3 dry tons per acre, not to exceed the application rate required by the nutrient management plan, or submit to the Department for approval an alternative risk management strategy at least two weeks prior to land application in lieu of the reduced land application rate. Such permit holder shall reduce the application rate required in this subdivision until such time as the annual average on a rolling 12-month basis demonstrates a concentration of less than 25 micrograms per kilogram. The permit holder shall send the concentrations for PFOS and PFOA demonstrating compliance with this subdivision and the concentrations for all other target analytes required under subsection T in a reader-friendly format by email or mail to the landowner at every property at which the permit holder intends to land apply such sewage sludge at least two weeks prior to land application. Notwithstanding the provisions of this subdivision, if any single test result exceeds a combined PFOS and PFOA concentration of 75 micrograms per kilogram, the owner of the sewage treatment works shall promptly collect another sample for testing and if the result of such test exceeds a combined PFOS and PFOA concentration of 75 micrograms per kilogram, such owner shall arrange for the alternative treatment, use, or disposal of such sewage sludge until a subsequent sample result demonstrates a concentration of less than 50 micrograms per kilogram; or

3. A combined PFOS and PFOA concentration in the sewage sludge of less than 25 micrograms per kilogram annual average on a rolling 12-month basis, the permit holder may land apply, market, or distribute such sewage sludge in accordance with its permit with no additional requirements. The permit holder shall send the concentrations for PFOS and PFOA demonstrating compliance with this subdivision and the concentrations for all other target analytes required under subsection T in a reader-friendly format by email or mail to the landowner at every property at which the permit holder intends to land apply such sewage sludge at least two weeks prior to land application.

When sewage sludge from two or more sewage sludge treatment works is blended prior to land application, the requirements of subdivisions 1, 2, and 3 shall be applied to the blended sewage sludge without further testing, using a mass-balance calculation.

2. That the Department of Environmental Quality shall modify all Virginia Pollution Abatement permits for the land application of sewage sludge and Virginia Pollutant Discharge Elimination System permits for sewage treatment works that include sewage sludge prepared for land application, marketing, or distribution as soon as practicable consistent with the provisions of § 62.1-44.19:3 of the Code of Virginia, as amended by this act. All such permit modifications shall be made without following the procedures of Part IV of the Virginia Pollutant Discharge Elimination System Permit Regulations (9VAC25-31) or Part III of the Virginia Pollution Abatement Regulation (9VAC 25-32).

3. That the Department of Environmental Quality (the Department) shall utilize the PFAS Expert Advisory Committee (the PEAC) created pursuant to § 62.1-44.34:33 of the Code of Virginia or convene a work group to study and recommend approaches to reduce the occurrence of perfluoroalkyl and polyfluoroalkyl substances (PFAS) in sewage sludge intended for land application within the Commonwealth. Such work group shall consist of owners of sewage sludge treatment works, private companies that land apply, market, or distribute sewage sludge, relevant nonprofit organizations, and any other stakeholder the Department deems appropriate. The PEAC or work group shall develop recommendations for (i) a PFAS sampling program for industrial residuals and industrial by-products that are land applied; (ii) a PFAS sampling program for fields where land application of sewage sludge, industrial residuals, and industrial by-products occurs; (iii) a source reduction strategy for when sewage sludge is found to contain elevated levels of PFAS; (iv) opportunities to expand PFAS remediation and disposal options in the Commonwealth; (v) additional studies regarding PFAS in soils; (vi) any appropriate revisions to the concentration-based biosolids management tiers established by this act; (vii) additional studies or appropriate PFAS sampling programs for sewage sludge from routine storage facilities with a Virginia Pollution Abatement permit; and (viii) a PFAS sampling program for groundwater and surface water. Such recommendations shall include the anticipated

implementation date for any proposed program or action listed in clauses (i) through (viii). The Department shall report the recommendations of the PEAC or work group to the Governor and the Chairs of the Senate Committee on Agriculture, Conservation and Natural Resources and House Committee on Agriculture, Chesapeake and Natural Resources by November 1, 2027. The PEAC or work group shall also recommend a reader-friendly format for presenting the compliance data for PFOS and PFOA, as those terms are defined in § 62.1-44.34:29 of the Code of Virginia, and other target analyte concentrations to landowners. The Department shall publish such recommendation by October 1, 2026.

4. That the provisions of § 62.1-44.19:3 of the Code of Virginia, as amended by this act, shall not be construed to limit the authority of the Department of Environmental Quality or the owner or operator of any publicly owned treatment works to which any user discharges wastewater to require monitoring or reporting or otherwise regulate the discharge of any perfluoroalkyl and polyfluoroalkyl substances or other pollutants under any other applicable authority.

5. That the provisions of the first enactment of this act shall become effective on January 1, 2027.

Project 8650 - Exempt Final

State Water Control Board

HB1443/SB386 - testing biosolids for PFAS, restrictions on land application of biosolids with PFAS- CHS 31 and 32

Chapter 31

Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation

Part VI

Standards for the Use of Biosolids or Disposal of Sewage Sludge

Article 1

General Requirements

9VAC25-31-465. PFAS requirements.

A. In addition to the definitions given in Part I (9VAC25-31-10 et seq.) and Part VI (9VAC25-31-420 et seq.) of this chapter, the following definitions apply to this section:

"PFAS" means per- and polyfluoroalkyl substances, as that term is defined in § 62.1-44.34:29 of the Code of Virginia.

"PFOA" means perfluorooctanoic acid.

"PFOS" means perfluorooctane sulfonate.

B. Beginning January 1, 2027, any owner of a treatment works land applying, marketing, or distributing biosolids in the Commonwealth shall collect representative samples of the biosolids that are intended to be land applied, marketed, or distributed and have such samples analyzed by an accredited laboratory for PFAS using U.S. Environmental Protection Agency (EPA) Method 1633, an applicable EPA revision, or another method approved by the EPA that may be allowed by the department.

1. The minimum frequency of such sampling shall be monthly for the initial sampling period from January 1, 2027, through December 31, 2027, and thereafter may be reduced to not less frequently than quarterly upon the approval of the department.

2. The owner of the treatment works shall provide the concentration results for PFOS and PFOA and all other target analytes from the analysis to the department and any person land applying biosolids from the treatment works within 10 days of receipt of such results.

3. If the treatment works that is the source of the biosolids is located outside of the Commonwealth, the permit holder intending to land apply, market, or distribute the biosolids in the Commonwealth from such treatment works shall provide analyses to the department that meet all requirements of this subsection.

C. After July 1, 2027, if the analysis required under subsection B of this section finds:

1. A PFOS or PFOA concentration in the biosolids of greater than or equal to 50 micrograms per kilogram annual average on a rolling 12-month basis, the biosolids shall not be land applied, marketed, or distributed. The owner of the treatment works shall arrange for alternative treatment, use, or disposal of the biosolids until such time as the annual average on a rolling 12-month basis demonstrates a concentration of less than 50 micrograms per kilogram;

2. A PFOS or PFOA concentration in the biosolids of greater than or equal to 25 but less than 50 micrograms per kilogram annual average on a rolling 12-month basis, the permit holder shall reduce the application rate of the biosolids to 3 dry tons per acre, not to exceed the application rate required by the nutrient management plan, or submit to the department for approval an alternative risk management strategy at least two weeks prior to land application in lieu of the reduced land application rate. Such permit holder shall reduce the application rate required in this subdivision until such time as the annual average on a 12-month basis demonstrates a concentration of less than 25 micrograms per kilogram. The permit holder shall send the concentrations for PFOS and PFOA demonstrating compliance with this subdivision and the concentrations for all other target analytes from the analysis required under subsection B of this section in a reader-friendly format by email or mail to the landowner at every property at which the permit holder intends to land apply the biosolids at least two weeks prior to land application.

a. Notwithstanding the provisions of this subdivision, if any single test result exceeds 75 micrograms per kilogram for PFOS or PFOA, the owner of the treatment works shall promptly collect another sample for testing; and

b. If the result of such sample exceeds 75 micrograms per kilogram for PFOS or PFOA, the owner of the treatment works shall arrange for alternative treatment, use, or disposal of the biosolids until such time as a subsequent sample result demonstrates a concentration of less than 50 micrograms per kilogram; or

3. A PFOS and PFOA concentration in the biosolids of less than 25 micrograms per kilogram annual average on a rolling 12-month basis, the permit holder may land apply, market, or distribute the biosolids in accordance with its permit with no additional requirements. The permit holder shall send the concentrations for PFOS and PFOA demonstrating compliance with this subdivision and the concentrations of all other target analytes from the analysis required under subsection B of this section in a reader-friendly format by email or mail to the landowner at every property at which the permit holder intends to land apply the biosolids at least two weeks prior to land application.

4. When biosolids from two or more treatment works are blended prior to land application, the requirements of subdivisions C 1, C 2, and C 3 of this section shall be applied to the blended biosolids without further testing, using a mass-balance calculation.

D. After July 1, 2029, if the analysis required under subsection B of this section finds:

1. A combined PFOS and PFOA concentration in the biosolids of greater than or equal to 50 micrograms per kilogram annual average on a rolling 12-month basis, the biosolids shall not be land applied, marketed, or distributed. The owner of the treatment works shall arrange for alternative treatment, use, or disposal of the biosolids until the annual average on a rolling 12-month basis demonstrates a concentration of less than 50 micrograms per kilogram;

2. A combined PFOS and PFOA concentration in the biosolids of greater than or equal to 25 but less than 50 micrograms per kilogram annual average on a rolling 12-month basis, the permit holder shall reduce the application rate of the biosolids to 3 dry tons per acre, not to exceed the application rate required by the nutrient management plan, or submit to the department for approval an alternative risk management strategy at least two weeks prior to land application in lieu of the reduced land application rate. Such permit holder shall reduce the application rate required in this subdivision until such time as the annual average on a rolling 12-month basis demonstrates a concentration of less than 25 micrograms per kilogram. The permit holder shall send the concentrations for PFOS and PFOA demonstrating compliance with this subdivision and the concentrations for all other target analytes from the analysis required under subsection B of this section in a reader-

friendly format by email or mail to the landowner at every property at which the permit holder intends to land apply the biosolids at least two weeks prior to land application.

a. Notwithstanding the provisions of this subdivision, if any single test result exceeds a combined PFOS and PFOA concentration of 75 micrograms per kilogram, the owner of the treatment works shall promptly collect another sample for testing; and

b. If the result of such test exceeds a combined PFOS and PFOA concentration of 75 micrograms per kilogram, such owner shall arrange for the alternative treatment, use, or disposal of the biosolids until a subsequent sample result demonstrates a concentration of less than 50 micrograms per kilogram; or

3. A combined PFOS and PFOA concentration in the biosolids of less than 25 micrograms per kilogram annual average on a rolling 12-month basis, the permit holder may land apply, market, or distribute the biosolids in accordance with its permit with no additional requirements. The permit holder shall send the concentrations for PFOS and PFOA demonstrating compliance with this subdivision and the concentrations for all other target analytes from the analysis required under subsection B of this section in a reader-friendly format by email or mail to the landowner at every property at which the permit holder intends to land apply the biosolids at least two weeks prior to land application.

4. When biosolids from two or more treatment works are blended prior to land application, the requirements of subdivisions D 1, D 2, and D 3 of this section shall be applied to the blended biosolids without further testing, using a mass-balance calculation.

9VAC25-31-485. Requirements for a person who land apply biosolids.

A. No person shall land apply biosolids pursuant to a permit issued in accordance with this regulation unless an individual holding a valid certificate of competence as specified in the Virginia Pollution Abatement Permit Regulation, Article 5, Certification of Land Applicators, as set forth in 9VAC25-32-690 through 9VAC25-32-760, is onsite at all times during such land application.

B. When an application for a permit that authorizes the land application of biosolids is submitted to the department:

1. Permit holders shall use a DEQ control number, if previously assigned, identifying each land application field. If a DEQ control number has not been assigned, provide the site identification code used by the permit applicant to report activities and the site's location.

2. A written agreement shall be established between the landowner and permit applicant or permit holder to be submitted with the permit application, whereby the landowner shall consent to the application of biosolids on his property. The landowner agreement shall include:

a. A statement certifying that the landowner is the sole owner or one of multiple owners of the property or properties identified on the landowner agreements;

b. A statement certifying that no concurrent agreements are in effect for the fields to be permitted for biosolids application;

c. An acknowledgement that the landowner shall notify the permittee when land is sold or ownership transferred;

d. An acknowledgement that the landowner shall notify the permittee if any conditions change such that any component of the landowner agreement becomes invalid;

e. Permission to allow department staff on the landowner's property to conduct inspections;

f. An acknowledgement by the landowner of any site restrictions identified in the regulation;

g. An acknowledgement that the landowner has received a biosolids fact sheet approved by the department; and

h. An acknowledgement that the landowner shall not remove notification signs placed by the permit holder.

3. New landowner agreements, using the most current form provided by the department, shall be submitted to the department for proposed land application sites identified in each application for issuance or reissuance of a permit or the modification to add land to an existing permit that authorizes the land application of biosolids.

4. For permits modified in order to incorporate changes to this chapter, the permit holder shall, within 60 days of the effective date of the permit modification, advise the landowner by certified letter of the requirement to provide a new landowner agreement. The letter shall include instructions to the landowner for signing and returning the new landowner agreement and shall advise the landowner that the permit holder's receipt of such new landowner agreement is required prior to application of biosolids to the landowner's property.

5. The responsibility for obtaining and maintaining the agreements lies with the permit holder.

C. The permit holder shall ensure that the landowner agreement is still valid at the time of land application.

D. Notification requirements.

1. At least 100 days prior to commencing the first land application of biosolids at a permitted site the permittee shall deliver or cause to be delivered written notification to the chief executive officer or his designee for the local government where the site is located. The notice shall identify the location of the permitted site and the expected sources of the biosolids to be applied to the site. This requirement may be satisfied by the department's notice to the local government at the time of receiving the permit application if all necessary information is included in the notice or by providing a list of all available permitted sites in the locality at least 100 days prior to commencing the application at any site on the list. If the site is located in more than one county, the notice shall be provided to all jurisdictions where the site is located.

2. At least 14 days prior to commencing land application of biosolids at a permitted site, the permit holder shall deliver or cause to be delivered written notification to the department and the chief executive officer or designee for the local government where the site is located unless they request in writing not to receive the notice. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site.

3. Not more than 24 hours prior to commencing land application activities, including delivery of biosolids at a permitted site, the permittee shall notify in writing the department and the chief executive officer or designee for the local government where the site is located unless they request in writing not to receive the notice. This notification shall include identification of the biosolids source and shall include only sites where land application activities will commence within 24 hours or where the biosolids will be staged within 24 hours.

4. The permit holder shall conduct notification in accordance with 9VAC25-31-465.

E. Evidence of financial responsibility shall be provided in accordance with requirements specified in Article 6 (9VAC25-32-770 et seq.) of Part IX (9VAC25-32-303 et seq.) of the Virginia Pollution Abatement (VPA) Permit Regulation.

F. Posting signs.

1. At least five business days prior to delivery of biosolids for land application on any site permitted under this regulation, the permit holder shall post signs at the site that comply with this section, are visible and legible from the public right-of-way in both directions of travel, and conform to the specifications in this subsection. The sign shall remain in place for at least five business days after land application has been completed at the site. The permit holder shall not remove the signs until at least 30 days after land application has been completed at the site.

a. A sign shall be posted at or near the intersection of the public right-of-way and the main site access road or driveway to the site used by the biosolids transport vehicles.

b. If the field is located adjacent to a public right-of-way, at least one sign shall be posted along each public road frontage beside the field to be land applied.

c. The department may grant a waiver to the requirements in this section, or require alternative posting options due to extenuating circumstances or where requirements conflict with local government ordinances and other requirements regulating the use of signs.

2. Upon the posting of signs at a land application site prior to commencing land application, the permittee shall deliver or cause to be delivered written notification to the department and the chief executive officer or designee for the local government where the site is located unless they request in writing not to receive the notice. Notification shall be delivered to the department within 24 hours of the posting of the signs. The notice shall include the following:

a. The name and telephone number of the permit holder, including the name of a representative knowledgeable of the permit;

b. Identification by tax map number and the DEQ control number for sites on which land application is to take place;

c. The name or title and telephone number of at least one individual designated by the permit holder to respond to questions and complaints related to the land application project if not the permit holder identified in subdivision a of this subdivision; and

d. The approximate dates on which land application is to begin and end at the site.

3. The sign shall be made of weather-resistant materials and shall be sturdily mounted so as to be capable of remaining in place and legible throughout the period that the sign is required at the site. Signs required by this section shall be temporary, nonilluminated, and four square feet or more in area, and only contain the following information:

a. A statement that biosolids are being land applied at the site;

b. The name of the permit holder;

c. The telephone number of an individual designated by the permit holder to respond to complaints and inquiries; and

d. Contact information for the department, including a telephone number for complaints and inquiries.

4. The permit holder shall make a good faith effort to replace or repair any sign that has been removed from a land application site or that has been damaged so as to render any of its required information illegible prior to five business days after completion of land application.

G. Biosolids management plan.

1. The permit holder shall maintain and implement a biosolids management plan, which shall consist of three components:

a. The materials, including site booklets, developed and submitted at the time of permit application or permit modification adding a site to the permit in accordance with 9VAC25-31-100 Q;

b. Nutrient management plan for each site, in accordance with 9VAC25-31-505; and

c. Operation and maintenance (O&M) manual, developed and submitted to the department within 90 days of the effective date of the permit.

2. The biosolids management plan and all of its components shall be incorporated as an enforceable part of the permit.

3. The O&M manual shall include at a minimum:

a. Equipment maintenance and calibration procedures and schedules;

b. Storage facility maintenance procedures and schedules;

c. Sampling schedules for:

(1) Required monitoring; and

(2) Operational control testing;

d. Sample collection, preservation and analysis procedures, including laboratories and methods used; and

e. Instructions for recording and reporting all monitoring activities.

4. Current VPDES permit holders who land apply biosolids may use their existing VPDES O&M plan addressing land application to satisfy the requirements of this section if the existing plan addresses all of the required minimum components identified in this section.

H. Handling of complaints.

1. Within 24 hours of receiving notification of a complaint, the permit holder shall commence investigation of the complaint and shall determine whether the complaint is substantive. The permit holder shall confirm receipt of all substantive complaints by phone, email, or facsimile to the department, the chief executive officer or designee for the local government of the jurisdiction in which the complaint originates, and the owner of the treatment facility from which the biosolids originated within 24 hours after receiving the complaint.

2. For the purposes of this section, a substantive complaint shall be deemed to be any complaint alleging a violation of these regulations, state law, or local ordinance; a release of biosolids to state waters or to a public right-of-way or to any location not authorized in the permit; or failure to comply with the nutrient management plan for the land application site.

9VAC25-31-490. Sampling and analysis.

A. Representative samples of biosolids that is applied to the land, or placed on a surface disposal site shall be collected and analyzed.

B. Methods in the materials listed below or in 40 CFR Part 136 shall be used to analyze samples of biosolids and calculation procedures in the materials shall be used to calculate the percent volatile solids reduction for biosolids.

1. Enteric viruses.

ASTM Designation: D 4994-89, "Standard Practice for Recovery of Viruses From Wastewater Sludges," Annual Book of ASTM Standards: Section 11 - Water and Environmental Technology, ASTM, Philadelphia, PA., 1992.

2. Fecal coliform.

Part 9221 E. or Part 9222 D., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992.

3. Helminth ova.

Yanko, W.A., "Occurrence of Pathogens in Distribution and Marketing Municipal Sludges," EPA 600/1-87-014, 1987. PB 88-154273/AS, National Technical Information Service, Springfield, Virginia.

4. Inorganic pollutants.

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Third Edition as amended by Final Updates I, II, IIA, IIB, III, IIIA, IIIB, IVA and IVB. PB88-239223, National Technical Information Service, Springfield, Virginia.

5. Salmonella sp. bacteria.

Part 9260 D., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992; or

Kenner, B.A. and H.P. Clark, "Detection and enumeration of Salmonella and Pseudomonas aeruginosa," J. Water Pollution Control Federation, 46(9):2163-2171, 1974.

6. Specific oxygen uptake rate.

Part 2710 B., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992.

7. Total, fixed, and volatile solids.

Part 2540 G., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992.

8. Percent volatile solids reduction calculation.

"Environmental Regulations and Technology - Control of Pathogens and Vector Attraction in Sewage Sludge," EPA-625/R-92/013, U.S. Environmental Protection Agency, Cincinnati, Ohio, Revised July 2003.

9. Per- and polyfluoroalkyl substances.

"Method 1633, Revision A - Analysis of Per- and Polyfluoroalkyl Substances (PFAS) in Aqueous, Solid, Biosolids, and Tissue Samples by LC-MS/MS," EPA-820/R-24/007, U.S. Environmental Protection Agency, Washington, DC, Revised December 2024.

Article 2

Biosolids Applied to the Land

9VAC25-31-530. General requirements.

A. No person shall apply biosolids to the land except in accordance with the requirements in this article.

B. No person shall apply bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 to agricultural land, forest, a public contact site, or a reclamation site if any of the cumulative pollutant loading rates in 9VAC25-31-540 B 2 has been reached.

C. No person shall apply domestic septage to agricultural land, forest, or a reclamation site during a 365-day period if the annual application rate in 9VAC25-31-540 C has been reached during that period.

D. The person who prepares bulk biosolids that is applied to agricultural land, forest, a public contact site, or a reclamation site shall provide the person who applies the bulk biosolids written notification of the concentration of total nitrogen (as N on a dry weight basis) in the bulk biosolids.

E. Application of biosolids to the land.

1. The person who applies biosolids to the land shall obtain information needed to comply with the requirements in this subpart.

2. Before bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 is applied to the land;

a. The person who proposes to apply the bulk biosolids shall contact the department to determine whether bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 has been applied to the site since July 20, 1993.

b. If bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 has not been applied to the site since July 20, 1993, the cumulative amount for each pollutant listed in Table 2 of 9VAC25-31-540 may be applied to the site in accordance with 9VAC25-31-540 A 2 a.

c. If bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk biosolids since that date is known, the cumulative amount of each pollutant applied to the site shall be used to determine the additional amount of each pollutant that can be applied to the site in accordance with 9VAC25-31-540 A 2 a.

d. If bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk biosolids since that date is not known, an additional amount of each pollutant shall not be applied to the site in accordance with 9VAC25-31-540 A 2 a.

F. When a person who prepares bulk biosolids provides the bulk biosolids to a person who applies the bulk biosolids to the land, the person who prepares the bulk biosolids shall provide the person who applies the biosolids notice and necessary information to comply with the requirements in this article.

G. When a person who prepares biosolids provides the biosolids to another person who prepares the biosolids, the person who provides the biosolids shall provide the person who receives the biosolids notice and necessary information to comply with the requirements in this article.

H. The person who applies bulk biosolids to the land shall provide the owner or lease holder of the land on which the bulk biosolids is applied notice and necessary information to comply with the requirements in this article.

I. Any person who prepares bulk biosolids in another state that is applied to land in Virginia shall provide written notice to the department prior to the initial application of bulk biosolids to the land application site by the applier. The notice shall include:

1. The location, by either street address or latitude and longitude, of each land application site;

2. The approximate time period bulk biosolids will be applied to the site;

3. The name, address, telephone number, and National Pollutant Discharge Elimination System permit number (if appropriate) for the person who prepares the bulk biosolids; and

4. The name, address, telephone number, and National (or Virginia) Pollutant Discharge Elimination System permit number (if appropriate) for the person who will apply the bulk biosolids.

J. Any person who applies bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 to the land shall provide written notice, prior to the initial application of bulk biosolids to a land application site by the applier, to the department and the department shall retain and provide access to the notice. The notice shall include:

1. The location, by either street address or latitude and longitude, of the land application site; and

2. The name, address, telephone number, and Virginia Pollutant Discharge Elimination System permit number (if appropriate) of the person who will apply the bulk biosolids.

K. Any person who land applies, markets, or distributes biosolids must do so in accordance with the requirements in 9VAC25-31-465.

9VAC25-31-540. Pollutant limits.

A. Biosolids.

1. Bulk biosolids or biosolids sold or given away in a bag or other container shall not be applied to the land if the concentration of any pollutant in the biosolids exceeds the ceiling concentration for the pollutant in Table 1 of this section.

2. If bulk biosolids is applied to agricultural land, forest, a public contact site, or a reclamation site, either:

a. The cumulative loading rate for each pollutant shall not exceed the cumulative pollutant loading rate for the pollutant in Table 2 of this section; or

b. The concentration of each pollutant in the biosolids shall not exceed the concentration for the pollutant in Table 3 of this section.

3. If bulk biosolids is applied to a lawn or a home garden, the concentration of each pollutant in the biosolids shall not exceed the concentration for the pollutant in Table 3 of this section.

4. If biosolids is sold or given away in a bag or other container for application to the land, either:

a. The concentration of each pollutant in the biosolids shall not exceed the concentration for the pollutant in Table 3 of this section; or

b. The product of the concentration of each pollutant in the biosolids and the annual whole sludge application rate for the biosolids shall not cause the annual pollutant loading rate for the pollutant in Table 4 of this section to be exceeded. The procedure used to determine the annual whole sludge application rate is presented in subsection D of this section.

5. Biosolids that are land applied, marketed, or distributed must satisfy the requirements in 9VAC25-31-465.

B. Pollutant concentrations and loading rates - biosolids.

TABLE 1
CEILING CONCENTRATIONS

Pollutant	Ceiling Concentration (milligrams per kilogram)*
Arsenic	75

Cadmium	85
Copper	4,300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
Selenium	100
Zinc	7,500

*Dry weight basis

TABLE 2
CUMULATIVE POLLUTANT LOADING RATES[1]

Pollutant	Cumulative Pollutant Loading Rate	
	(kilograms per hectare)	(pounds per acre)
Arsenic[2]	41	36
Cadmium	39	35
Copper	1,500	1,340
Lead	300	270
Mercury	17	16
Molybdenum[2]		
Nickel	420	375
Selenium	100	89
Zinc	2,800	2,500

Notes:

[1]Such total applications to be made on soils with the biosolids/soil mixture pH adjusted to 6.0 or greater if the biosolids cadmium content is greater than or equal to 21 mg/kg.

The maximum cumulative application rate is limited for all ranges of cation exchange capacity due to soil background pH in Virginia of less than 6.5 and lack of regulatory controls of soil pH adjustment after biosolids application ceases.

[2]The maximum cumulative application rate is currently under study by the USEPA. Research suggests that for Molybdenum a cumulative pollutant loading rate below 40 kg/hectare may be appropriate to reduce the risk of copper deficiency in grazing animals.

TABLE 3
POLLUTANT CONCENTRATIONS

Pollutant	Monthly Average Concentration (milligrams per kilogram)*
Arsenic	41
Cadmium	39
Copper	1,500
Lead	300
Mercury	17
Molybdenum(1)	
Nickel	420
Selenium	100
Zinc	2,800

*Dry weight basis

Note:

(1)The monthly average concentration is currently under study by the USEPA. Research suggests that a monthly average Molybdenum concentration below 40 mg/kg may be appropriate to reduce the risk of copper deficiency in grazing animals.

TABLE 4
ANNUAL POLLUTANT LOADING RATES

Pollutant	Annual Pollutant Loading Rate(1) (per 365-day period)	
	(kilograms per hectare)	(pounds per acre)
Arsenic	2.0	1.8
Cadmium	1.9	1.7
Copper	75	67
Lead	15	13
Mercury	0.85	0.76
Molybdenum(2)		
Nickel	21	19
Selenium	5.0	4.6
Zinc	140	125

Notes:
[1]Such total applications to be made on soils with the biosolids/soils mixture pH adjusted to 6.0 or greater if the biosolids cadmium content is greater than or equal to 21 mg/kg.
The maximum cumulative application rate is limited for all ranges of cation exchange capacity due to soil pH in Virginia of less than 6.5 and lack of regulatory controls of soil pH adjustment after biosolids application ceases.
[2]The maximum cumulative application rate is currently under study by the USEPA.

C. Domestic septage. The annual application rate for domestic septage applied to agricultural land, forest, or a reclamation site shall not exceed the annual application rate calculated using equation (1).

EQUATION (1)
AAR = N/0.0026
AAR = Annual application rate in gallons per acre per 365-day period.
N = Amount of nitrogen in pounds per acre per 365-day period needed by the crop or vegetation grown on the land.

D. Procedures to determine the annual whole sludge application rate for biosolids. 9VAC25-31-540 A 4 b requires that the product of the concentration for each pollutant listed in Table 4 of this section in biosolids sold or given away in a bag or other container for application to the land and the AWSAR for the biosolids not cause the annual pollutant loading rate for the pollutant in Table 4 to be exceeded. This section contains the procedure used to determine the AWSAR for a biosolids that does not cause the annual pollutant loading rates in Table 4 of this section to be exceeded.

1. The relationship between the APLR for a pollutant and the AWSAR for a biosolids is shown in equation (2).

EQUATION (2)
APLR = C x AWSAR x 0.001
APLR = Annual pollutant loading rate in kilograms per hectare per 365-day period
C = Pollutant concentration in milligrams per kilogram of total solids (dry weight basis)
AWSAR = Annual whole sludge application rate in metric tons per hectare per 365-day period (dry weight basis)
0.001 = A conversion factor

2. To determine the AWSAR, equation (2) is rearranged into equation (3):

EQUATION (3)
AWSAR = APLR/(C x 0.001)

AWSAR = Annual whole sludge application rate in metric tons per hectare per 365-day period (dry weight basis)
APLR = Annual pollutant loading rate in kilograms per hectare per 365-day period
C = Pollutant concentration in milligrams per kilogram of total solids (dry weight basis)
0.001 = A conversion factor

3. The procedure used to determine the AWSAR for a biosolids is presented below.

a. Analyze a sample of the biosolids to determine the concentration for each of the pollutants listed in Table 4 of this section in the biosolids.

b. Using the pollutant concentrations from Step 1 and the APLRs from Table 4 of this section, calculate an AWSAR for each pollutant using equation (3) above.

c. The AWSAR for the biosolids is the lowest AWSAR calculated in Step 2.

Chapter 32

Virginia Pollution Abatement (VPA) Permit Regulation

Part IX

Biosolids Program

Article 1

Procedures and Requirements

9VAC25-32-313. General requirements.

A. No person shall apply biosolids to the land except in accordance with the requirements in this article.

B. No person shall apply bulk biosolids to the land if it is likely to adversely affect a threatened or endangered species listed in 9VAC25-260-320 or § 4 of the Endangered Species Act (16 USC § 1533) or if the land application is likely to adversely affect its designated critical habitat.

C. No person shall apply bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-32-356 Table 3 to agricultural land, forest, a public contact site, or a reclamation site if any of the cumulative pollutant loading rates in 9VAC25-32-356 Table 3 has been reached.

D. No person shall apply domestic septage to agricultural land, forest, or a reclamation site during a 365-day period if the annual application rate in 9VAC25-32-356 D has been reached during that period.

E. The person who prepares bulk biosolids that is applied to agricultural land, forest, a public contact site, or a reclamation site shall provide the person who applies the bulk biosolids written notification of the concentration of total nitrogen and phosphorus (as N and P on a dry weight basis) in the bulk biosolids.

F. Before bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-32-356 Table 3 is applied to the land, the person who proposes to apply the bulk biosolids shall contact the department to determine whether bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-32-356 Table 3 has been applied to the site since July 20, 1993.

1. If bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-32-356 Table 3 has not been applied to the site since July 20, 1993, the cumulative amount of

each pollutant listed in 9VAC25-32-356 Table 3 may be applied to the site in accordance with 9VAC25-32-356 B 2 a.

2. If bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-32-356 Table 3 has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk biosolids since that date is known, the cumulative amount of each pollutant applied to the site shall be used to determine the additional amount of each pollutant that can be applied to the site in accordance with 9VAC25-32-356 B 2 a.

3. If bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-32-356 Table 3 has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk biosolids since that date is not known, an additional amount of each pollutant shall not be applied to the site in accordance with 9VAC25-32-356 B 2 a.

G. When a person who prepares bulk biosolids provides the bulk biosolids to a person who applies the bulk biosolids to the land, the person who prepares the bulk biosolids shall provide the person who applies the biosolids notice and necessary information to comply with the requirements in this article.

H. When a person who prepares biosolids provides the biosolids to another person who prepares the biosolids, the person who provides the biosolids shall provide the person who receives the biosolids notice and necessary information to comply with the requirements in this article.

I. The person who applies bulk biosolids to the land shall provide the owner or lease holder of the land on which the bulk biosolids is applied notice and necessary information to comply with the requirements in this article.

J. Any person who prepares bulk biosolids in another state that is applied to land in Virginia shall provide written notice to the department prior to the initial application of bulk biosolids to the land application site by the applier. The notice shall include:

1. The location, by either street address or latitude and longitude, of each land application site;

2. The approximate time period bulk biosolids will be applied to the site;

3. The name, address, telephone number, and National Pollutant Discharge Elimination System permit number (if appropriate) for the person who prepares the bulk biosolids; and

4. The name, address, telephone number, and National (or Virginia) Pollutant Discharge Elimination System permit number (if appropriate) for the person who will apply the bulk biosolids.

K. Any person who applies bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-32-356 Table 3 to the land shall provide written notice, prior to the initial application of bulk biosolids to the land application site by the applier, to the department and the department shall retain and provide access to the notice. The notice shall include:

1. The location, by either street address or latitude and longitude, of the land application site; and

2. The name, address, telephone number, and Virginia Pollution Abatement permit number (if appropriate) of the person who will apply the bulk biosolids.

L. Any person who land applies, markets, or distributes biosolids must do so in accordance with the requirements in 9VAC25-32-316.

9VAC25-32-316. PFAS requirements.

A. In addition to the definitions given in Part I (9VAC25-32-10 et seq.) of this chapter, the following definitions apply to this section:

"PFAS" means per- and polyfluoroalkyl substances, as that term is defined in § 62.1-44.34:29 of the Code of Virginia.

"PFOA" means perfluorooctanoic acid.

"PFOS" means perfluorooctane sulfonate.

B. Beginning January 1, 2027, any owner of a treatment works land applying, marketing, or distributing biosolids in the Commonwealth shall collect representative samples of the biosolids that are intended to be land applied, marketed, or distributed and have such samples analyzed by an accredited laboratory for PFAS using U.S. Environmental Protection Agency (EPA) Method 1633, an applicable EPA revision, or another method approved by the EPA that may be allowed by the department.

1. The minimum frequency of such sampling shall be monthly for the initial sampling period from January 1, 2027, through December 31, 2027, and thereafter may be reduced to not less frequently than quarterly upon the approval of the department.

2. The owner of the treatment works shall provide the concentration results for PFOS and PFOA and all other target analytes from the analysis to the department and any person land applying biosolids from the treatment works within 10 days of receipt of such results.

3. If the treatment works that is the source of the biosolids is located outside of the Commonwealth, the permit holder intending to land apply, market, or distribute the biosolids in the Commonwealth from such treatment works shall provide analyses to the department that meet all requirements of this subsection.

C. After July 1, 2027, if the analysis required under subsection B of this section finds:

1. A PFOS or PFOA concentration in the biosolids of greater than or equal to 50 micrograms per kilogram annual average on a rolling 12-month basis, the biosolids shall not be land applied, marketed, or distributed. The owner of the treatment works shall arrange for alternative treatment, use, or disposal of the biosolids until such time as the annual average on a rolling 12-month basis demonstrates a concentration of less than 50 micrograms per kilogram;

2. A PFOS or PFOA concentration in the biosolids of greater than or equal to 25 but less than 50 micrograms per kilogram annual average on a rolling 12-month basis, the permit holder shall reduce the application rate of the biosolids to 3 dry tons per acre, not to exceed the application rate required by the nutrient management plan, or submit to the department for approval an alternative risk management strategy at least two weeks prior to land application in lieu of the reduced land application rate. Such permit holder shall reduce the application rate required in this subdivision until such time as the annual average on a 12-month basis demonstrates a concentration of less than 25 micrograms per kilogram. The permit holder shall send the concentrations for PFOS and PFOA demonstrating compliance with this subdivision and the concentrations for all other target analytes from the analysis required under subsection B of this section in a reader-friendly format by email or mail to the landowner at every property at which the permit holder intends to land apply the biosolids at least two weeks prior to land application.

a. Notwithstanding the provisions of this subdivision, if any single test result exceeds 75 micrograms per kilogram for PFOS or PFOA, the owner of the treatment works shall promptly collect another sample for testing; and

b. If the result of such sample exceeds 75 micrograms per kilogram for PFOS or PFOA, the owner of the treatment works shall arrange for alternative treatment, use, or

disposal of the biosolids until such time as a subsequent sample result demonstrates a concentration of less than 50 micrograms per kilogram; or

3. A PFOS and PFOA concentration in the biosolids of less than 25 micrograms per kilogram annual average on a rolling 12-month basis, the permit holder may land apply, market, or distribute the biosolids in accordance with its permit with no additional requirements. The permit holder shall send the concentrations for PFOS and PFOA demonstrating compliance with this subdivision and the concentrations of all other target analytes from the analysis required under subsection B of this section in a reader-friendly format by email or mail to the landowner at every property at which the permit holder intends to land apply the biosolids at least two weeks prior to land application.

4. When biosolids from two or more treatment works are blended prior to land application, the requirements of subdivisions C 1, C 2, and C 3 of this section shall be applied to the blended biosolids without further testing, using a mass-balance calculation.

D. After July 1, 2029, if the analysis required under subsection B of this section finds:

1. A combined PFOS and PFOA concentration in the biosolids of greater than or equal to 50 micrograms per kilogram annual average on a rolling 12-month basis, the biosolids shall not be land applied, marketed, or distributed. The owner of the treatment works shall arrange for alternative treatment, use, or disposal of the biosolids until the annual average on a rolling 12-month basis demonstrates a concentration of less than 50 micrograms per kilogram;

2. A combined PFOS and PFOA concentration in the biosolids of greater than or equal to 25 but less than 50 micrograms per kilogram annual average on a rolling 12-month basis, the permit holder shall reduce the application rate of the biosolids to 3 dry tons per acre, not to exceed the application rate required by the nutrient management plan, or submit to the department for approval an alternative risk management strategy at least two weeks prior to land application in lieu of the reduced land application rate. Such permit holder shall reduce the application rate required in this subdivision until such time as the annual average on a rolling 12-month basis demonstrates a concentration of less than 25 micrograms per kilogram. The permit holder shall send the concentrations for PFOS and PFOA demonstrating compliance with this subdivision and the concentrations for all other target analytes from the analysis required under subsection B of this section in a reader-friendly format by email or mail to the landowner at every property at which the permit holder intends to land apply the biosolids at least two weeks prior to land application.

a. Notwithstanding the provisions of this subdivision, if any single test result exceeds a combined PFOS and PFOA concentration of 75 micrograms per kilogram, the owner of the treatment works shall promptly collect another sample for testing; and

b. If the result of such test exceeds a combined PFOS and PFOA concentration of 75 micrograms per kilogram, such owner shall arrange for the alternative treatment, use, or disposal of the biosolids until a subsequent sample result demonstrates a concentration of less than 50 micrograms per kilogram; or

3. A combined PFOS and PFOA concentration in the biosolids of less than 25 micrograms per kilogram annual average on a rolling 12-month basis, the permit holder may land apply, market, or distribute the biosolids in accordance with its permit with no additional requirements. The permit holder shall send the concentrations for PFOS and PFOA demonstrating compliance with this subdivision and the concentrations for all other target analytes from the analysis required under subsection B of this section in a reader-friendly format by email or mail to the landowner at every property at which the permit holder intends to land apply the biosolids at least two weeks prior to land application.

4. When biosolids from two or more treatment works are blended prior to land application, the requirements of subdivisions D 1, D 2, and D 3 of this section shall be applied to the blended biosolids without further testing, using a mass-balance calculation.

Article 2

Operational and Monitoring Requirements

9VAC25-32-356. Pollutant monitoring and limits.

Article 2

Operational and Monitoring Requirements

A. Bulk biosolids or biosolids sold or given away in a bag or other container shall be monitored for the parameters identified in Table 1 of this section:

TABLE 1
PARAMETERS for BIOSOLIDS ANALYSIS[1]

Pollutant
Percent solids (%)
Volatile solids (%)
pH (standard units)
Total Kjeldahl nitrogen (%)
Ammonia nitrogen (%)
Nitrates (mg/kg)
Total phosphorus (%)
Total potassium (%)
Alkalinity as $CaCO_3$ (mg/kg)[2]
Arsenic (mg/kg)
Cadmium (mg/kg)
Copper (mg/kg)
Lead (mg/kg)
Mercury (mg/kg)
Molybdenum (mg/kg)
Nickel (mg/kg)
Selenium (mg/kg)
Zinc (mg/kg)
[1]Values reported on a dry weight basis unless indicated. [2]Lime treated biosolids (10% or more lime by weight) shall be analyzed for percent $CaCO_3$.

B. Biosolids pollutant limits.

1. Bulk biosolids or biosolids sold or given away in a bag or other container shall not be applied to the land if the concentration of any pollutant in the biosolids exceeds the ceiling concentration for the pollutant in Table 2 of this section.

2. If bulk biosolids is applied to agricultural land, forest, a public contact site, or a reclamation site, either:

a. The cumulative loading rate for each pollutant shall not exceed the cumulative pollutant loading rate for the pollutant in Table 3 of this section; or

b. The concentration of each pollutant in the biosolids shall not exceed the concentration for the pollutant in Table 4 of this section.

3. If bulk biosolids is applied to a lawn or a home garden, the concentration of each pollutant in the biosolids shall not exceed the concentration for the pollutant in Table 4 of this section.

4. If biosolids is sold or given away in a bag or other container for application to the land, either:

a. The concentration of each pollutant in the biosolids shall not exceed the concentration for the pollutant in Table 4 of this section; or

b. The product of the concentration of each pollutant in the biosolids and the annual whole sludge application rate for the biosolids shall not cause the annual pollutant loading rate for the pollutant in Table 5 of this section to be exceeded. The procedure used to determine the annual whole sludge application rate is presented in subsection D of this section.

5. Biosolids that are land applied, marketed, or distributed must satisfy the requirements in 9VAC25-32-316.

C. Pollutant concentrations and loading rates - biosolids.

TABLE 2
CEILING CONCENTRATIONS

Pollutant	Ceiling Concentration (milligrams per kilogram)*
Arsenic	75
Cadmium	85
Copper	4,300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
Selenium	100
Zinc	7,500

*Dry weight basis

TABLE 3
CUMULATIVE POLLUTANT LOADING RATES(1)

	Cumulative Pollutant Loading Rate	
Pollutant	(kilograms per hectare)	(pounds per acre)
Arsenic[2]	41	36
Cadmium	39	35
Copper	1,500	1,340
Lead	300	270
Mercury	17	16
Molybdenum[2]		
Nickel	420	375
Selenium	100	89
Zinc	2,800	2,500

Notes:[1]Such total applications to be made on soils with the biosolids/soil mixture pH adjusted to 6.0 or greater if the biosolids cadmium content is greater than or equal to 21 mg/kg.

The maximum cumulative application rate is limited for all ranges of cation exchange capacity due to soil background pH in Virginia of less than 6.5 and lack of regulatory controls of soil pH adjustment after biosolids application ceases.

[2]The maximum cumulative application is currently under study by USEPA. Research suggests that for Molybdenum a cumulative pollutant loading rate below 40 kg/hectare may be appropriate to reduce the risk of copper deficiency in grazing animals.

TABLE 4
POLLUTANT CONCENTRATIONS

Pollutant	Monthly Average Concentration (milligrams per kilogram)*
Arsenic	41
Cadmium	39
Copper	1,500
Lead	300
Mercury	17
Molybdenum[1]	
Nickel	420
Selenium	100
Zinc	2,800

*Dry weight basis

Note: (1) The monthly average concentration is currently under study by USEPA. Research suggests that a monthly average Molybdenum concentration below 40 mg/kg may be appropriate to reduce the risk of copper deficiency in grazing animals.

TABLE 5
ANNUAL POLLUTANT LOADING RATES (1)

	Annual Pollutant Loading Rate (per 365-day period)	
Pollutant	(kilograms per hectare)	(pounds per acre)
Arsenic (2)	2.0	1.8
Cadmium	1.9	1.7
Copper	75	67
Lead	15	13
Mercury	0.85	0.76
Molybdenum(2)		
Nickel	21	19
Selenium	5.0	4.6
Zinc	140	125

Notes:(1)Such total applications to be made on soils with the biosolids/soil mixture pH adjusted to 6.0 or greater if the biosolids cadmium content is greater than or equal to 21 mg/kg.

The maximum cumulative application rate is limited for all ranges of cation exchange capacity due to soil background pH in Virginia of less than 6.5 and lack of regulatory controls of soil pH adjustment after biosolids application ceases.

(2)The maximum cumulative application is currently under study by USEPA.

D. Procedures to determine the annual whole sludge application rate (AWSAR) for biosolids. Subdivision B 4 b of this section requires that the product of the concentration for each pollutant listed in Table 4 of this section in biosolids sold or given away in a bag or other container for application to the land and the AWSAR for the biosolids not cause the annual pollutant loading rate for the pollutant in Table 5 to be exceeded. This subsection contains that procedure used to determine the AWSAR for a biosolids that does not cause the annual pollutant loading rates (APLR) in Table 5 of this section to be exceeded.

1. The relationship between the APLR for a pollutant and the AWSAR for a biosolids is shown in equation (1):

EQUATION (1)
APLR = C X AWSAR X 0.001

APLR = Annual pollutant loading rate in kilograms per hectare per 365-day period
C = Pollutant concentration in milligrams per kilogram of total solids (dry weight basis)
AWSAR = Annual whole sludge application rate in metric tons per hectare per 365-day period (dry weight basis)
0.001 = A conversion factor

2. To determine the AWSAR, equation (1) is rearranged into equation (2):

EQUATION (2)
AWSAR = APLR/(C X 0.001)
AWSAR = Annual whole sludge application rate in metric tons per hectare per 365-day period (dry weight basis)
APLR = Annual pollutant loading rate in kilograms per hectare per 365-day period
C = Pollutant concentration in milligrams per kilogram of total solids (dry weight basis)
0.001 = A conversion factor

3. The procedure used to determine the AWSAR for a biosolids is presented below:

a. Analyze a sample of the biosolids to determine the concentration for each of the pollutants listed in Table 4 of this section in the biosolids.

b. Using the pollutant concentrations from subdivision 3 a of this subsection and the APLRs from Table 5 of this section, calculate an AWSAR for each pollutant using Equation (2) above.

c. The AWSAR for the biosolids is the lowest AWSAR calculated in subdivision 3 b of this subsection.

Article 3

Biosolids Use Standards and Practices

9VAC25-32-515. Notification of land application activity.

A. Written notification.

1. At least 100 days prior to commencing the first land application of biosolids at a permitted site, the permit holder shall deliver or cause to be delivered written notification to the chief executive officer or designee for the local government where the site is located. This requirement may be satisfied by the department's notice to the local government at the time of receiving the permit application if all necessary information is included in the notice or by providing a list of available permitted sites in the locality at least 100 days prior to commencing the application at any site on the list. If the site is located in more than one county, the information shall be provided to all jurisdictions where the site is located.

2. At least 14 days prior to commencing land application of biosolids at a permitted site, the permit holder shall deliver or cause to be delivered written notification to the department and the chief executive officer or designee for the local government where the

site is located unless they request in writing not to receive the notice. The notice shall identify the location of the permitted site and the expected sources of the biosolids to be applied to the site.

3. Not more than 24 hours prior to commencing land application activities, including delivery of biosolids at a permitted site, the permittee shall notify in writing the department and the chief executive officer or designee for the local government where the site is located unless they request in writing not to receive the notice. This notification shall include identification of the biosolids source and shall include only sites where land application activities will commence within 24 hours or where biosolids will be staged within 24 hours.

4. The permit holder shall conduct notification in accordance with 9VAC25-32-316.

B. Posting signs.

1. At least five business days prior to delivery of biosolids for land application on any site permitted under this regulation, the permit holder shall post signs at the site that comply with this section, are visible and legible from the public right-of-way in both directions of travel, and conform to the specifications herein. The sign shall remain in place for at least five business days after land application has been completed at the site. The permit holder shall not remove the signs until at least 30 days after land application has been completed at the site.

a. A sign shall be posted at or near the intersection of the public right-of-way and the main site access road or driveway to the site used by the biosolids transport vehicles.

b. If the field is located adjacent to a public right-of-way, at least one sign shall be posted along each public road frontage beside the field to be land applied.

c. The department may grant a waiver to the requirements in this section, or require alternative posting options due to extenuating circumstances or where requirements conflict with local government ordinances and other requirements regulating the use of signs.

2. Upon the posting of signs at a land application site prior to commencing land application, the permittee shall deliver or cause to be delivered written notification to the department and the chief executive officer or designee for the local government where the site is located unless they request in writing not to receive the notice. Notification shall be delivered to the department within 24 hours of the posting of signs. The notice shall include the following:

a. The name and telephone number of the permit holder, including the name of a representative knowledgeable of the permit;

b. Identification by tax map number and the DEQ control number for sites on which land application is to take place;

c. The name or title and telephone number of at least one individual designated by the permit holder to respond to questions and complaints related to the land application project if not the permit holder identified in 9VAC25-32-515 B 2 a;

d. The approximate dates on which land application is to begin and end at the site; and

e. The name, address, and telephone number of the wastewater treatment facility or facilities from which the biosolids will originate, including the name or title of a representative of the treatment facility who is knowledgeable about the land application operation.

3. The sign shall be made of weather-resistant materials and shall be sturdily mounted so as to be capable of remaining in place and legible throughout the period that the sign is required at the site. Signs required by this section shall be temporary, nonilluminated, and four square feet or more in area, and only contain the following information:

a. A statement that biosolids are being land-applied at the site;

b. The name of the permit holder;

c. The telephone number of an individual designated by the permit holder to respond to complaints and inquiries; and

d. Contact information for the department, including a telephone number for complaints and inquiries.

4. The permit holder shall make a good faith effort to replace or repair any sign that has been removed from a land application site or that has been damaged so as to render any of its required information illegible prior to five business days after completion of land application.

C. Handling of complaints.

1. Within 24 hours of receiving notification of a complaint, the permit holder shall commence investigation of said complaint and shall determine whether the complaint is substantive. The permit holder shall confirm receipt of all substantive complaints by phone, email, or facsimile to the department, the chief executive officer or his designee for the local government of the jurisdiction in which the complaint originates, and the owner of the treatment facility from which the biosolids originated within 24 hours after receiving the complaint.

2. For the purposes of this section, a substantive complaint shall be deemed to be any complaint alleging a violation of these regulations, state law, or local ordinance; a release of biosolids to state waters or to a public right-of-way or to any location not authorized in the permit; or failure to comply with the nutrient management plan for the land application site.

3. Localities receiving complaints concerning land application of biosolids shall notify the department and the permit holder within 24 hours of receiving the complaint.

9VAC25-32-570. Distribution and marketing.

A. Exceptional quality. Distribution or marketing provides for the sale or distribution of exceptional quality biosolids or mixtures of exceptional quality biosolids with other materials such that the mixture achieves the Class A pathogen control, vector attraction reduction and pollutant control standards. Distribution or marketing of Class A biosolids that have been mixed with inert materials may be approved on a case-by-case basis. Use of such mixtures for agricultural purposes shall be evaluated through proper testing or research programs designed to assess the suitability of the material for such use. Exceptional quality biosolids marketed as fertilizers or soil conditioners must meet the following conditions:

1. The biosolids product must be registered with the Virginia Department of Agriculture and Consumer Services in accordance with the provisions of § 3.2-3607 of the Code of Virginia.

2. The biosolids product must be processed to meet Class A pathogen requirements as specified in 9VAC25-32-675 A.

3. The biosolids product must meet one of the vector attraction reduction requirements as specified in 9VAC25-32-685 B 1 through B 8.

4. The biosolids product must meet the ceiling concentrations specified in 9VAC25-32-356 - Table 2.

5. The biosolids product must meet the pollutant concentrations specified in 9VAC25-32-356 - Table 4.

6. The biosolids product must meet the requirements specified in 9VAC25-32-316.

7. Additional parameters may be required for screening purposes such as organic chemicals, aluminum (mg/kg), water soluble boron (mg/kg), calcium (mg/kg), chlorides (mg/l), manganese (mg/kg), sulfur (mg/kg), and those pollutants for which removal credits are granted.

B. Bulk distribution. Exceptional quality biosolids may be distributed and marketed in either bulk amounts (unpacked) or as a bagged product. The following requirements shall apply to distribution and marketing of biosolids products:

1. Any permit holder who distributes or markets exceptional quality biosolids shall comply with the reporting requirements of §§ 3.2-3609 and 3.2-3610 of the Code of Virginia. The records shall be maintained for five years and made available to the department upon request.

2. Bulk quantities of exceptional quality biosolids shall be land applied in accordance with a nutrient management plan prepared by a certified nutrient management planner as stipulated in regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia, except under the following conditions:

a. The percent solids of the biosolids is equal to or greater than 90% based on moisture content and total solids, or

b. A blended product derived from biosolids is utilized for a purpose other than land application at agricultural operations.

3. Within 30 days after land application at the site has commenced, the permit holder shall provide a copy of the plan to the farm operator of the site and the Department of Conservation and Recreation.

C. Approval of biosolids sources. Only exceptional quality biosolids produced from a sludge processing facility approved by the department can be distributed and marketed.

D. Information furnished to all users. Labeling requirements shall be addressed in a biosolids management plan. Either a label shall be affixed to the bag or other container in which exceptional quality biosolids is sold or given away for application to the land, or an information sheet shall be provided to the person who receives exceptional quality biosolids. The label or information sheet shall contain the following information:

1. The name and address of the person who prepared the exceptional quality biosolids;

2. A statement that application of the exceptional quality biosolids to the land is prohibited except in accordance with the instructions on the label or information sheet;

3. The annual whole sludge application rate for the biosolids that does not cause any of the annual pollutant loading rates in Table 5 of 9VAC25-32-356 to be exceeded; and

4. Information required in accordance with regulations promulgated under § 3.2-3601 of the Code of Virginia and with the labeling provisions of § 3.2-3611 of the Code of Virginia.

E. Recordkeeping.

1. The person who prepares exceptional quality biosolids shall develop the following information and shall retain the information for five years:

a. The concentration of each pollutant listed in Table 4 of 9VAC25-32-356 in the biosolids;

b. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the Class A pathogen requirements in 9VAC25-32-675 A and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

c. A description of how the Class A pathogen requirements in 9VAC25-32-675 A are met; and

d. A description of how one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8 is met.

2. The person who derives the material that meets the criteria of exceptional quality biosolids shall develop the following information and shall retain the information for five years:

a. The concentration of each pollutant listed in Table 4 of 9VAC25-32-356 in the material;

b. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the Class A pathogen requirements in 9VAC25-32-675 A and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

c. A description of how the Class A pathogen requirements in 9VAC25-32-675 A are met; and

d. A description of how one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8 is met.

3. If the requirements in 9VAC25-32-356 B 4 b are met when biosolids is sold or given away in a bag or other container for application to the land, the person who prepares the biosolids that is sold or given away in a bag or other container shall develop the following information and shall retain the information for five years:

a. The annual whole sludge application rate for the biosolids that does not cause the annual pollutant loading rates in Table 5 of 9VAC25-32-356 to be exceeded;

b. The concentration of each pollutant listed in Table 5 of 9VAC25-32-356 in the biosolids;

c. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in 9VAC25-32-570 E and F, the Class A pathogen requirement in 9VAC25-32-675 A, and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

d. A description of how the Class A pathogen requirements in 9VAC25-32-675 A are met; and

e. A description of how one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8 is met.

F. An annual report shall be submitted to the department that includes the following information:

1. Total amount in dry tons of exceptional quality biosolids distributed in a bag or other container per year;

2. Total amount in dry tons of exceptional quality biosolids distributed in bulk; and

3. Total amount in dry tons of exceptional quality biosolids distributed from each approved source.

Office of Regulatory Management

Economic Review Form

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-31 9VAC25-32
VAC Chapter title(s)	Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32)
Action title	Implementation of Chapters 853 and 854 of the 2026 Acts of Assembly
Date this document prepared	5/12/2026
Regulatory Stage (including Issuance of Guidance Documents)	Final Exempt

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

(1) Direct & Indirect Costs & Benefits (Monetized)	**Background:** Chapters 853 and 854 of the 2026 Acts of Assembly (HB1433 – Del. Lopez; SB386 – Sen. Stuart) amend § 62.1-44.19:3 of the Code of Virginia to establish per- and polyfluoroalkyl substances (PFAS) testing, reporting, and concentration-based management requirements for owners of sewage treatment works and other permit holders that land apply, market, or distribute sewage sludge in the Commonwealth. The legislation is summarized as follows: 1. Section 62.1-44.19:3 T of the Code of Virginia states that "Beginning January 1, 2027, any owner of a sewage treatment works land applying, marketing, or distributing sewage sludge in the Commonwealth shall collect representative samples of the sewage sludge intended to be land applied, marketed, or distributed and have such samples analyzed by an accredited laboratory for PFAS". This section also specifies the analysis method, the frequency of sampling, and the requirement to report analysis results to the Department and any person land applying the sewage sludge. In addition, the requirements of this section apply to the permit holder intending to land apply, market, or distribute sewage sludge that originates from outside the Commonwealth. 2. Section 62.1-44.19:3 U of the Code of Virginia sets PFAS concentration-based biosolids management requirements after July 1, 2027. Based on perfluorooctanoic acid (PFOA) or perfluorooctane sulfonate (PFOS) concentrations in the sewage sludge, the land application, marketing, and distribution of such material is either: allowable with land owner notification, restricted with land owner notification, or prohibited and alternate treatment, use, or disposal must be arranged. 3. Section 62.1-44.19:3 V of the Code of Virginia sets PFAS concentration-based biosolids management requirements after July 1, 2029. Based on a combined PFOA and PFOS concentration in the sewage sludge, the land application, marketing, and distribution of such material is either: allowable with land owner notification, restricted with land owner notification, or prohibited and alternate treatment, use, or disposal must be arranged. Section 62.1-44.19:3 A 2 of the Code of Virginia states that "Sewage sludge shall be treated to meet standards for land application as required by Board regulation prior to delivery at the land application site." Sewage sludge that has received an established treatment and contains

	acceptable levels of certain pollutants, such that it is acceptable for land application, marketing or distribution in accordance with the VPDES Permit Regulation or the VPA Permit Regulation, is known as "biosolids." Chapters 853 and 854 of the 2026 Acts of Assembly refer to this material as "sewage sludge." Because of the distinction between "sewage sludge" and "biosolids," further references within this form and within the regulatory action use the term "biosolids" when referring to material intended for land application, marketing, or distribution. This rulemaking amends the Virginia Pollutant Discharge System (VPDES) Permit Regulation (9VAC25-31) and Virginia Pollutant Abatement (VPA) Permit Regulation (9VAC25-32) to be consistent with the change to Virginia statutory law. **Direct Costs:** There are 67 publicly and privately owned wastewater treatment plants (WWTPs) in Virginia that treat sewage sludge to levels required for biosolids land application, distribution, or marketing. The Department issues permits to WWTPs and contractors that land apply biosolids in 61 localities. There are currently 111 permits authorizing land application by 14 WWTPs and contractors that land apply biosolids in Virginia. The WWTPs and contractors land applied 115,440 dry tons of biosolids in 2024. Of the total land applied, approximately 77,000 dry tons were from WWTPs in Virginia and approximately 38,000 dry tons came from WWTPs in other states. The extent of direct costs on owners of treatment works will include new procedures for sampling, analyzing, and reporting PFAS results, as well as new procedures for storing and managing material while test results are verified, and arranging for alternate treatment, use, or disposal when specified thresholds are exceeded. There are 15 laboratories in Virginia that are currently certified by the Division of Consolidated Laboratory Services to do PFAS testing for biosolids. Test costs are currently in the range of $375-$750 per sample with a minimum turnaround time of 15 days. If certain thresholds of PFOS and/or PFOA concentrations are exceeded, alternate treatment, use, or disposal requirements will likely result in increased disposal of sewage sludge at landfills. Landfills have been reluctant to accept biosolids or sewage sludge because of its moisture content, odor, and their own volume limitations. The Department does not have adequate information to estimate the landfill disposal costs. The extent of direct costs on land appliers will include new procedures for verifying PFAS concentrations and notifying land owners of PFAS concentrations. In addition, if the person land applying, marketing, or distributing biosolids obtains such material from outside the

	Commonwealth, they will incur all the direct costs of obtaining analysis results, reporting, and land owner notification. Stakeholders such as utility rate payers may be subjected to rate increases due to the increase in direct costs to WWTPs, however, the Department is not able to estimate how costs will be passed on to stakeholders. The change to state law establishes an ongoing obligation for the Department to receive, review, and assess recurring laboratory data submissions; determine compliance; evaluate alternative management approaches where applicable, initiate enforcement; and oversee implementation of land application restrictions. The amount of direct costs incurred by the Department is anticipated to be $625,000 annually. These costs include hiring five new positions to include one data analyst, one waste-specific technical reviewer, and three compliance coordinators. **Indirect Costs:** Indirect costs may be incurred by the regulated entities and stakeholders due to the same factors described above in the Direct Costs discussion. The Department cannot identify or estimate all of the potential costs. **Direct and Indirect Benefits:** This change in the law and resulting regulation provides for increased data availability and transparency regarding PFAS levels in biosolids that are land applied, marketed, and distributed in the Commonwealth. It is anticipated that the concentration-based management requirements will result in a reduction in the land application, marketing, and distribution of biosolids containing PFAS. An expected indirect benefit of this monitoring and concentration-based management is the protection of human health and the environment, including public water supplies. The Department is unable to determine the monetized value of the Direct and Indirect Benefits.

(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a)Test costs for PFAS analysis incurred by WWTPs in the range of $375-$750 per sample. Unable to estimate the total cost as it would depend on the number of samples analyzed. Anticipated cost	(b) Indeterminate.

	to the Department of $625,000 annually.	
(3) Net Monetized Benefit	Indeterminate.	
(4) Other Costs & Benefits (Non-Monetized)	Indeterminate direct and indirect benefits from increased data availability and transparency regarding PFAS in biosolids, and an anticipated reduction in the land application, marketing, and distribution of biosolids containing PFAS, and the protection of human health and the environment. Indeterminate direct and indirect costs due to new requirements for WWTPs generating and permit holders applying biosolids, and the resulting change in the use and disposal of biosolids in the Commonwealth.	
(5) Information Sources	• Department of Planning and Budget, State Fiscal Impact Statement for HB1443ER • Chapters 853 and 854 of the 2026 Acts of Assembly • Discussions with Department staff	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	This regulatory amendment is in response to a change in state law where no agency discretion is involved. Retaining the status quo is not an option. The current regulations do not contain PFAS testing, reporting, and concentration-based management requirements for the land application, distribution, and marketing of treated sewage sludge. **Direct and Indirect Costs:** N/A **Direct and Indirect Benefits:** N/A	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Unable to be estimated but costs would be the same as they have been under the status quo.	(b) None identified.
(3) Net Monetized Benefit	Indeterminate.	
(4) Other Costs & Benefits (Non-Monetized)	None identified.	

(5) Information Sources	See Table 1a.

Table 1c: Costs and Benefits under Alternative Approach(es)
This action is mandated by state statute. There are no alternative approaches.

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	**Direct and Indirect Costs:** Publicly owned WWTPs are expected to be the primary local partner impacted by this change in state law and corresponding regulatory amendment. See the discussion in Table 1a. The Department does not have adequate information to estimate the total direct and indirect cost to local partners. **Direct and Indirect Benefits:** Indeterminate direct and indirect benefits from increased data regarding PFAS in biosolids.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Test costs for PFAS analysis incurred by WWTPs in the range of $375-$750 per sample. Unable to estimate the total cost as it would depend on the number of samples analyzed.	(b) Indeterminate.
(3) Other Costs & Benefits (Non-Monetized)	Indeterminate direct and indirect benefits from increased data regarding PFAS in biosolids.	
(4) Assistance	None identified.	
(5) Information Sources	See Table 1a.	

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	**Direct and Indirect Costs:** Stakeholders such as utility rate payers may be subjected to rate increases due to the increase in direct costs to WWTPs, however, the Department is not able to estimate how costs will be passed on to stakeholders. **Direct and Indirect Benefits:** Stakeholders that may benefit by the regulatory change include the landowners who allow biosolids to be applied to their property and local residents in communities where biosolids are land applied. It is anticipated that the concentration-based management requirements will result in a reduction in the land application, marketing, and distribution of biosolids containing PFAS. An expected indirect benefit is the protection of human health and the environment, including public water supplies.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Indeterminate.	(b) Indeterminate.
(3) Other Costs & Benefits (Non-Monetized)	None identified.	
(4) Information Sources	See Table 1a.	

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	**Direct and Indirect Costs:** No direct or indirect costs specific to small businesses have been identified as a result of this regulatory action. **Direct and Indirect Benefits:**

	No direct or indirect benefits specific to small businesses have been identified as a result of this regulatory action.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None identified.	(b) None identified.
(3) Other Costs & Benefits (Non-Monetized)	None identified.	
(4) Alternatives	None identified.	
(5) Information Sources	See Table 1a.	

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

9VAC25-31

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Total Net Change in Requirements
9VAC25-31-465 (new section)	**(M/A):**	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	16	0	+16
	(D/R):	0	0	0	0
9VAC25-31-485	**(M/A):**	1	0	0	0
	(D/A):	0	0	0	0
	(M/R):	17	0	0	0
	(D/R):	0	0	0	0
9VAC25-31-490	**(M/A):**	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	2	0	0	0
	(D/R):	0	0	0	0
9VAC25-31-530	**(M/A):**	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	10	0	0	0
	(D/R):	0	0	0	0
9VAC25-31-540	**(M/A):**	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	1	0	0	0
	(D/R):	0	0	0	0
				Grand Total of Changes in Requirements:	**(M/A):** 0
					(D/A): 0
					(M/R): +16[A]
					(D/R): 0

9VAC25-32

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Total Net Change in Requirements
9VAC25-32-313	**(M/A):**	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	11	0	0	0
	(D/R):	0	0	0	0
9VAC25-32-316 (new section)	**(M/A):**	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	16	0	+16
	(D/R):	0	0	0	0
9VAC25-32-356	**(M/A):**	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	2	0	0	0
	(D/R):	0	0	0	0
9VAC25-32-515	**(M/A):**	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	11	0	0	0
	(D/R):	0	0	0	0
9VAC25-32-570	**(M/A):**	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	8	0	0	0
	(D/R):	0	0	0	0
				Grand Total of Changes in Requirements:	**(M/A):** 0
					(D/A): 0
					(M/R): +16[A]
					(D/R): 0

[A] This regulatory amendment is in response to a change in state law where no agency discretion is involved. The change in state law and resulting regulatory amendment contain 16 new mandatory requirements affecting external parties. The VPDES Permit Regulation (9VAC25-31) and the VPA Permit Regulation (9VAC25-32) both contain the requirements for finished sewage sludge (biosolids) such that it is acceptable for land application, marketing, or distribution. The VPA Permit Regulation contains the requirements for biosolids activities where no discharge occurs, while the VPDES Permit Regulation governs treatment facilities that may prepare, market, distribute, or land apply biosolids. Currently, neither the VPA Permit Regulation nor the VPDES Permit Regulation address PFAS testing, reporting, or concentration-based management

requirements for biosolids. The statutory mandates of § 62.1-44.19:3 of the Code of Virginia, as amended by Chapters 853 and 854 of the 2026 Acts of Assembly, are being added to both regulations, such that the 16 new requirements affect both permit types equally and consistently. Sections 9VAC25-31-465 and 9VAC25-32-316 are being added as new sections to consolidate all PFAS requirements related to biosolids into a single location within each chapter. The rest of the amended sections do not contain unique new requirements, rather they reference the new sections (9VAC25-31-465 or 9VAC25-32-316, as appropriate) for clarity throughout the chapters.

Key:
Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:
(M/A): Mandatory requirements mandated by federal and/or state statute affecting the agency itself
(D/A): Discretionary requirements affecting agency itself
(M/R): Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies
(D/R): Discretionary requirements affecting external parties, including other agencies

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved*	**Description of Regulatory Requirement**	**Initial Cost**	**New Cost**	**Overall Cost Savings/Increases**
9VAC25-31-465	Requires owners of sewage treatment works to conduct testing for PFAS in sewage sludge beginning January 1, 2027; establishes concentration-based land application restrictions for PFOS and PFOA; mandates reporting of PFAS test results to the Department and affected landowners; and requires alternative treatment, use, or disposal when specified thresholds are exceeded.	Unknown.	Test costs for PFAS analysis incurred by WWTPs in the range of $375-$750 per sample; Other potential costs are unknown.	Indeterminate.
9VAC25-32-316	Same as above.	Unknown.	Same as above.	Indeterminate.

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved*	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden
9VAC25-31-465	Requires owners of sewage treatment works to conduct testing for PFAS in sewage sludge beginning January 1, 2027; establishes concentration-based land application restrictions for PFOS and PFOA; mandates reporting of PFAS test results to the Department and affected landowners; and requires alternative treatment, use, or disposal when specified thresholds are exceeded.	Currently, neither the VPA Permit Regulation nor the VPDES Permit Regulation address PFAS testing, reporting, or concentration-based management requirements for treated sewage sludge (biosolids). The regulatory change is a new requirement for permittees regulated under the VPA Permit Regulation and the VPDES Permit Regulation.
9VAC25-32-316	Same as above.	Same as above.

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	Original Word Count	New Word Count	Net Change in Word Count
N/A			

*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the appropriate chart(s).

TAB G

Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

www.deq.virginia.gov

David L. Bulova
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director

MEMORANDUM

TO: State Water Control Board Members

FROM: Jaime B. Robb, Director, Water Operations Division Jaime B. Robb

DATE: May 22, 2026

SUBJECT: Final Amendments to the Fees for Permits and Certificates (9VAC25-20) Regulation: Implementation of Chapter 933 of the 2026 Acts of Assembly – Sewage Sludge; Local authority to test and monitor land application within its political boundaries.

At the June 23, 2026, meeting of the State Water Control Board (Board), the department will present the Board with final amendments to the Fees for Permits and Certificates regulation, 9VAC25-20. These amendments are necessary to implement Chapter 933 of the 2026 Acts of Assembly (HB1072 – Del Laufer).

Background

Section 62.1-44.19 I of the Code of Virginia currently allows localities to adopt an ordinance that provides for the testing and monitoring of the land application of sewage sludge within its political boundaries to ensure compliance with applicable laws and regulations. Section 62.1-44.19:3 G (ii) of the Code of Virginia specifies that land application permit fees deposited into the Sludge Management Fund may be used to reimburse localities for their sewage sludge testing and monitoring activities. Chapter 933 of the 2026 Acts of Assembly (HB1072 – Del Laufer) amends § 62.1-44.19:3 of the Code of Virginia to provide that localities may adopt ordinances for the testing and monitoring of the land application of sewage sludge within their political boundaries for perfluoroalkyl and polyfluoroalkyl substances (PFAS), as defined in § 62.1-44.34:29 of the Code of Virginia, and that expenses incurred by a locality for such testing and monitoring are not eligible for reimbursement from the Sludge Management Fund established under § 62.1-44.19:3 G.

Amendments

The following amendments are being made to the Fees for Permits and Certificates regulation in response to Chapter 933 of the 2026 Acts of Assembly:

Section 90: The existing regulation governs the deposit and permissible uses of fees collected under 9VAC25-20, including fees deposited into the Sludge Management Fund and their disbursement to localities with duty adopted ordinances for testing and monitoring of the land application of sewage sludge. In response to Chapter 933 of the 2026 Acts of Assembly, 9VAC25-20-90 A is being amended to add a statement establishing at the Fund scope level that a locality may through a local ordinance require testing and monitoring for perfluoroalkyl and polyfluoroalkyl substances (PFAS), as defined in § 62.1-44.34:29 of the Code of Virginia, using an applicable test method established by the U.S. Environmental Protection Agency (EPA),but such expenses are not eligible for reimbursement from the Sludge Management Fund. This placement ensures the exclusion operates as a foundational Fund scope limitation rather than a cost-type exclusion and is visible to any reader examining the permissible uses of the Fund.

Section 148: The existing regulation identifies the specific types of expenses localities may submit for reimbursement from the Sludge Management Fund, including costs associated with reviewing permits, conducting site monitoring and inspections, and collecting and delivering samples to laboratories. In response to Chapter 933 of the 2026 Acts of Assembly, a new subsection C is being added to 9VAC25-148 expressly providing that expenses incurred for PFAS testing and monitoring pursuant to a local ordinance authorized under § 62.1-44.19:3 of the Code of Virginia are not eligible for reimbursement. This placement ensures that a locality reviewing eligible cost types under 9VAC25-20-148 encounters the exclusion directly and is not misled into believing PFAS testing costs may qualify under the activity types listed in subsections A or B.

Attorney General Certification

The Office of the Attorney General will be sent the regulation for certification of authority to adopt the amendments.

Staff Recommendation

At your meeting scheduled for June 23, 2026, the department will request that the Board adopt these amendments as final regulations, authorize their publication, and affirm that the Board will receive, consider and respond to petitions by any interested persons at any time with respect to reconsiderations or revision.

Presenter Contact Information

Name: Nelson Daniel
Phone: (804) 659-1752
Email: David.Daniel@deq.virginia.gov

Attachments

Attachment A: Draft Virginia Regulatory Town Hall Document (TH-09): Amend Requirements for Fees for Permits and Certificates Pursuant to Chapter 933 of the 2026 Acts of Assembly

Attachment B: Chapter 933 of the 2026 Acts of Assembly

Attachment C: Text of Final Amendments to the Fees for Permits and Certificates (9VAC25-20) regulation: Implementation of Chapter 933 of the 2026 Acts of Assembly; (RIS PROJECT 8646)

Attachment D: ORM Economic Review Form

townhall.virginia.gov

Exempt Action: Final Regulation
Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-20
VAC Chapter title(s)	Fees for Permits and Certificates
Action title	Implementation of Chapter 933 of the 2026 Acts of Assembly
Final agency action date	June 23, 2026
Date this document prepared	May 15, 2026

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.

Section 62.1-44.19:3 I of the Code of Virginia currently allows localities to adopt an ordinance that provides for the testing and monitoring of the land application of sewage sludge within its political boundaries to ensure compliance with applicable laws and regulations. Chapter 933 of the 2026 Acts of Assembly (HB1072 – Del Laufer) amends § 62.1-44.19:3 of the Code of Virginia to provide that localities may adopt ordinances for the testing and monitoring of the land application of sewage sludge within their political boundaries for perfluoroalkyl and polyfluoroalkyl substances (PFAS), as defined in § 62.1-44.34:29 of the Code of Virginia, and that expenses incurred by a locality for such testing and monitoring are not eligible for reimbursement from the Sludge Management Fund established under § 62.1-44.19:3 G. To implement this statutory change, the Board is amending 9VAC25-20 (Fees for Permits and Certificates) by adding language to 9VAC25-20-90 A (Deposit and use of fees) establishing that PFAS testing and monitoring expenses are excluded from permissible Fund disbursements, and by adding a

new subsection C to 9VAC25-20-148 (Reimbursable local monitoring costs) directing localities to the exclusion when reviewing eligible cost types.

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."

Chapter 933 of the 2026 Acts of Assembly (HB1072 – Del Laufer), amends § 62.1-44.19:3 of the Code of Virginia to provide that localities may adopt ordinances for the testing and monitoring of the land application of sewage sludge within their political boundaries for perfluoroalkyl and polyfluoroalkyl substances (PFAS), as defined in § 62.1-44.34:29 of the Code of Virginia, and that expenses incurred by a locality for such testing and monitoring are not eligible for reimbursement from the Sludge Management Fund established under § 62.1-44.19:3 G.

This regulation amendment is exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 a of the Code of Virginia because it is necessary to conform to changes in Virginia statutory law where no agency discretion is involved.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) that the agency has "adopted final amendments" to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, "On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)]."

On June 23, 2026, the State Water Control Board adopted final amendments to the Fees for Permits and Certificates (9VAC25-20) regulation.

The regulatory action is to be effective as provided in the Administrative Process Act. In adopting these amendments, the State Water Control Board affirmed that it would receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

CHAPTER 933

An Act to amend and reenact § 62.1-44.19:3 of the Code of Virginia, relating to local authority to test and monitor the land application of sewage sludge within its political boundaries.

[H 1072]

Approved April 13, 2026

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.19:3 of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.19:3. Prohibition on land application, marketing, and distribution of sewage sludge without permit; ordinances; notice requirement; fees.

A. 1. No owner of a sewage treatment works shall land apply, market, or distribute sewage sludge from such treatment works except in compliance with a valid Virginia Pollutant Discharge Elimination System Permit or valid Virginia Pollution Abatement Permit.

2. Sewage sludge shall be treated to meet standards for land application as required by Board regulation prior to delivery at the land application site. No person shall alter the composition of sewage sludge at a site approved for land application of sewage sludge under a Virginia Pollution Abatement Permit or a Virginia Pollutant Discharge Elimination System. Any person who engages in the alteration of such sewage sludge shall be subject to the penalties provided in Article 6 (§ 62.1-44.31 et seq.). The addition of lime or deodorants to sewage sludge that has been treated to meet land application standards shall not constitute alteration of the composition of sewage sludge. The Department may authorize public institutions of higher education to conduct scientific research on the composition of sewage sludge that may be applied to land.

3. No person shall contract or propose to contract, with the owner of a sewage treatment works, to land apply, market, or distribute sewage sludge in the Commonwealth, nor shall any person land apply, market, or distribute sewage sludge in the Commonwealth without a current Virginia Pollution Abatement Permit authorizing land application, marketing, or distribution of sewage sludge and specifying the location or locations, and the terms and conditions of such land application, marketing, or distribution. The permit application shall not be complete unless it includes the landowner's written consent to apply sewage sludge on his property.

4. The land disposal of lime-stabilized septage and unstabilized septage is prohibited.

5. Beginning July 1, 2007, no application for a permit or variance to authorize the storage of sewage sludge shall be complete unless it contains certification from the governing body of the locality in which the sewage sludge is to be stored that the storage site is consistent with all applicable ordinances. The governing body shall confirm or deny consistency within 30 days of receiving a request for certification. If the governing body does not so respond, the site shall be deemed consistent.

B. The Board, with the assistance of the Department of Conservation and Recreation and the Department of Health, shall adopt regulations to ensure that (i) sewage sludge permitted for land application, marketing, or distribution is properly treated or stabilized; (ii) land application, marketing, and distribution of sewage sludge is performed in a manner that will protect public health and the environment; and (iii) the escape, flow, or discharge of sewage sludge into state waters in a manner that would cause pollution of state waters, as those terms are defined in § 62.1-44.3, shall be prevented.

C. Regulations adopted by the Board, with the assistance of the Department of Conservation and Recreation and the Department of Health pursuant to subsection B, shall include:

1. Requirements and procedures for the issuance and amendment of permits, including general permits, authorizing the land application, marketing, or distribution of sewage sludge;

2. Procedures for amending land application permits to include additional application sites and sewage sludge types;

3. Standards for treatment or stabilization of sewage sludge prior to land application, marketing, or distribution;

4. Requirements for determining the suitability of land application sites and facilities used in land application, marketing, or distribution of sewage sludge;

5. Required procedures for land application, marketing, and distribution of sewage sludge;

6. Requirements for sampling, analysis, recordkeeping, and reporting in connection with land application, marketing, and distribution of sewage sludge;

7. Provisions for notification of local governing bodies to ensure compliance with §§ 62.1-44.15:3 and 62.1-44.19:3.4;

8. Requirements for site-specific nutrient management plans, which shall be developed by persons certified in accordance with § 10.1-104.2 prior to land application for all sites where sewage sludge is land applied, and approved by the Department of Conservation and Recreation prior to permit issuance under

specific conditions, including but not limited to sites operated by an owner or lessee of a Confined Animal Feeding Operation, as defined in subsection A of § 62.1-44.17:1, or Confined Poultry Feeding Operation, as defined in § 62.1-44.17:1.1, sites where the permit authorizes land application more frequently than once every three years at greater than 50 percent of the annual agronomic rate, and other sites based on site-specific conditions that increase the risk that land application may adversely impact state waters;

9. Procedures for the prompt investigation and disposition of complaints concerning land application of sewage sludge, including the requirements that (i) holders of permits issued under this section shall report all complaints received by them to the Department and to the local governing body of the jurisdiction in which the complaint originates and (ii) localities receiving complaints concerning land application of sewage sludge shall notify the Department and the permit holder. The Department shall maintain a searchable electronic database of complaints received during the current and preceding calendar year, which shall include information detailing each complaint and how it was resolved;

10. Procedures for receiving and responding to public comments on applications for permits and for permit amendments authorizing land application at additional sites. Such procedures shall provide that an application for any permit amendments to increase the acreage authorized by the initial permit by 50 percent or more shall be treated as a new application for purposes of public notice and public hearings; and

11. Procedures for addressing administrative, staging, signage, and additional on-site and alternative storage site requirements when routine and on-site storage facility capacity and holding times are anticipated to be exceeded for the purpose of protecting against the release of sewage sludge into state waters, and to account for increased intensity, frequency, and duration of storm events.

D. Prior to issuance of a permit authorizing the land application, marketing, or distribution of sewage sludge, the Department shall consult with and give full consideration to the written recommendations of the Department of Health and the Department of Conservation and Recreation. Such consultation shall include any public health risks or water quality impacts associated with the permitted activity. The Department of Health and the Department of Conservation and Recreation may submit written comments on proposed permits within 30 days after notification by the Department.

E. Where, because of site-specific conditions, including soil type, identified during the permit application review process, the Department determines that special requirements are necessary to protect the environment or the health, safety, or welfare of persons residing in the vicinity of a proposed land application site, the Department may incorporate in the permit at the time it is issued reasonable special conditions regarding buffering, transportation routes, slope, material source, methods of handling and application, and time of day restrictions exceeding those required by the regulations adopted under this section. Before incorporating any such conditions into the permit, the Department shall provide written notice to the permit applicant, specifying the reasons therefor and identifying the site-specific conditions justifying the additional requirements. The Department shall incorporate into the notice any written requests or recommendations concerning such site-specific conditions submitted by the local governing body where the land application is to take place. The permit applicant shall have at least 14 days in which to review and respond to the proposed conditions.

F. The Board shall adopt regulations prescribing a fee to be charged to all permit holders and persons applying for permits and permit modifications pursuant to this section. All fees collected pursuant to this subsection shall be deposited into the Sludge Management Fund. The fee for the initial issuance of a permit shall be $5,000. The fee for the reissuance, amendment, or modification of a permit for an existing site shall not exceed $1,000 and shall be charged only for permit actions initiated by the permit holder. Fees collected under this section shall be exempt from statewide indirect costs charged and collected by the Department of Accounts and shall not supplant or reduce the general fund appropriation to the Department.

G. There is hereby established in the treasury a special fund to be known as the Sludge Management Fund, hereinafter referred to as the Fund. The fees required by this section and by subsection E of § 62.1-44.16 shall be transmitted to the Comptroller to be deposited into the Fund. The income and principal of the Fund shall be used only and exclusively (i) for the Department's direct and indirect costs associated with the processing of an application to issue, reissue, amend, or modify any permit to land apply, distribute, or market sewage sludge or industrial wastes, the administration and management of the Department's sewage sludge and industrial wastes land application programs, including monitoring and inspecting, and the Department of Conservation and Recreation's costs for implementation of the sewage sludge application program and (ii) to reimburse localities with duly adopted ordinances providing for the testing and monitoring of the land application of sewage sludge or solid or semisolid industrial wastes. The State Treasurer shall be the custodian of the moneys deposited in the Fund. No part of the Fund, either principal or interest earned thereon, shall revert to the general fund of the state treasury.

H. All persons holding or applying for a permit authorizing the land application of sewage sludge shall provide to the Board written evidence of financial responsibility, which shall be available to pay claims for cleanup costs, personal injury, and property damages resulting from the transportation, storage, or land application of sewage sludge. The Board shall, by regulation, establish and prescribe mechanisms for meeting the financial responsibility requirements of this section.

I. Any ~~county, city, or town~~ *locality* may adopt an ordinance that provides for the testing and monitoring of the land application of sewage sludge within its political boundaries to ensure compliance with applicable laws and regulations. *Such ordinance may provide for testing and monitoring for PFAS, as that term is defined in § 62.1-44.34:29, using an applicable test method established by the U.S. Environmental Protection Agency; however, no expenses for such testing and monitoring shall be eligible for reimbursement from the Sludge Management Fund established in subsection G.*

J. The Department, upon the timely request of any individual to test the sewage sludge at a specific site, shall collect samples of the sewage sludge at the site prior to the land application and submit such samples to a laboratory. The testing shall include an analysis of the (i) concentration of trace elements, (ii) coliform count, and (iii) pH level. The results of the laboratory analysis shall be (a) furnished to the individual requesting that the test be conducted and (b) reviewed by the Department. The person requesting the test and analysis of the sewage sludge shall pay the costs of sampling, testing, and analysis.

K. At least 100 days prior to commencing land application of sewage sludge at a permitted site, the permit holder shall deliver or cause to be delivered written notification to the chief executive officer or his designee for the local government where the site is located. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site. This requirement may be satisfied by providing a list of all available permitted sites in the locality at least 100 days prior to commencing the application at any site on the list. This requirement shall not apply to any application commenced prior to October 10, 2005. If the site is located in more than one county, the notice shall be provided to all jurisdictions where the site is located.

L. The permit holder shall deliver or cause to be delivered written notification to the Department at least 14 days prior to commencing land application of sewage sludge at a permitted site. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site.

M. The Department shall randomly conduct unannounced site inspections while land application of sewage sludge is in progress at a sufficient frequency to determine compliance with the requirements of this section, § 62.1-44.19:3.1, or regulations adopted under those sections.

N. Surface incorporation into the soil of sewage sludge applied to cropland may be required when practicable and compatible with a soil conservation plan meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service.

O. The Board shall develop regulations specifying and providing for extended buffers to be employed for application of sewage sludge (i) to hay, pasture, and forestlands or (ii) to croplands where surface incorporation is not practicable or is incompatible with a soil conservation plan meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service. Such extended buffers may be included by the Department as site specific permit conditions pursuant to subsection E, as an alternative to surface incorporation when necessary to protect odor sensitive receptors as determined by the Department or the local monitor.

P. The Board shall adopt regulations requiring the payment of a fee for the land application of sewage sludge, pursuant to permits issued under this section. The person land applying sewage sludge shall (i) provide advance notice of the estimated fee to the generator of the sewage sludge unless notification is waived, (ii) collect the fee from the generator, and (iii) remit the fee to the Department as provided for by regulation. The fee shall be imposed on each dry ton of sewage sludge that is land applied in the Commonwealth. The regulations shall include requirements and procedures for:

1. Collection of fees by the Department;

2. Deposit of the fees into the Fund; and

3. Disbursement of proceeds by the Department pursuant to subsection G.

Q. The Department, in consultation with the Department of Health, the Department of Conservation and Recreation, the Department of Agriculture and Consumer Services, and the Virginia Cooperative Extension Service, shall establish and implement a program to train persons employed by those local governments that have adopted ordinances, pursuant to this section, to test and monitor the land application of sewage sludge. The program shall include, at a minimum, instruction in: (i) the provisions of the Virginia Biosolids Use Regulations; (ii) land application methods and equipment, including methods and processes for preparation and stabilization of sewage sludge that is land applied; (iii) sampling and chain of custody control; (iv) preparation and implementation of nutrient management plans for land application sites; (v) complaint response and preparation of complaint and inspection reports; (vi) enforcement authority and procedures; (vii) interaction and communication with the public; and (viii) preparation of applications for reimbursement of local monitoring costs disbursed pursuant to subsection G. To the extent feasible, the program shall emphasize in-field instruction and practical training. Persons employed by local governments shall successfully complete such training before the local government may request reimbursement from the Board for testing and monitoring of land application of sewage sludge performed by the person. The completion of training shall not be a prerequisite to the exercise of authority granted to local governments by any applicable provision of law.

The Department may:

1. Charge attendees a reasonable fee to recover the actual costs of preparing course materials and providing facilities and instructors for the program. The fee shall be reimbursable from the Fund established pursuant to this section; and

2. Request and accept the assistance and participation of other state agencies and institutions in preparing and presenting the course of training established by this subsection.

R. Localities, as part of their zoning ordinances, may designate or reasonably restrict the storage of sewage sludge based on criteria directly related to the public health, safety, and welfare of its citizens and the environment. Notwithstanding any contrary provision of law, a locality may by ordinance require that a special exception or a special use permit be obtained to begin the storage of sewage sludge on any property in its jurisdiction, including any area that is zoned as an agricultural district or classification. Such ordinances shall not restrict the storage of sewage sludge on a farm as long as such sludge is being stored (i) solely for land application on that farm and (ii) for a period no longer than 45 days. No person shall apply to the State Health Commissioner or the Department of Environmental Quality for a permit, a variance, or a permit modification authorizing such storage without first complying with all requirements adopted pursuant to this subsection.

S. (Expires July 1, 2030) The permitting requirements of this article shall not apply to any land application of sewage sludge for a research project when such land is owned and operated by an institution of higher education in the Commonwealth. At least 30 days prior to commencing any land application of sewage sludge, the institution of higher education shall notify the Department and the owner of every adjoining property of its intent to land apply such sewage sludge. The institution of higher education shall comply with setback and recordkeeping requirements as outlined in the Virginia Pollution Abatement Permit Regulation (9VAC25-32). As used in this subsection, "institution of higher education" means a public institution of higher education, as that term is defined in § 23.1-100.

Project 8646 - Exempt Final

State Water Control Board

HB1072- CH20 local ordinances for monitoring/testing biosolids

9VAC25-20-90. Deposit and use of fees.

A. Sludge Management Fund. All land application fees collected from permit holders who land apply biosolids or industrial residuals in the Commonwealth of Virginia, and fees collected from permit holders and persons applying for permits and permit modifications pursuant to § 62.1-44.19:3 of the Code of Virginia shall be deposited into the Sludge Management Fund established by, and used and accounted for as specified in §§ 62.1-44.16 and 62.1-44.19:3 of the Code of Virginia. Payments to the Department of Conservation and Recreation for their costs related to implementation of the biosolids land application program and to localities with duly adopted ordinances providing for the testing and monitoring of the land application of biosolids or industrial residuals will be made from this fund. Such ordinance(s) may provide for testing and monitoring for PFAS, as that term is defined in § 62.1-44.34:29, using an applicable test method established by the U.S. Environmental Protection Agency; however, no expenses for such testing and monitoring shall be eligible for reimbursement from the Sludge Management Fund. Fees collected shall be exempt from statewide indirect costs charged and collected by the Department of Accounts and shall not supplant or reduce the general fund appropriation to the department.

B. State Water Control Board Permit Program Fund. All fees collected in response to this chapter and not deposited into the Sludge Management Fund shall be deposited into the State Water Control Board Permit Program Fund established by, and used and accounted for as specified in § 62.1-44.15:7 of the Code of Virginia. Payment to the Departments of Conservation and Recreation and Game and Inland Fisheries for permit applications they are required under state law to review will be made from this fund. Fees collected shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

9VAC25-20-148. Reimbursable local monitoring costs.

A. Reasonable expenses for the following types of activities may be submitted for reimbursement:

1. Charges for reviewing the permit to identify potential health and environmental protection issues upon notification by the permittee that operations will be initiated on permitted sites.

2. Charges and expenses, including local travel for site monitoring, inspections, collection and delivery of biosolids, industrial residuals, or soil samples to a nearby laboratory and examination of records.

3. Charges for recordkeeping.

4. Charges for complaint and incident response.

5. Charges for biosolids, industrial residuals, and soil sample testing costs.

6. Charges for the training of local monitors.

B. Charges for site monitoring not associated with determining compliance with state or federal law or regulation are ineligible for reimbursement.

C. No expenses for testing and monitoring for PFAS, as that term is defined in § 62.1-44.34:29, shall be eligible for reimbursement.

Office of Regulatory Management

Economic Review Form

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-20
VAC Chapter title(s)	Fees for Permits and Certificates
Action title	Implementation of Chapter 933 of the 2026 Acts of Assembly (HB1072 – Del Laufer)
Date this document prepared	April 24, 2026
Regulatory Stage (including Issuance of Guidance Documents)	Final Exempt

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes

(1a) Direct & Indirect Costs (Monetized)	**Background:** This regulatory action is the result of Chapter 933 of the 2026 Acts of Assembly (HB1072 – Del Laufer). The legislation amended § 62.1-44.1:3 of the Code of Virginia authorizing localities to adopt ordinances for the testing and monitoring of the land application of sewage sludge within their political boundaries for perfluoroalkyl and polyfluoroalkyl substances (PFAS), as defined in §62.1-44.34:29 of the Code of Virginia, and that expenses incurred by a locality for such testing and monitoring are not eligible for reimbursement from the Sludge Management Fund established under §62.1-44.19:3 G.

	To implement this statutory change, the Board is amending the Fees for Permits and Certificates regulation (9VAC25-20) to establish that expenses incurred by localities for PFAS testing and monitoring pursuant to a local ordinance authorized under §62.1-44.19:3 are not eligible for reimbursement from the Sludge Management Fund. **Direct Costs:** The regulatory amendment does not impose any new mandatory requirements on the regulated community. Adoption of a local ordinance for PFAS testing and monitoring is discretionary. Costs will vary by locality depending on the number of locality/source combinations and sampling frequency. Based on 2024 data reflecting 47 localities and 338 unique locality/source combinations, and assuming a cost of $525 per sample, total costs could reach approximately $710,000 per year if all localities adopted quarterly testing ordinances. Because PFAS testing and monitoring costs are not eligible for reimbursement from the Sludge Management Fund, any costs incurred would be borne directly by the locality, and the frequency of the testing, if any, would be established through local ordinance. **Indirect costs:** None
2 (a). Direct & Indirect Benefits (Monetized)	**Direct benefits:** The direct benefits of this regulatory amendment cannot be monetized at this time. **Indirect benefits:** The indirect benefits of this regulatory amendment cannot be monetized at this time.
3 (a) Net monetized benefit	Because adoption of a local ordinance for PFAS testing and monitoring is discretionary, net monetized benefits will vary by locality depending on the decision to adopt an ordinance and the scope of testing undertaken. Monetized benefits are unable to be determined.
4 (a) Other costs and benefits that cannot be monetized	PFAS testing and monitoring by localities may reduce environmental and public health risks by providing early detection of elevated concentrations
5 (a) Information Sources Used	Cost information about PFAS sampling and turnaround time provided by DEQ, PFAS staff; permit information was provided by DEQ, VPA program staff.

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

1 (b) Direct & Indirect Costs (Monetized)	**Direct Costs:** None **Indirect costs:** None

2 (b). Direct & Indirect Benefits (Monetized)	**Direct benefits:** None **Indirect benefits:** None
3 (b) Net monetized benefit	None
4 (b) Other costs and benefits that cannot be monetized	. None
5 (b) Information Sources Used	N/A

Table 1c: Costs and Benefits under Alternative Approach(es)
This regulatory action is required by changes to state statute, Chapter 933 of the 2026 Acts of Assembly (HB1072 – Del. Laufer). No alternatives were considered because of the statutory requirement.

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

<table>
<tr><td>(1) Direct & Indirect Costs & Benefits (Monetized)</td><td colspan="2">Direct Costs: Localities are the primary local partners affected by this regulatory amendment. Chapter 933 of the 2026 Acts of Assembly (HB1072 – Del Laufer) authorizes localities to adopt ordinances for the testing and monitoring of the land application of sewage sludge within their political boundaries for PFAS and clarifies that associated costs are not eligible for reimbursement from the Sludge Management Fund. Localities that elect to adopt such ordinances will bear the full cost of PFAS testing and monitoring without state assistance through the Fund. Based on 2024 data, if all 47 localities with biosolids land application adopted quarterly testing ordinances, costs could reach approximately $710,000 per year.

Indirect Costs: None

Direct Benefits: See Table 1a.

Indirect Benefits: See Table 1a.</td></tr>
<tr><td>(2) Present Monetized Values</td><td>Direct & Indirect Costs</td><td>Direct & Indirect Benefits</td></tr>
<tr><td></td><td>(a) Direct costs: None
Indirect costs: None</td><td>(b) Direct benefits:
Indirect benefits: None</td></tr>
<tr><td>(3) Other Costs & Benefits (Non-Monetized)</td><td colspan="2">Indirect benefit: PFAS testing and monitoring by localities may reduce environmental and public health risks by providing early detection of elevated concentrations</td></tr>
<tr><td>(4) Assistance</td><td colspan="2">N/A</td></tr>
<tr><td>(5) Information Sources</td><td colspan="2">Cost information about PFAS sampling and turnaround time provided by DEQ, PFAS staff; permit information was provided by DEQ, VPA program staff.</td></tr>
</table>

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	No direct or indirect costs are expected to impact families because the changes do not impose any fees or requirements on households. No direct benefits are expected.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None	(b) None.
(3) Other Costs & Benefits (Non-Monetized)	If localities choose to conduct PFAS monitoring and testing, indirect benefits that cannot be monetized may include identification of elevated concentrations in land applied sewage sludge for families living near application sites.	
(4) Information Sources	Cost information about PFAS sampling and turnaround time provided by DEQ, PFAS staff; permit information was provided by DEQ, VPA program staff.	

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	**Direct Costs:** None **Indirect Costs:** None **Direct Benefits:** (See Table 1a) **Indirect benefits:** (See Table 1a)	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) (See Table 1a)	(b) (See Table 1a)
(3) Other Costs & Benefits (Non-Monetized)	(See Table 1a)	
(4) Alternatives	None. This regulatory effort is an optional choice for localities and does not impose a burden on small businesses.	

(5) Information Sources	Cost information about PFAS sampling and turnaround time provided by DEQ, PFAS staff; permit information was provided by DEQ, VPA program staff.

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Total Net Change in Requirements
9VAC20-90 A	**(M/A):**	**1**	0	0	0
	(D/A):	**0**	0	0	0
	(M/R):	**1**	0	0	0
	(D/R):	**1**	0	0	0
9VAC25-20-148 C	**(M/A):**	**1**	0	0	0
	(D/A):	**0**	0	0	0
	(M/R):	**0**	0	0	0
	(D/R):	**1**	0	0	0
				Grand Total of Changes in Requirements:	**(M/A): 0**
					(D/A): 0
					(M/R): 0
					(D/R): 0

Key:
Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:
(M/A): Mandatory requirements mandated by federal and/or state statute affecting the agency itself
(D/A): Discretionary requirements affecting agency itself
(M/R): Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies
(D/R): Discretionary requirements affecting external parties, including other agencies

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved*	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases

9VAC25-20-90 A	Establishing authority for localities to test and monitor for PFAS and such expenses are excluded from permissible Sludge Management Fund disbursements	None	None; Localities bear testing costs voluntarily if ordinance is adopted	No change to Sludge Management Fund expenditures because PFAS testing costs are currently not eligible for reimbursement
9VAC20-148 C	New subsection excluding PFAS testing costs from reimbursable expenses from Sludge Management Fund	None	None	None; clarifying provision only

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved*	**Description of Regulatory Change**	**Overview of How It Reduces or Increases Regulatory Burden**
9VAC25-20-90 A	Adds statement at the Fund scope level authorizing localities to adopt ordinances for PFAS testing and monitoring of sewage sludge land application pursuant to §62.1-44.19:3; and establishing that expenses incurred for such testing are not eligible for reimbursement from the Sludge Management Fund.	No new burden. Localities have the option to adopt an ordinance concerning PFAS monitoring and testing of sewage sludge.
9VAC25-20-148 C	Adds new subsection C expressly providing those expenses incurred for PFAS testing and monitoring pursuant to a local ordinance authorized under §62.1-44.19:3 are not eligible for reimbursement with cross-reference to 9VAC25-20-90.	No new burden: ensures eligible cost types under 9VAC25-20-148 are directed to the Fund scope exclusion established in 9VAC25-20-90 A.

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	**Original Word Count**	**New Word Count**	**Net Change in Word Count**
N/A			

*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the app

TAB H

Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

www.deq.virginia.gov

David L. Bulova
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director

MEMORANDUM

TO: State Water Control Board Members

FROM: Jaime Robb, Director, Water Operations Division

SUBJECT: Petition for New Regulatory Rulemaking on Discharges to Dry Ditches

DATE: June 1, 2026

I. Executive Summary

At the upcoming meeting of the State Water Control Board (Board), the Board will act on a petition requesting a new regulatory rulemaking under the Virginia Pollutant Discharge Elimination System (VPDES) program to regulate point source discharges into dry ditches or intermittent streams from wastewater facilities discharging 1,000 gallons per day (gpd) or more.

Pursuant to § 2.2-4007 of the Code of Virginia, the Board must either grant or deny the petitioner's request. After reviewing the petition, public comments, state and federal laws and regulations, and the State Water Control Law,[1] which establishes the Board's authority over the discharge of pollutants to state waters, Virginia Department of Environmental Quality (DEQ) staff recommends the Board deny the petition. The VPDES Permit Regulation[2] already provides authority for DEQ to regulate point source discharges into dry ditches or intermittent streams from wastewater facilities discharging 1,000 gpd or more. This memorandum provides a summary of the petition, a summary of the comments received during the public comment period, an overview of relevant laws and regulations, an analysis of relevant issues, and the rationale for DEQ's recommendation.

II. Background

On March 26, 2026, the Board received a petition for rulemaking from James Alexander and Evans Oakerson (collectively, the petitioners) requesting the Board adopt regulations, application requirements, and associated definitions to address "significant gaps in existing regulations regarding VPDES discharges into dry ditch or intermittent streams for wastewater facilities

[1] § 62.1-44.2 et seq. of the Code of Virginia.
[2] 9VAC25-31.

discharging 1,000 gallons or more each day after the landmark Clean Water Act decision in Sackett v. [Environmental Protection Agency]"[3] (*Sackett*).[4]

Pursuant to the Administrative Process Act[5] and the Public Participation Guidelines,[6] any person may petition an agency to request it develop a new regulation or amend an existing regulation. In this case, the petitioners propose that the Board "adopt regulations to address the circumstances involving intermittent streams, ephemeral streams, or dry ditch situations."[7] The petition includes proposed amendments to the VPDES Permit Regulation[8] including:

- Addition of language stating that effluent leaving a system is sited in a manner that protects public health and minimizes environmental impacts;
- Incorporation of Reliability Class requirements from the Sewage Collection and Treatment Regulations;[9] and
- Establishment of requirements for discharges to intermittent streams and dry ditches.

The petition also suggests the regulation take the form of a general permit.[10]

A copy of the petition is included as Attachment 1 to this memorandum.

III. Summary of Comments Received on the Petition

In accordance with § 2.2-4007 C of the Code of Virginia, DEQ announced a 21-day public comment period on the petition in the April 20, 2026, issue of the *Virginia Register of Regulations*. Public comments could be submitted in writing directly to DEQ or through the Virginia Regulatory Town Hall website from April 20, 2026, through May 11, 2026.

A. Comments in Opposition:

A total of 3 comments in opposition to the petition were submitted via email. These comments were submitted by Chantilly Crushed Stone, the Virginia Association of Municipal Wastewater Agencies (VAMWA), and on behalf of the Mountain View Nursing Home.

The main issues raised in opposition to the petition are summarized below:

- Petitioners misconstrue the impact of *Sackett* on Virginia's authority to regulate discharges to state waters, including intermittent and ephemeral streams and dry ditches;

[3] 598 U.S. 651 (2023).
[4] Petition at 2.
[5] § 2.2-2007 of the Code of Virginia.
[6] 9VAC25-11-60.
[7] Petition at 4.
[8] Amendments to 9VAC25-31-190, Conditions applicable to all permits, are provided. See Petition at 5-16.
[9] 9VAC25-790.
[10] Petition at 4 and 7. Page 4 of the petition refers to the VPDES General Permit Regulation for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day, 9VAC25-110, effective August 2, 2021, to July 31, 2026 (a new general permit regulation will be effective August 1, 2026, and expire on July 31, 2031). Discharges equal to or greater than 1,000 gallons per day are currently permitted under the VPDES Permit Regulation, 9VAC25-31, using a VPDES individual permit.

- In Virginia, jurisdiction over discharges of pollutants to waters under the VPDES Permit Program is to "state waters" as that term is defined in § 62.1-44.3 of the Code of Virginia, and the breadth of state waters is broader than waters of the United States under the Clean Water Act;
- Petitioners proposed regulations exceed the Agency's authority;
- Other discharges of domestic sewage, where the discharge does not reach state waters, falls under the Virginia Pollution Abatement Permit regulation, 9VAC25-32, thus there is not a gap in DEQ's permitting authority.

B. Other Comments

DEQ received one comment raising compliance concerns regarding a periodic discharge of pollutants to a dry ditch that reaches a stream on the commenter's property. The discharge is the subject of a controversial VPDES permit application that DEQ is currently processing for Mountain View Nursing Home, VPDES permit VA0063347. The email message from the commenter includes "Petition for Rulemaking" as the subject but does not otherwise speak to the petition or state what action the Board should take with respect to it.

Copies of the comments DEQ received during the public comment period are included as Attachment 2 to this memorandum.

IV. Legal Authority to Regulate Discharges into State Waters

A. The Clean Water Act

Section 301 of the Clean Water Act[11] establishes a broad prohibition against "the discharge of any pollutant by any person" except in compliance with the act's permit requirements, effluent limitations, and other enumerated provisions. The discharge of a "pollutant" is defined to mean "any addition of any pollutant to navigable waters from any point source."[12] A "point source" is defined as "any discernable, confined, and discrete conveyance … from which pollutants are or may be discharged."[13] The definition of a point source has been broadly interpreted to cover almost any natural or man-made conveyance from which a pollutant may be discharged, including pipes, ditches, and channels.[14]

B. The NPDES Permit Program

Section 402 of the Clean Water Act[15] establishes the National Pollutant Discharge Elimination System (NPDES) federal permitting program that regulates the discharge of pollutants from point sources into surface waters of the United States. Without a NPDES permit, it is illegal to discharge pollutants from a point source (such as a pipe, ditch, channel, or tunnel) into a water of the United

[11] 33 U.S.C. § 1311 (a).
[12] 33 U.S.C. § 1362 (12).
[13] 33 U.S.C. § 1362 (6).
[14] See, https://www.epa.gov/npdes/npdes-permit-basics What is a point source? The term point source is also defined very broadly in the Clean Water Act and it has been through 25 years of litigation. It means any discernible, confined and discrete conveyance, such as a pipe, ditch, channel, tunnel, conduit, discrete fissure, or container. It also includes vessels or other floating craft from which pollutants are or may be discharged.
[15] 33 U.S.C. § 1342.

States. Section 402 authorizes the EPA to delegate implementation of the NPDES program to states and eligible tribes including permit issuance, monitoring, and enforcement of the program.[16]

40 CFR Part 123 of the NPDES regulations establishes the criteria a state or eligible tribe must meet for EPA approval of a delegated NPDES program, how delegated programs must be administered, and how EPA oversees, reviews, and can withdraw program delegation. Among those requirements, the state or tribe must have the legal authority to implement provisions of the NPDES program and must administer those provisions in conformance with program requirements,[17] except that a state may impose more stringent requirements. [18] EPA initially approved Virginia as a delegated authority to administer and implement the NPDES program, referred to as the VPDES program, in March 1975.[19] Since 1975, the delegation has been subsequently amended to incorporate additional components of the NPDES program. EPA routinely evaluates the effectiveness of the VPDES program through permit quality and state framework reviews.

C. State Law and Regulations

The State Water Control Law establishes that it is the policy of the Commonwealth of Virginia to: (1) protect existing high quality state waters and restore all other state waters to such condition of quality that any such waters will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (2) safeguard the clean waters of the Commonwealth from pollution; (3) prevent any increase in pollution; and (4) reduce existing pollution.[20]

To this end, the State Water Control Law prohibits waste discharges or other quality alterations of state waters except as authorized by a permit:

> A. Except in compliance with a certificate, land-disturbance approval, or permit issued by the Board or other entity authorized by the Board to issue a certificate, land-disturbance approval, or permit pursuant to this chapter, it shall be unlawful for any person to:
>
> 1. Discharge into state waters sewage, industrial waste, other wastes, or any noxious or deleterious substances;
> 2. Excavate in a wetland;
> 3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses…[21]

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[16] 33 U.S.C. § 1342 (b); requirements for state programs are set out at 40 CFR Part 123.
[17] *See* 40 CFR §§ 123.1 and 123.25.
[18] 40 CFR § 123.1 (i) "Nothing in this part precludes a State from: (1) Adopting or enforcing requirements which are more stringent or more extensive than those required under this part; (2) Operating a program with a greater scope of coverage than that required under this part. If an approved State program has greater scope of coverage than required by Federal law the additional coverage is not part of the Federally approved program."
[19] Memorandum of Understanding Regarding Permit and Enforcement Program between the State Water Control Board and the Regional Administrator, Region III Environmental Protection Agency.
[20] § 62.1-44.2 of the Code of Virginia.
[21] § 62.1-44.5 A of the Code of Virginia.

Similarly, the VPDES Permit Regulation "prohibits, except in compliance with a VPDES permit, or another permit issued by the Department, discharges into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances that may otherwise alter the physical, chemical or biological properties of such state waters."[22] "State waters" means "all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands."[23]

Through the VPDES permit program, DEQ issues individual permits to both municipal and industrial facilities, including wastewater treatment plants. Permit requirements, special conditions, effluent limitations and monitoring requirements are determined for each facility on a site-specific basis in order to meet applicable water quality standards. DEQ issues permits authorizing discharges of wastewater to point sources, including intermittent streams and dry ditches,[24] that are protective of water quality standards, human health, and the environment. Permit limitations for discharges to dry ditches and intermittent streams are calculated with an assumption of "zero" flow and do not allow the use of mixing zones that may otherwise be allowed in accordance with 9VAC25-260-20 B of the Water Quality Standards regulation, resulting in "end of pipe" limitations.

General permits are written for a general class of dischargers and adopted by the Board as regulations using the process established in the Administrative Process Act which requires notice, formation of a technical advisory committee composed of relevant stakeholders, an opportunity for the public to provide oral and written comments on a proposed regulation, and a public hearing.[25] Because a general permit is a regulation that is applicable to all permittees covered by the permit, it cannot be modified for individual, site specific situations.

D. Sackett v. Environmental Protection Agency

On May 25, 2023, the Supreme Court of the United States issued its decision in *Sackett*. The question presented was the jurisdictional extent of certain wetlands under the Clean Water Act.

The case originated when the Sacketts started backfilling their property with dirt to prepare for building a home. The EPA informed the Sacketts that their property contained wetlands and that their backfilling violated the Clean Water Act, which prohibits discharging pollutants into waters of the United States without a permit.[26] Through a long series of court cases, the Sacketts challenged EPA's assertion that wetlands on their property were waters of the United States. Ultimately, the majority of justices on the Supreme Court held that the Clean Water Act's use of "waters of the United States" refers only to "geographic[al] features that are described in ordinary

[22] 9VAC25-31-50 A.
[23] § 62.1-44.3 of the Code of Virginia.
[24] "Point source" means any discernible, confined, and discrete conveyance including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. 9VAC25-31-10.
[25] § 2.2-4006 A 8 of the Code of Virginia.
[26] Section 404 of the Clean Water Act provides for the issuance of permits for the discharge of dredge or fill material into the navigable waters of the United States.

parlance as 'streams, oceans, rivers, and lakes'"[27] and to adjacent wetlands that are "indistinguishable" from those bodies of water due to a continuous surface connection.[28]

As a result of the Supreme Court decision, numerous wetlands and many non-permanent streams are no longer considered federally regulated. In November 2025, EPA announced a proposed rule that would establish a definition of "waters of the United States" under the Clean Water Act. The proposed rule defines "relatively permanent," "continuous surface connection," and "tributary" to delineate the scope of waters of the United States consistent with the Clean Water Act and Supreme Court precedent, establishes that jurisdictional tributaries must connect to traditional navigable waters either directly or through other features that provide predictable and consistent flow, and reaffirms that wetlands must be indistinguishable from jurisdictional waters through a continuous surface connection.[29] EPA has not issued a final rule as of the date of this memorandum.

V. DEQ Analysis

The petitioners assert that the ruling in *Sackett* compromises Virginia's ability to regulate discharges to intermittent streams and dry ditches under the Clean Water Act because such waters are no longer considered waters of the United States. According to the petitioners, this means that DEQ can no longer rely on the provisions of the Clean Water Act or the EPA to grant permits or enforce sewage discharge limitations in these settings. Based on existing authority under the State Water Control Law and VPDES Permit Regulation, DEQ disagrees with the need for the Board to adopt new regulations or a general permit to regulate discharges to intermittent streams and dry ditches following *Sackett*.

Sackett does not amend the NPDES regulations themselves, but for NPDES programs administered by EPA, it narrows federal jurisdiction in the regulation of wetlands and non-permanent streams and reduces the universe of waterbodies that would necessitate a point source discharger to obtain a NPDES permit. How the decision affects state-administered NPDES programs depends on the nature of the state program. By removing federal jurisdiction over many wetlands and streams, *Sackett* effectively reduces the applicability of the federal NPDES program for those states that have adopted requirements that are consistent with federal requirements.[30] However, for those states administering the NPDES program and who have adopted more stringent requirements, such as in Virginia, where the program applies to "state waters," all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands,[31] the state's NPDES program is not affected.

While *Sackett* may have implications at the federal level and some states, it does not limit Virginia, the Board, or DEQ authority in the regulation of point source discharges to state waters, including intermittent streams and dry ditches. The State Water Control Law and the authorities of the Board and DEQ remain unaffected by the change in definition of "waters of the United States." Thus, the *Sackett* decision does not create a gap in DEQ's authority, under the VPDES Permit Regulation

[27] 598 U.S. 651, 671 (2023).
[28] *Id.,* at 678-679.
[29] See https://www.epa.gov/wotus/updated-definition-waters-united-states and 90 Fed. Reg. 52,548 (Nov. 20, 2025). The public comment period closed on January 5, 2026.
[30] The impact will be clarified once the EPA issues a final rule.
[31] § 62.1-44.3 of the Code of Virginia.

as it currently exists, to issue individual permits to point source discharges to state waters, including intermittent streams and dry ditches.

DEQ, through the issuance of a VPDES individual permit, already addresses the other revisions to the VPDES Permit Regulation the petitioners requested:

- Addition of language stating that effluent leaving a system is sited in a manner that protects public health and minimizes environmental impacts: Individual permits are drafted in a manner that is protective of receiving streams by evaluating stream flows relative to discharge.[32]
- Incorporation of Reliability Class requirements from the Sewage Collection and Treatment (SCAT) Regulations (9VAC25-790): VPDES individual permits for municipal wastewater treatment incorporate Reliability Class requirements outlined in the SCAT Regulations.
- Establishment of requirements for discharges to dry ditches and intermittent streams: Individual permits are drafted in a manner that is protective of the receiving stream by evaluating stream flows relative to discharge.

Additionally, the promulgation of a general permit regulation for point source discharges to dry ditches or intermittent streams for wastewater facilities discharging 1,000 gallons per day (gpd) or more would prohibit DEQ from establishing the necessary site-specific limitations, monitoring, and conditions that DEQ currently establishes through the issuance of individual permits for discharges of the same nature.

VI. Staff Recommendation

DEQ staff recommend the Board deny the petition for the reasons set forth above. All point source discharges that have the potential to reach state waters are already regulated by state and federal laws and regulations.

Attachments:

Attachment 1 – Petition from James A. Alexander and Evans Oakerson
Attachment 2 – Public Comments

[32] See e.g., Parts II and III (9VAC25-100 et seq. and 9VAC25-31-190 et seq.) of the VPDES Permit Regulation.

Attachment 1
Petition from James A. Alexander and Evans Oakerson

JAMES A. ALEXANDER

ATTORNEY AT LAW **MEMBER VA, PA, and CA**

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State Water Control Board
Virginia Department of Environmental Quality
Central Office
111 E. Main St.
Suite 1400
Richmond, VA 23219

March 24, 2026

via email: citizenboards@deq.virginia.gov

Re: Petition for Rulemaking

Dear State Water Control Board,

Please find attached hereto a Petition for Rulemaking in accord with 9VAC25-11-60, and Code of Va. §2.2-4007.

Please advise if this petition should be submitted to another office in order to effect a filing with the State Water Control Board.

Thank you for your consideration.

Yours very truly,

/s/ JAMES A. ALEXANDER

JAMES A. ALEXANDER

PETITION FOR RULEMAKING

Petitioners: James A. Alexander
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Purpose of Rulemaking:

To propose adoption of regulations to address significant gaps in existing regulations regarding VPDES discharges into dry ditch or intermittent streams for wastewater facilities discharging 1,000 gallons or more each day after the landmark Clean Water Act decision in Sackett v. EPA**,** 598 U.S. 651 (2023).

The U.S. Supreme Court decision in **Sackett v. EPA,** 598 U.S. 651 (2023) significantly restricted the EPA's authority under the Clean Water Act, limiting jurisdiction to wetlands with a "continuous surface connection" to traditional navigable waters. In the language of the Court:

> "We conclude that the *Rapanos* plurality was correct: the CWA's use of "waters" encompasses "only those relatively permanent, standing or continuously flowing bodies of water 'forming

geographic[al] features' that are described in ordinary parlance as 'streams, oceans, rivers, and lakes.'" 547 U. S., at 739

[underline emphasis added]

"In sum, we hold that the CWA extends to only those wetlands that are "as a practical matter indistinguishable from waters of the United States." *Rapanos*, 547 U. S., at 755 (plurality opinion) (emphasis deleted). This requires the party asserting jurisdiction over adjacent wetlands to establish "first, that the adjacent [body of water constitutes] . . . 'water[s] of the United States,' (*i.e.*, a relatively permanent body of water connected to traditional interstate navigable waters); and second, that the wetland has a continuous surface connection with that water, making it difficult to determine where the 'water' ends and the 'wetland' begins." *Id.*, at 742.

Sackett ends the EPA jurisdiction under the Clean Water Act [CWA] to waters that can be considered intermittent, ephemeral or dry ditch circumstances; such waters are no longer considered Waters of the United States [WOTUS]. In the recent case of U.S. v Chameleon, LLC, et al, No. 3:23-cv-763-HEH (United States District Court for the Eastern District of Virginia, Richmond Division), Senior United States District Judge Henry E. Hudson described the change as follows:

"This Court recognized that intermittent streams not qualifying as WOTUS "is now the fossilized rule." (Hr'g Tr. 11:9-19; 35:1; 39:3-9.)

The change in jurisdiction of the Clean Water Act means that the EPA no longer has jurisdiction over intermittent streams, ephemeral streams, or dry ditch circumstances. The National Pollution Discharge Elimination System [NPDES] permit issued by EPA, based on the CWA, has previously served as the authority for DEQ VPDES permits.

DEQ has previously been delegated authority over EPA NPDES permits by the Memorandum of Understanding (1975) and subsequent Addenda to that authority, issuing VPDES permits under the provisions of the EPA and the Clean Water Act. See, e.g., State Water Control Board, Chapter 31, Virginia Pollutant Discharge Elimination System (VPDES) Regulations, 9VAC25-31-10:

> "General Permit" means a VPDES permit authorizing a category of discharges **under the CWA** and the law within a geographical area." [bold emphasis added]

See, also, 9VAC25-31-20: "This chapter delineates the procedures and requirements to be followed in connection with VPDES permits issued by the department or a general permit issued as a regulation adopted by the board **pursuant to the Clean Water Act** and the State Water Control Law." [bold emphasis added]

The removal of CWA jurisdiction over intermittent streams, ephemeral streams, or dry ditch situations means that DEQ can no longer rely on provisions of the Clean Water Act or the EPA to grant permits or enforce sewage discharges in these settings.

DEQ regulations are needed to fill the gap in the absence of CWA rules and regulations in the circumstances involving intermittent streams, ephemeral streams, or dry ditch situations.

By way of example, one such pending situation is VPDES permit VA0063347, involving an intermittent stream, a stream that DEQ rates as having a flow of 0.0cfs at all times, in all seasons. The renewal permit application in that case is an 'EPA' application, which is now moot because the EPA plainly has no jurisdiction in the case involving an intermittent stream. DEQ does not have even an application form.

We propose that DEQ adopt regulations to address the circumstances involving intermittent streams, ephemeral streams, or dry ditch situations. We here submit proposed regulations.

The regulations we propose have already been adopted for DEQ VPDES permits for more than a decade for discharges of <1,000 gallons. With minor modifications, those regulations [initially adopted by the Virginia Department of Health] can readily address the need for regulations after the changes in the jurisdiction of the CWA.

AUTHORITY OF THE AGENCY TO TAKE ACTION

Code of Va. §62.1-44.15 (3a) provides authority for the State Water Control Board to establish standards of quality and policies for any state waters, to modify, amend or cancel standards and policies in the public interest.

In addition, Code of Va. §62.1-44.15(3a) provides that the Board shall also give due consideration to the public health standards issued by the Virginia Department of Health with respect to issues of public health policy and protection.

In addition, Code of Va. §62.1-44.15(5) provides authority to issue, revoke or amend certificates under prescribed conditions for the discharge of sewage, and other wastes into or adjacent to state waters.

In addition, Code of Va. §62.1-44.15(6) provides that the Board and the State Department of Health shall enter into a memorandum of understanding establishing a common format to consolidate and simplify inspections of sewage treatment plants in order to protect water quality and public health.

In addition, Code of Va. §62.1-44.15(14) provides authority to establish requirements for the treatment of sewage, industrial wastes, and other wastes.

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PROPOSED REGULATIONS

These proposed regulations fit within 9VAC25-31-190, 'Conditions applicable to all permits'. The overwhelming majority of these suggested regulations are adopted from 12VAC5-640, regulations in effect for more than a decade specifically to address the locations involving dry ditch, intermittent stream, or ephemeral stream sewage effluent discharges, now extended to all general permits.

Proposed changes begin here:

The following conditions apply to all VPDES permits to guide in the determination of whether a permit for handling and disposal of sewage should be issued or denied; and

To guide the owner in the requirements necessary to secure a permit for handling and disposing of sewage.

All discharging systems shall be located so that the treatment system, the point of discharge, all appurtenances, and the effluent leaving the system are sited in a manner that protects public health and minimizes environmental impacts.

Reliability Class I is required for dry ditch and intermittent stream discharges. For biological treatment processes, Reliability Class I shall be met by providing one of the following:

a. A passive, backup biological treatment system (e.g., an intermittent sand, peat or media filter);
b. A generator for the treatment system with automatic transfer switch.

c. A 24 hour holding tank for raw wastewater treatment with telemetry system to immediately notify the operator of system failure; or
d. Any alternative means that limits the discharge of a noncompliant effluent to a maximum of 2 hours.

For disinfection, a Reliability Class I shall ensure that the effluent is continually disinfected by providing electronic or mechanical mean of monitoring the process such that failure of disinfection systems may be corrected within 12 hours.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"All Weather Stream" means any stream that will, at all times, in all seasons, dilute point source discharge effluent from a pipe at least 10:1 ratio of the receiving All Weather Stream flow to effluent during a seven consecutive day average of a 10 year low flow (7-Q-10).

"Dry ditch" means a naturally occurring swale or channel that is topographically connected to an all weather stream. In some cases a dry ditch may have a manmade component that provides a topographical connection to an existing, naturally occurring swale or channel. A dry ditch may have observable flow during or immediately after a storm event or snow melt. For the purposes of this chapter, all dry ditches shall have a well defined natural channel with sides that have at least a 1:10 (rise:run) slope.

"General permit" means a Virginia Pollutant Discharge Elimination System (VPDES) General Permit issued by the State Water Control Board for domestic sewage discharges equal to or greater than 1,000 gallons per day on a monthly average.

“Intermittent stream” means any stream that will not, at all times, in all seasons, dilute point source discharge effluent at least 10:1 ratio of the receiving flow to effluent during a seven consecutive day average of a 10 year low flow (7-Q-10). For the purposes of this section, an intermittent stream is identified as a dashed or dotted line on the most recent United States Geologic Survey 7.5 minute topographic map.

The Application process for a General Permit shall include the following details:

a. A site sketch on a survey plat showing the location of and setback distances from the proposed discharge point and discharging system components to the following:
b. Location of existing or proposed houses and other structures;
c. Property boundaries;
d. Location of proposed discharge point;
e. Existing and proposed wells, springs, cisterns, or other sources of potable water within 200 feet upslope or 1,600 feet downslope of the proposed discharge point;
f. Actual or proposed discharging systems within 600 feet of the proposed discharge point;
g. Recorded and proposed easements;
h. Existing and proposed overhead and buried utilities such as water lines, electrical lines, phone lines, gas lines, etc.;
i. Sink holes located within 1,600 feet downslope of the proposed discharge point;
j. Other topographical features such as wetlands, lakes, ponds, rivers, streams, drainage ways, and swales, within 200 feet upslope and 600 feet downslope of the proposed discharge point;
k. Slope and side slope of any proposed dry ditch channels;
l. Public water supply intakes; and
m. Swimming or recreational water use areas within one mile upstream or five miles downstream of the proposed discharge

point shown on a United States Geological Survey 7.5 minute topographic map or surveyed plat.

n. The site sketch should be to scale and accompanied by a United States Geological Survey 7.5 minute topographic map to provide information relevant to offsite setbacks;

The nature of the discharge point will determine what precautions must be taken to protect public health and environmental resources.

Where an All Weather Stream is available, it shall be used rather than discharging to an intermittent stream, dry ditch, or ephemeral stream. An All Weather Stream can readily dilute the effluent at least 10:1 at the seven consecutive day average of a 10 year low flow (7-Q-10) and thereby minimize public health and water quality impacts.

An all weather stream is represented by a solid blue line on the most recently published 7.5 minute United States Geologic Survey topographic map and has a 7-Q-10 flow that can provide 10:1 dilution of the effluent. Intermittent streams are represented by a dotted and dashed blue line on the most recently published 7.5 minute United States Geologic Survey topographic map. An all weather stream that provides less than 10:1 dilution of the effluent based on 7-Q-10 flow shall be considered an intermittent stream.

Intermittent streams and dry ditches have an assigned stream flow 7-Q-10 of zero.

Discharges into intermittent streams or dry ditches that do not have the dilution capability of at least 10:1 ratio of the receiving flow to effluent during a seven consecutive day average of a 10 year low flow (7-Q-10) shall be located entirely within the owner's property.

Discharges proposed within one mile (upstream or up channel) of any public water intake shall not be permitted.

Discharges proposed within one mile upstream or up channel of any area explicitly designated for public swimming shall not be permitted.

When any river, stream, or other potential discharge area appears to receive significant primary contact use, such as, but not limited to, swimming, water skiing, tubing, or wet-wading, so that the discharge will pose a significant threat to public health, the district health director may require a higher level of treatment and reliability class for the permitted discharge facility.

The wastewater treatment system (tankage and components), shall be a minimum of 50 feet from private and public water wells and private cisterns.

Setback distances to other wells, such as geothermal and gas wells, will be determined on a case-by-case basis.

No discharging system or any portion of the channel carrying the treated effluent flow shall be within 100 feet of a spring. Further, no discharging system shall discharge within 1,500 feet upstream or 100 feet downstream of any spring used for human consumption.

Discharging systems are prohibited from discharging directly into sink holes or into dry ditches, intermittent streams, wetlands, streams, or other waterways that flow into sink holes within 1,500 feet from the point of discharge.

Dry ditch discharges shall not have limestone outcrops within the dry ditch channel. This provision shall apply for a distance of 50 feet along the channel.

Except as noted below, the department will not approve discharging systems except where discharge points will be at least 500 feet apart. The separation distance may be reduced to 250 feet between discharge points in accordance with the following:

No discharge shall be permitted under this chapter which will result in the condemnation of shellfish waters or the continued condemnation of shellfish waters closed only because of inadequate water quality.

All systems operated under this chapter shall meet the effluent limitations set forth by the State Water Control Board in the General Permit. All systems operated under this chapter shall maintain the treatment system in accordance with the approved construction permit or as modified by the final construction permit in accordance with the operation permit, "as built" plans, and the operation and maintenance manual.

No system shall be approved for use which provides a bypass pipe, or otherwise allows untreated or partially treated effluent to discharge in the event of a system failure.

All owners of systems discharging to an intermittent stream, dry ditch, or wetland shall ensure the following conditions are met:

1. Direct contact between minimally diluted effluent and insects, animals, and humans must be restricted for the life of the system. This will be achieved by reducing the chance of ponding and run-off and limiting access to the effluent. The department shall require fencing, rip-rap, or other barriers to restrict access to effluent discharging to a dry ditch, intermittent stream, or wetland as deemed necessary to protect public health. This determination shall be made by the department on a case-by-case basis.

a. For dry ditch and intermittent stream discharges, the restricted access area shall begin at the point where the effluent is discharged and continue until the effluent discharges into an all weather stream.

When effluent is discharged to a dry ditch, intermittent stream, or wetland, the owner shall own the land or acquire a voluntary easement

from the downstream or downgradient land owner(s) to discharge on all land below the point of discharge until the effluent discharges into an all weather stream providing a ratio of 10:1 flow of receiving stream to effluent.

To allow for system construction and repair within the restricted access area, and to facilitate maintenance and monitoring, the easement shall be a minimum of 50 feet wide and approximately centered on the low point of the dry ditch or intermittent stream for the entire length of the restricted access area.

All voluntary easements must be in perpetuity and shall be recorded by the owner with the clerk of the circuit court having jurisdiction over the property prior to issuance of the construction permit. For the purposes of complying with this chapter, written approval to utilize an easement owned by the Virginia Department of Transportation shall be recorded by the owner with the clerk of the circuit court office having jurisdiction over the property.

Each discharging system that discharges to a dry ditch, intermittent stream, or wetland must receive additional treatment beyond that required by the General Permit in order to reduce the increased potential for public health problems which may result when partially treated effluent is not diluted. Such additional treatment shall be capable of producing an effluent with a quality of 10 mg/l of BOD_5, 10 mg/l of suspended solids and a fecal coliform level of less than or equal to 100 colonies per 100 ml.

All discharging systems shall be equipped with a means of disinfecting the effluent which is acceptable to the division and meets the performance requirements of this chapter.

All discharging systems utilizing chlorine as a disinfectant shall be equipped with a chlorinator and contact chamber. Dechlorination is to be supplied if required by the General Permit.

Chlorinator capacity shall be based on the degree of treatment, flow variations, and other variables in the treatment processes. For disinfection, the capacity shall be adequate to maintain a total chlorine residual between 1.0 mg/l and 2.0 mg/l in the effluent after the required contact period. All chlorinators shall be designed to provide the appropriate dose of chlorine and mix the chlorine with the effluent. All chlorine products used to disinfect effluent from a discharging system shall be approved by the U.S. Environmental Protection Agency for use as a sewage disinfectant; products unapproved for wastewater disinfection are not acceptable. Use of unapproved products shall constitute a violation of this chapter.

The chlorine contact chamber shall have a length to width ratio of 20:1 and shall provide a contact time of 30 minutes based on peak hourly flow, or 60 minutes based on peak daily flow.

When required by the General Permit, dechlorination capacity shall be adequate to dechlorinate the maximum chlorine residual anticipated and achieve the required General Permit effluent limits for total residual chlorine by providing at least 1-1/2 parts sulfite salt to one part chlorine. Provisions shall be made to thoroughly mix the dechlorinating agent with the contact tank effluent within a period of approximately one minute.

To meet Reliability Class I or Class II, all chlorination and dechlorination units shall be alarmed to notify the operator when tablets are not present in the dosing chamber or equipped with duplicate units that automatically switch over to the redundant unit if the primary unit is not operating.

Disinfection can be achieved through exposure of microorganisms to a sufficient level of ultraviolet light (UV) irradiation at the germicidal wavelength for an adequate period of time.

UV disinfection equipment shall be capable of providing a minimum average calculated dose of 50,000 microwatt-seconds per square

centimeter after the UV lamps have been in operation for 7,500 hours or more and at a 65% transmissivity.

UV lamps shall produce 90% or more of their emitted light output at the germicidal wavelength of 253.7 nanometers.

UV lamp assemblies shall be so located as to provide convenient access for lamp maintenance and removal.

UV lamps should not be viewed in the ambient air without proper eye protection as required by VOSH and other applicable regulations. The system design should prevent exposure of bare skin to UV lamp emission for durations exceeding several minutes.

An elapsed time meter shall be provided to indicate the total operating time of the UV lamps.

UV systems are sensitive to color and suspended solids. Precautions should be taken to protect the UV system from both color and excessive suspended solids.

To meet Reliability Class I or Class II, all UV units shall be equipped with a sensor to detect bulb failure with an alarm or equipped with duplicate units that automatically switchover if the primary unit is not operating.

Post-aeration as required by the General Permit shall be provided to ensure that the final effluent complies with the dissolved oxygen effluent limits in the General Permit. Post-aeration may involve diffused aeration or cascade type aeration. All post-aeration designs shall assume a zero dissolved oxygen concentration in the influent wastewater to the post-aeration unit.

Effluent post-aeration may be achieved by the introduction of diffused air into the effluent.

Diffused aeration basins shall be designed to eliminate short-circuiting and the occurrence of dead spaces. For maximum efficiencies, sufficient detention time shall be provided to allow the air bubbles to rise to the surface of the wastewater prior to discharge from the basin.

When the detention time in the aeration basin exceeds 30 minutes, consideration shall be given to the oxygen requirements resulting from biological activity in the aeration unit.

Diffused air aeration systems shall be designed utilizing Fick's Law (the rate of molecular diffusion of a dissolved gas in a liquid) in the determination of oxygen requirements. Supporting experimental data shall be included with the submission of any proposal for the use of diffusers that are considered nonconventional. Such proposals will be evaluated on a case-by-case basis by the division.

Alternatively, an airflow of one cubic foot per minute at a diffuser submergence of one foot is sufficient to increase the dissolved oxygen of 1000 gallons per day of effluent to greater than five mg/l dissolved oxygen at 25°C.

If airflow is to be siphoned off the blower for the biological treatment unit, calculations shall be submitted to verify that there is sufficient air for both uses.

Effluent post-aeration may be achieved through a turbulent liquid-air interface established by passing the effluent downstream over either a series of constructed steps that produces a similar opportunity for transfer of dissolved oxygen to the effluent, otherwise known as cascade or step aeration.

a. The following equation shall be used in the design of cascade/step type aerators:

$$r^n = (C_s-C_a)/(C_s-C_b)$$

where: r = Deficit ratio

C_s	=	Dissolved oxygen saturation (mg/l)
C_a	=	Dissolved oxygen concentration above the weir, assumed to be 0.0 mg/l
C_b	=	Dissolved oxygen concentration in the effluent from the last or preceding step
n	=	The number of equal size steps
r	=	1 + (0.11) (ab) (1 + 0.046 T) (h)
where: T	=	Water temperature (°C)
h	=	Height of one step (ft)
a	=	1.0 for effluents (BOD_5 of less than 15 mg/l) or 0.8 for effluents (BOD_5 of 15 mg/l to 30 mg/l)
b	=	1.0 for free fall and 1.3 for step weirs

The equation for determining the number of steps is dependent upon equidistant steps, and if unequal steps are used, transfer efficiencies must be determined for each separate step.

The effluent discharge to a cascade type aerator shall be over a sharp weir to provide for a thin sheet of wastewater. Consideration shall be given to prevention of freezing.

The final step of the cascade type aerator shall be above normal stream flow elevation and the cascade aerator shall be protected from erosion damage due to storm water drainage or flood/wave action.

When pumping is necessary prior to discharge over the cascade aerator, the range of the flow rate to the post-aeration unit must be accounted for in the design.

A step aerator with multiple steps each less than or equal to one foot and a total drop of five feet is sufficient to increase the dissolved oxygen in an effluent at 25°C to greater than five mg/l.

Post-filtration may be used to ensure compliance with the reliability standards and generally follow the biological treatment unit and are prior to disinfection in the treatment process. For granular media filters, the media depth shall not be less than 30 inches. Sand media for intermittently dosed and recirculated effluent, shall have an effective size of 0.30 mm to 1.0 mm and 0.8 mm to 1.5 mm, respectively. The uniformity coefficient should not exceed 4.0. No more than 2.0% shall be finer than 0.177 mm (80 mesh sieve) and not more than 1.0% shall be finer than 0.149 mm. No more than 2.0% shall be larger than 4.76 mm (4 mesh sieve). Larger granular media up to five mm in effective size may be considered on a case-by-case basis. The filter shall be equipped with an underdrain. The surface of the filter shall be accessible for maintenance. For the purposes of a filtration unit, the maximum surface hydraulic loading rate is 15 gpd/sf.

D. Constructed wetlands that are used as a passive backup biological treatment unit for the purposes of meeting Reliability Class I requirements shall be lined with a minimum surface area of 100 square feet, a depth of 18 inches, a length to width ratio of about four to one, and shall have subsurface flow. Wastewater shall be disinfected prior to entering the constructed wetlands and sampling ports shall be provided to allow monitoring of the influent to the wetlands. Effluent dechlorination prior to entering the wetlands may be necessary to protect the plants from toxic levels of chlorine.

End of Proposed Regulations

Attachment 2
Public Comments

AQUALAW

RICHARD H. SEDGLEY
DICK@AQUALAW.COM
PH: 804.716.9021
FX: 804.716.9022

May 8, 2026

By Email (erica.duncan@deq.virginia.gov)

Ms. Erica Duncan
Manager, Office of VPDES Permits and Compliance
Virginia Department of Environmental Quality
1111 East Main Street, Suite 1400
P.O. Box 1105
Richmond, Virginia 23218

Re: VA.R. Doc. No. PFR26-28 - Petition for Rulemaking

Ms. Duncan:

I am writing to provide comments on the Petition for Rulemaking noted above and published in the *Virginia Register* on April 20, 2026. The Petition requests changes to the VPDES Regulations addressing non-perennial streams. It refers to VPDES Permit No. VA0063347, issued to the Mountain View Nursing Home ("Mt. View") and currently up for reissuance, on which the submitter Mr. Alexander has commented. These comments are submitted on behalf of Mt. View.

Mt. View is a church owned and operated nursing home in Madison County.

Our comments include two principal points. First the legal principles presented in the Petition are incorrect. Second, the ongoing Mt. View permit process is being handled properly by VRO and pursuant to long-proven Department processes, and that process is fully adequate to address any legitimate concerns about environmental protection and health.

I will address the legal point only briefly, as I am confident that the Department will be well advised by OAG on this. The Petition refers to *Sackett v. EPA*, 598 U.S. 651 (2023), and appears to assert that *Sackett* establishes the legal principle that there is no federal Clean Water Act ("CWA") authority or jurisdiction over non-perennial streams. In fact, as DEQ is aware, the United States Environmental Protection Agency has proposed a new Waters of the United States ("WOTUS") Rule designed to address *Sackett* and, as proposed, would not exclude all non-perennial streams from CWA WOTUS jurisdiction.

However, if *Sackett* did have the effect claimed on CWA jurisdiction, it would not adversely affect the Commonwealth's VPDES jurisdiction. The Department's authority to issue VPDES permits is not premised on federal law (although those permits are enforceable by EPA under CWA authority), rather it is based on the State Water Control Law ("SWCL") and the Department's regulations under the SWCL. Further, the Commonwealth's jurisdiction here is over "state waters"

as defined by Va. Code § 66.2-44.3, and the breadth of state waters is substantially broader than Waters of the U.S. under the CWA. The Petitioners' legal premises are accordingly incorrect.

As to our second point, the Department has a longstanding and well-developed process for VPDES permitting, including both original and reissued permits. That process addresses in substantial detail and with substantial conservativeness environmental protection and any human health issues. The Department also has extensive expertise and experience in addressing particular issues that may be common to relatively small discharges to either perennial or non-perennial streams. Any amendments to the regulations that Petitioners request are therefore unnecessary.

The Department should decline the Petition. Thank you for considering these comments.

Sincerely,

Richard H. Sedgley

Copy: Ryan Hoover, Mt. View
Timothy Clemons, Mt. View Board Chair

Chantilly Crushed Stone, Incorporated

May 11, 2026

State Water Control Board
Virginia Department of Environmental Quality
Erica Duncan
Manager, Office of NPDES and Compliance
Department of Environmental Quality
1111 East Main Street, Suite 1400
PO Box 1105
Richmond, VA 23218

RE: Petition for Rulemaking to Amend Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulations 9VAC25-31

Dear Ms. Duncan,

Chantilly Crushed Stone, Inc. submits these comments in opposition to Petitioners', James A. Alexander and Evans Oakerson, proposal to revise regulations under 9VAC25-31-190 purportedly to address pollutants from wastewater facilities discharging 1,000 gallons or more each day into dry ditch or intermittent streams. 42:18 VA.R. 1879, April 20, 2026. Virginia Department of Environmental Quality (VDEQ) should deny the Petition based upon a lack of authority under the Virginia Water Control Act to regulate discharges of pollutants to ephemeral streams and dry ditches.

VDEQ regulates discharges of pollutants to surface waters, including intermittent streams, under the state water control law §62.1-44.15 and VPDES permitting regulations at 9 VAC25-31. Like the federal state, Virginia's water law prohibits the discharge of a pollutant to state waters from a point source without a permit. §62.1-44.5 and 9VAC25-31-10. VDEQ issues such permits under an approved program adopted under Chapter 31 of the Virginia Administrative Code. The regulations define "surface water" to expressly include intermittent streams, ephemeral streams and dry ditches are not included and therefore are not considered regulated surface waters of the state. Any effort to expand Virginia's VPDES permitting regulations to include regulation of discharges to ephemeral streams and dry ditches would overreach the VDEQ's statutory authority and could not be

accomplished through rulemaking. Accordingly, Petitioners request for rulemaking must be denied for VDEQ's lack of authority.

Petitioners Misconstrue the Impact of *Sackett v. EPA* on Virginia's Authority to Regulate State Waters

Chantilly agrees that the Supreme Court decision in *Sackett v. EPA*, 598 U.S. 651(2023) limits federal Clean Water Act (CWA) jurisdiction to include "only those relatively permanent, standing or continuously flowing bodies of water" and their adjacent wetlands[1], leaving intermittent, ephemeral, dry ditches and wetlands lacking a continuous surface connection to a water of the United States outside the scope of the federal CWA. The practical effect of the ruling is that a permit is no longer required for discharges to these stream categories where the Environmental Protection Agency (EPA) is the primary CWA regulatory authority. In primacy states, such as Virginia, where EPA has approved the State discharge regulatory program, nothing precludes the State from implementing a broader permitting program, so long as it has the authority to do so under the state water law. 40 CFR §123.1(i)(2). Petitioners are correct that federal CWA jurisdiction can no longer be asserted over intermittent and ephemeral streams, dry ditches, and non-adjacent wetlands. But they fail to recognize that the Virginia Water Control Act is broader than the federal CWA and specifically extends VDEQ's regulatory authority to include intermittent streams, however ephemeral streams are not included. Therefore, VDEQ already has all the authority it needs to regulate discharges of wastewater over 1,000 gallons to intermittent streams. However, because VDEQ has no authority to regulate discharges to ephemeral streams and dry ditches, the Petition for Rulemaking must be denied.

Petitioners' Proposed Regulations are Overly Broad and Exceed the Agency's Authority

The Petition seeks to address a specific sewage discharge problem by incorporating sweeping changes to the regulations governing all VPDES permits. The proposal would incorporate sewage treatment regulations for individual single- family dwellings (12VAC5-640) as conditions applicable to all VPDES permits. The proposal is a dead end as it suffers from the same legal deficiencies discussed above. First, for reasons already explained, making the sewage treatment regulatory requirements applicable to ephemeral streams and dry ditches exceeds the VDEQ's statutory authority. Second, the 12VAC5-640-5

[1] *Sackett* (2023) determined a two-part test for determining adjacent wetlands, the wetland must be adjacent, abutting, touching the covered water (WOTUS), and must have a continuous surface water connection such that the wetland and the water are indistinguishable.

regulatory definition for surface waters, i.e. regulated waters, mirrors the VPDES regulations by expressly including intermittent and excluding ephemeral and dry ditches, meaning the proposed regulations already apply in intermittent streams and there is no statutory authority to include ephemeral and dry ditches in 9VAC25-31-190. Furthermore, importation of the 12VAC5-640 regulations into the broader VPDES permitting regulations would impose significant restrictions on the entire universe of VPDES permittees, without providing any legitimate basis suggesting they are warranted. Petitioners are attempting to impose very strict requirements intended to remedy one sewage discharge, while impacting all discharge permits. In addition to the legal authority deficiencies, the proposal for broad sweeping change is unsupported. VDEQ should work within the agency's authority to find alternative means for addressing Petitioners concerns.

Thank you for the opportunity to submit Chantilly's comments.

Respectfully submitted,

Eddie Hoy IV
Chantilly Crushed Stone, Inc.

Cc: Rob Lanham, Virginia Transportation Construction Alliance

Porterfield, Melissa (DEQ)

From: Kimberla Tillery <kimberlatillery@gmail.com>
Sent: Sunday, May 10, 2026 11:18 PM
To: Duncan, Erica (DEQ)
Subject: Petition for Rulemaking

Ms. Poterfield,
I am one of the private property owners who is directly affected by the waste water discharge coming from Mountain View Nursing Home in Madison county. Their practice of dumping their waste water into a dry ditch allows their human and pharmaceutical waste to find its way all the way down into The Great Run, which runs through my property. I have seen the brown foam, and solid waste come down the creek. It is appalling. When my husband and I first moved to Virginia nearly 30 years ago we purchased our property in Radiant. The rolling hills and the beautiful creek that runs through it captured our hearts. We allowed our children to play in this creek and had no concerns, until we started seeing soap suds, brown foam and an oily film come down through the creek. I actually called the EPA to come out and investigate where the pollution was coming from. I was told it was coming from Mountain View Nursing Home when they would backwash their lagoon into the creek. I was shocked that such a primitive practice was still being utilized. We citizens who live in the countryside are not allowed to dump our personal waste water into a dry ditch and just let it go wherever. We are required to install septic systems onto our private property to properly dispose of the waste that we generate and to do it in a manner that is permitted by the county and the health department, inspected and approved by state inspectors who are suppose to make sure everything is done properly so no pollution has a negative effect on surrounding neighbors or waterways. So why in the world is a business allowed to just continually dump 15,000+ gallons of waste water daily down into a dry ditch?
I respectfully request that MVNH be held to the same waste management rules and standards the rest of the residents of Madison county are held to. Failure to do so could turn our beautiful county's natural waterways into nothing short of toxic septic flows for any and all businesses who feel entitled to just dump their waste wherever they choose without any consideration for the private properties, wildlife and recreational activities that take place in and around these natural waterways.

Respectfully,
Kimberla Tillery
Radiant, VA

COMMENTS OF THE
VIRGINIA ASSOCIATION OF MUNICIPAL WASTEWATER AGENCIES, INC.
ON THE PETITION FOR RULEMAKING CONCERNING DISCHARGES INTO DRY DITCHES OR INTERMITTENT STREAMS

MAY 11, 2026

The Virginia Association of Municipal Wastewater Agencies, Inc. ("VAMWA") submits these comments to the Department of Environmental Quality ("DEQ") on the Petition for Rulemaking Concerning Discharges into Dry Ditches or Intermittent Streams for wastewater facilities discharging 1,000 gallons or more each day, dated March 24, 2026 (the "Petition"). VAMWA is a statewide association of local governments and authorities that own and operate municipal wastewater treatment facilities.

The Petition requests that the State Water Control Board promulgate a new Virginia Pollutant Elimination System ("VPDES") general permit regulation for discharges of domestic sewage exceeding 1,000 gallons per day. The stated justification for the proposed rulemaking is that the United States Supreme Court's ruling in *Sackett v. U.S. Environmental Protection Agency*[1] purportedly creates a "gap" in DEQ's authority to regulate discharges to dry ditches, ephemeral streams, and intermittent streams. Nevertheless, the proposed general permit regulation is not limited to discharges to ditches and small streams. It would apply to all domestic sewage discharges, including those of VAMWA's members.[2]

VAMWA supports the principle that wastewater discharges to waters of the Commonwealth should be subject to appropriate regulation through VPDES permits. However, VAMWA does not agree with the Petition's assertion that the *Sackett* decision created a gap in DEQ's authority to regulate any such discharges.

The State Water Control Law and VPDES permit regulation broadly prohibit discharges to "*state waters*" without a permit issued by DEQ.[3] State waters encompass "all water, on the surface or under the ground" within the Commonwealth, including intermittent and ephemeral streams.[4] DEQ has repeatedly confirmed that the *Sackett* ruling does not diminish the Department's

[1] 598 U.S. 651 (2023).
[2] *See*, *e.g.*, Petition at 5 ("The following conditions apply to all VPDES permits to guide in the determination of whether a permit for handling and disposal of sewage should be issued or denied." (emphasis added)).
[3] Va. Code § 62.1-44.5; 9 VAC 25-31-50(A).
[4] Va. Code § 62.1-44.3.

longstanding authority to regulate discharges to state waters.[5] Accordingly, there is no basis for the conclusion that *Sackett* created a gap in DEQ's authority to regulate domestic sewage discharges to any state waters—including intermittent and ephemeral streams.

The Petition also proposes a new VPDES general permit regulation for discharges to ditches. Under longstanding DEQ precedent, some ditches are state waters, and some are not. The *Sackett* case has no effect on this distinction.[6] Discharges to ditches classified as state waters would be regulated like any other discharge to state waters. Discharges to ditches *not* classified as state waters would require a VPDES permit nevertheless if the ditch outflows to state waters.[7] Lastly, any other discharges of domestic sewage to a ditch would fall under the Virginia Pollution Abatement Permit regulation.[8] In sum, there is no gap in DEQ's permitting authority.

The Petition appears to be proposing a solution in search of a problem. For domestic sewage discharges exceeding 10,000 gallons per day, DEQ has ample authority to incorporate into individual VPDES permits appropriate conditions that are protective of public health and the environment. The proposed general permit regulation and its prescriptive requirements would place an unnecessary regulatory burden on municipal wastewater treatment facilities and needlessly limit DEQ's discretion to develop appropriate facility-specific VPDES permit conditions. Accordingly, VAMWA respectfully requests that DEQ and the State Water Control Board deny the Petition.

* * *

[5] *See*, *e.g.*, DEQ, Memorandum: Recent Supreme Court Decision in Sackett – Effect in Virginia at 2 (June 29, 2023), *available at* https://tinyurl.com/yedbfmnh; DEQ, Comments Regarding Waters of the United States, Docket ID No. EPA-HQ-OW-2025-0093, at 2 (Apr. 23, 2025), *available at* https://tinyurl.com/5prr36ac.
[6] *See* DEQ, Comments Regarding Waters of the United States at 5–6.
[7] *See* 9 VAC 25-31-10 (defining "point source" to include ditches).
[8] 9 VAC 25-32-30.

TAB I

Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

www.deq.virginia.gov

David L. Bulova
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director

MEMORANDUM

TO: State Water Control Board Members

FROM: Meghan Mayfield, Director, Office of Clean Water Finance and Training Assistance

DATE: May 27, 2026

SUBJECT: Revised Project Priority List - Virginia Clean Water Revolving Loan Fund Final Authorization for the 2025 State Revolving Fund Supplemental Appropriation for Hurricanes Helene and Milton and the Hawai'i Wildfires

Background

On December 21, 2024, the American Relief Act, 2025, P.L. 118-158, ("the Act") became law. The funding for the Environmental Protection Agency (EPA) in Title VII of the Act includes $3 billion in disaster relief supplemental funding for the State Revolving Fund programs, of which, $1.23 billion was allotted to the Clean Water State Revolving Fund (CWSRF), available only to states or territories in EPA Regions 3, 4, and 9 for wastewater treatment works impacted by Hurricanes Helene and Milton and the Hawai'i wildfires. Only the States of Florida, Georgia, Hawai'i, North Carolina, South Carolina, Tennessee, and Virginia are eligible to apply for these supplemental funds. The 2025 State Revolving Fund Supplemental Appropriation for Hurricanes Helene and Milton and the Hawai'i Wildfires (SA-HMW) for Clean Water will be administered by the Virginia Department of Environmental Quality's Clean Water Financing and Assistance Program (CWFAP) via the State Revolving Loan program. The Board has previously approved Project Priority List (PPL) for the use of the centralized funds in the amount of $9,307,000. This request is for approval of the Revised PPL for the inclusion of monies for decentralized wastewater systems in the amount of $1,645,000.

Purpose

Section 606 of the Federal Water Pollution Control Act requires the submission of an Intended Use Plan (IUP), which includes a PPL, in conjunction with the CWSRF SA-HMW Grant application. Section 62.1-229 of Chapter 22of the Code of Virginia, authorizes the State Water Control Board (Board) to establish to whom loans are made, the loan amounts, and repayment

terms. The next step in this process is for the Board to approve the loan terms and authorize the execution of the additional loan agreements for this additional emergency funding for decentralized wastewater systems.

Virginia plans to utilize the additional $1,656,000 in SA-HMW funds for project loans with full principal forgiveness as all the communities that were affected by Hurricane Helene are financially stressed and considered disadvantaged communities within the Commonwealth. Virginia's revised draft IUP for Supplemental Appropriations Under the SA-HMW and PPL, adds two projects for decentralized wastewater systems funding (enclosed). The Virginia's revised draft IUP and PPL will be posted on Virginia's Regulatory Town Hall website for viewing by the general public for a period of 30 days. The public comment period for these projects is from May 12, 2026, to June 11, 2026, with no public meeting proposed or required as part of this process. To date, the EPA has provided no comments that require modification of the IUP. The Board will be updated on any comments received after the close of the comment period. The HA-SMW revised PPL will become effective if approved by the Board at its June 23, 2026, meeting.

Discussion

The Virginia Clean Water Revolving Loan Fund's objective for the SA-HMW funds, for the eligible decentralized wastewater system projects, is to enhance resiliency to rapid hydrologic change or natural disaster, as defined by section 212 of the Federal Water Pollution Control Act, and for other eligible tasks at such treatment locations or facilities necessary to further such purposes.

Hurricane Helene struck Virginia, causing widespread damage, starting on September 25, 2024. During this time, the storm predominantly affected the southwestern region of the Commonwealth. DEQ's Southwest Regional Office (SWRO) is located directly within the affected area. DEQ leadership from SWRO, Central Office, as well as CWFAP staff have engaged in extensive community outreach and collaboration with the impacted owners of wastewater systems that experienced damage attributed to Hurricane Helene. SWRO assisted with the collection of critical wastewater infrastructure damage assessment information, which was incorporated within a report from the Virginia Department of Emergency Management (VDEM) detailing impacted wastewater systems directly after the flood waters subsided. The SWRO Pollution Response Team performed site visits to all wastewater systems identified on the FEMA-4831-DR, Virginia Disaster Declaration Map, dated October 10, 2024. In addition, CWFAP oversight and extensive outreach has been performed via site visits and meetings to determine the localities with the greatest demonstrated need based on financial need and environmental impacts or potential impacts on State waters. Based on extensive field investigations and outreach, it is with great confidence that the PPL has identified the projects with the greatest need and that will result in improving water quality of the Commonwealth of Virginia. Therefore, DEQ has bypassed the use of an application solicitation period in order to expedite the distribution of funds and is recommending the Board approve funding of the two projects listed in the revised PPL. Expediting distribution of funds will allow for these most critically important wastewater infrastructure repair projects to be realized in a timelier manner, thus eliminating ongoing public health threats, expediting the restoration of the community's

natural resources for recreational and economic benefits, as well as significantly improving the water quality in these highly impacted areas.

Staff Recommendation

Authorize the execution of loan agreements for the two additional projects listed in the revised PPL, as well as loan amounts, with full principal forgiveness, resulting in no additional debt to be borne by the locality recipients of these loans.

Attachment- Virginia Clean Water State Revolving Fund - DRAFT Revised Project Priority List - FY26 Update, Supplemental Appropriation for Hurricanes Helene and Milton and the Hawai'i Wildfires (SA-HMW) - additional projects noted in red font

Virginia Clean Water State Revolving Fund - DRAFT Project Priority List - FY26 Update
Supplemental Appropriation for Hurricanes Helene and Milton and the Hawai'i Wildfires (SA-HMW)

Applicant	Requested Amount	NPDES Permit #	Project Description	Project Number	Binding Commitment Date	Funding Amount
Town of Fries	$890,900.00	VA0067881	The project includes cleaning and rehabilitation of two sewage lift station collection wet wells, two new sewage pumps, new flow meters and improvements to the electrical controls. The work proposed at the wastewater treatment plant includes improvements to the main influent pump station that consists of the installation of three new main influent pumps. The WWTP Emergency Generator Assembly was damaged and will be replaced along with the plant's main electrical service disconnect switch. Also included in the project is the repair of the effluent outfall discharge line and headwall. Removal of tree debris on and along the security fence surrounding the plant is also included in the project along with repair to sections of the security fence. The laboratory/office building roof repairs are also included in the scope of work.	SA-HMW-003	Summer 2026	$890,900.00
Town of Chilhowie	$2,281,678.75	VA0026379	The project includes the installation of three sewer aerial river crossings and concrete support piers that were destroyed by flooding. The scope of work will include: 415 LF of 18-inch PVC gravity sewer & 24-inch steel casing, 368 LF of 18-inch PVC gravity sewer, rehabilitation of 46.2 vertical foot (VF) of sanitary sewer manhole, 7 sanitary sewer manhole frame and covers. In addition, two sanitary sewer manholes require replacement.	SA-HMW-001	10/31/2025	$2,281,678.00
Buchanan County PSA	$8,991,464.40	VA0090531	The project includes sanitary sewer collection repairs within the Slate Creek Sewer Subbasin and the Levisa Fork River Main Interceptor. The Slate Creek Sewer Collector improvements consist of replacement of 30 manholes and all associated components i.e. manhole cone, frame and cover and cofferdam to allow for additional flood resilient measures of concrete anchoring and strapping of manholes for additional support. Also included is the replacement of gravity sewer line ranging from 6-inch to 8-inch that totals 720 LF. In addition, the replacement of 20 sanitary sewer laterals is required. The Levisa Fork River Interceptor scope of work consists of replacement of 7 manholes, 26 sewer 4-inch lateral replacements, and 2,000 LF of 8-inch sewer replacement. In addition, 8 spot repairs of various sewer pipe size has been included in the project. The Slate Creek Collector and Levisa Fork Interceptor will require extensive cleaning via sewer jet and vacumm prior to starting repair work. Also, post Closed -Circuit Television (CCTV) monitoring is proposed to ensure that the system has been repaired accordingly with flood resilient measures.	SA-HMW-002	Summer 2026	$6,134,422.00
Wythe County	$1,190,000.00	VA0092843	The Jackson Elementary School wastewater project will consist of demolishing the failing septic tank and low-pressure distribution /mass drain field system where the school presently discharges wastewater. The replacement system will consist of installing a duplex submersible pump lift station and approximately 5,500 linear feet of 2-inch sewer force main which will pump into the Shorts Creek wastewater collection system owned by the County. The lift station will have an emergency backup generator as well as security fencing around the perimeter of the lift station site.	SA-HMW-004	Fall 2026	$1,190,000.00
Washington County Public Service Authority	$3,948,594.00	VA0026531	The Greenfield Mobile Home Park experienced flooding and saturation of the septic field beds during and post Hurricane Helene. In addition, several trees had fallen during the storm that resulted in damage to several septic field beds. The mobile home park has 97 lots, of which 85 are currently occupied. Several septic systems are at complete failure. The Washington County Service Authority would provide reliable sewer service to the mobile home park by construction of a pump station and associated gravity and forcemain sewer lines. The project consists of 4,400 LF of 8-inch gravity sewer line, one grinder pump station, 450 LF of 2-inch forcemain, 25 manholes and other related apparatuses.	SA-HMW-005	Fall 2026	$466,000.00

Projects Subtotal:	
Total Requested:	**$17,302,637.15**

SA-HMW Subtotal	**$9,307,000.00**
SA-HMW Decentralized Subtotal	**$1,656,000.00**
SA-HMW Total	**$10,963,000.00**