



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-192-10 et seq.
Regulation title	Virginia Pollution Abatement (VPA) General Permit Regulation for Animal Feeding Operations (AFOs)
Action title	Amend and reissue the Virginia Pollution Abatement (VPA) General Permit Regulation for Animal Feeding Operations (AFOs)
Date this document prepared	June 1, 2012

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

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this action is to reissue and amend, as necessary, the existing Virginia Pollution Abatement (VPA) General Permit Regulation for Animal Feeding Operations (AFOs). The current VPA general permit expires on November 15, 2014. The VPA General Permit Regulation for AFOs governs the pollutant management activities of animal wastes at AFOs not covered by a Virginia Pollutant Discharge Elimination System (VPDES) permit, and having 300 or more animal units utilizing a liquid manure collection and storage system. These AFOs may operate and maintain treatment works for waste storage, treatment or recycle and may perform land application of manure, wastewater, compost, or sludges. The amendments to the VPA permit regulation related to AFOs will be covered by a concurrent NOIRA.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. The identification should include (i) a reference to the agency/board/person's overall regulatory authority, as well as a specific provision authorizing the promulgating entity to regulate this specific subject or program; and a description of the extent to which the authority is mandatory or discretionary.

In 1994, the Virginia General Assembly passed House Bill 222 (62.1-44.17:1) establishing the general permit for confined animal feeding operations. The Act required the State Water Control Board to adopt the general permit, establish provisions for issuing the general permits and establish criteria for the design and operation of the confined AFOs. Virginia Code §62.1-44.17:1 authorizes the State Water Control Board to establish and implement the general permit for confined AFOs having 300 or more animal units. The regulation and general permit first became effective on November 16, 1994 and was reissued for an additional ten year term which became effective November 14, 2004.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The current VPA general permit which governs the pollutant management activities of animal wastes at AFOs having 300 or more animal units (see acronym and definition section) utilizing a liquid manure collection and storage system expires on November 15, 2014. The use of a general permit provides permittees the authority to manage pollutants and allows for the protection of state waters while utilizing fewer resources of the Commonwealth.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

This action is primarily a reissuance of the existing general permit and significant changes are not expected; however, the following items will also be considered in the development of a regulatory proposal:

1. Emerging manure handling and treatment technology has made the transfer and possible marketing of manure based products off the farm more common and necessary in cases where manure land application is limited by phosphorus soil test levels. The current regulation does not address manure transfer. This regulatory action will consider the addition of language that would specify requirements for the transfer of manure from the permitted facility.
2. Farm owners and operators are more commonly considering the use of digesters as alternative manure treatment technology and for potential energy production. As a result, the owners and operators may consider importing other wastes to supplement the digester gas production. This regulatory action will consider the addition of language that would specify requirements for this practice.

3. Other amendments to the VPA General Permit Regulation for AFOs may be considered by the Board based on comments received in response to this notice and discussions of the technical advisory committee.

The concurrent NOIRA to amend the VPA permit regulation related to AFOs will address similar amendments.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

Currently, 140 animal feeding operations are covered under this general permit. One alternative to the reissuance of the VPA General Permit Regulation for Animal Feeding Operations is to issue an individual VPA permit to each animal feeding operation which confines 300 or more animal units. However, due to the number of animal feeding operations currently required to obtain coverage under a VPA permit, it is not practical to issue an individual VPA permit to each operation. Operations that do not qualify for coverage under the general permit will be issued an individual VPA permit.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives, 3) potential impacts of the regulation and 4) impacts of the regulation on farm and forest land preservation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to **Betsy Bowles, P.O. Box 1105, Richmond, Virginia 23218, phone 804-698-4059, fax 804-698-4032 and betsy.bowles@deq.virginia.gov**. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Public hearing at proposed stage

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

Technical advisory committee

A technical advisory committee will be involved in the development of the proposed regulation.

The Board is using a technical advisory committee to develop a proposal for this action and a concurrent NOIRA to amend the VPA permit regulation related to AFOs. Persons interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and the organization represented (if any). Any persons wishing to be included in the advisory committee are encouraged to attend the public meeting mentioned above. The primary function of the advisory committee is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. For purposes of determining committee representation, multiple applications from a single company, organization, group or other entity to participate in the committee count as one. Notification of the composition of the advisory committee will be sent to all applicants.

Family impact

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.

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

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

AFO - Animal Feeding Operations

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

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

VPA - Virginia Pollution Abatement