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Periodic Review Report of Findings

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-31
Regulation title	Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation
Date this document prepared	August 6, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

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

Board- State Water Control Board
CAFO- Combined Animal Feeding Operations
DEQ- Department of Environmental Quality
NPDES- National Pollutant Discharge Elimination System
U. S. EPA- United States Environmental Protection Agency
VPDES- Virginia Pollutant Discharge Elimination System

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the National Pollutant Discharge Elimination System (NPDES) permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. The State Water Control Board (Board) adopted this regulation under the authority of §62.1-44.15 (10) of the Code of Virginia which allows the Board to adopt regulations necessary to enforce the general water quality management program of the Board. Section 62.1-44.15 (5) authorizes the Board to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters and § 62.1-44.15 (7) authorizes the Board to adopt rules governing the procedures of the Board with respect to the issuance of permits, §62.1-44.15(14) authorizes the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes, § 62.1-44.16 specifies the Board's authority to regulate discharges of industrial wastes,

Alternatives

Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

As an authorized state, Virginia operates a state NPDES program, the Virginia Pollutant Discharge Elimination System (VPDES) program. This allows the Board to regulate entities under the VPDES program and these entities to interact with DEQ instead of EPA concerning their permitted discharges to state waters. One alternative would be to relinquish the program to EPA to oversee and permit discharges under the NPDES program. This alternative was rejected. By retaining oversight of the state VPDES program, Virginia is able to more closely monitor water quality conditions and coordinate with other state water users including the protection of surface water for drinking water, aquatic life protection, aquaculture, and recreational uses conducted by DEQ and other state agencies.

Public Comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

An informal advisory group was not formed to assist with the periodic review. No comments were received during the public comment period.

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulation is necessary for the protection of public health, safety, and welfare. The regulation protects the environment and public health and safety by regulating discharges into state waters. The content of the regulation is complex; however, the regulation is clearly written and easily understandable by the regulated community.

Decision

Please explain the basis for the rulemaking entity’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The regulation continues to be needed and is being retained without changes.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

The VPDES regulation continues to be needed. The regulation establishes the requirements for VPDES permits. These permits regulate the discharges of pollutants to surface waters to protect water quality.

No comments were received during the comment period.

The regulation is judiciously complex in that it regulates a number of programs including VPDES point source discharges, CAFOs, land application of sewage sludge and the pretreatment program.

The Clean Water Act established the National Pollutant Discharge Elimination System (NPDES) program to limit pollutant discharges into streams, rivers, and bays. The Clean Water Act authorizes the Environmental Protection Agency (EPA) to authorize states to operate the NPDES permit program. In the Commonwealth of Virginia, DEQ administers the program as the Virginia Pollutant Discharge Elimination System (VPDES). Virginia has modeled the state requirements after the federal NPDES regulation and has included state specific requirements as required by state law. Virginia's regulation does not conflict with federal law or regulation.

This regulation is periodically updated to maintain consistency with changes in the NPDES federal regulation. The last amendment to this regulation was in 2018 to incorporate updates made to the federal regulation. The regulation has been written to minimize the economic impact of the regulation on all businesses including small businesses while maintaining consistency with federal laws and regulations and state law.

Family Impact

Please assess the potential impact of the regulation's impact on the institution of the family and family stability.

This regulation does not impact the institution of the family or family stability.