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Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-860
VAC Chapter title(s)	General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Potable Water Treatment Plants
Date this document prepared	September 22, 2020

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 (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

Acronyms and Definitions

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

NPDES- National Pollutant Discharge Elimination System
PFAS- per- and polyfluoroalkyl substances
VPDES- Virginia Pollutant Discharge Elimination System

Legal Basis

Identify (1) the promulgating agency, 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 agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the Board to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters and § 62.1-44.15(7) authorizes the Board to adopt rules governing the procedures of the Board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the Board to adopt such regulations as it deems necessary to enforce the general water quality management program, §62.1-44.15(14) authorizes the Board to

establish requirements for the treatment of sewage, industrial wastes and other wastes, § 62.1-44.16 specifies the Board's authority to regulate discharges of industrial wastes, § 62.1-44.20 provides that agents of the Board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations, and § 62.1-44.21 authorizes the Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the (NPDES) permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991 to authorize the Commonwealth to administer a General VPDES Permit Program.

Alternatives to Regulation

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.

One alternative considered was the repeal of this regulation. This alternative was rejected. This regulation provides the regulated community with a streamlined permitting process. Without this regulation, regulated entities that are currently eligible to operate under the provisions of the general permit would be required to obtain individual permits to operate. This regulation is the least burdensome alternative available for achieving the purpose of the regulation.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. 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. The Southern Environmental Law Center and the Potomac Riverkeeper Network submitted joint comments on this periodic review.

Summary of the comments submitted by the Southern Environmental Law Center and the Potomac Riverkeeper Network

(PFAS) are toxic chemicals that are harmful to human health and the environment and DEQ should explicitly require disclosure of PFAS discharges from potable water treatment plants (PWTP). PWTP may discharge PFAS as part of their effluent. The current general VPDES PWTP permit registration form requires disclosure of only the chemicals used by the water treatment plant itself in the production of potable water and the treatment process of water. The limited scope means that the form does not call for the disclosure of PFAS passing through these plants from contaminated surface water and groundwater. Nor does it require reporting PFAS created by the degradation or transformation of PFAS and PFAS precursors during the water

treatment process. DEQ should amend the regulation to require disclosure of PFAS by potable water treatment plants.

If a PWTP discharges PFAS, it should not be permitted under the general VPDES potable water treatment permit. The general VPDES potable water treatment permit does not include technology-based or water quality-based effluent limitations for PFAS that would ensure that the plants' discharges do not violate Virginia's general water quality criteria. These plants should be permitted under the individual VPDES permit program to allow DEQ to employ a case-by-case analysis and establish appropriate technology-based and water quality-based PFAS effluent limitations for each plant. There is effective treatment technology to remove PFAS from potable water treatment plant discharges.

Response to Southern Environmental Law Center and the Potomac Riverkeeper Network comments

DEQ is aware of the concerns related to PFAS expressed by the commenters; however, it is premature to initiate a regulatory amendment to address PFAS at this time. EPA is currently working to establish drinking water standards (Maximum Contaminant Levels (MCLs) for PFAS and to develop validated analytical methods for groundwater, surface water, wastewater, and solids, including soils, sediments, biota, and biosolids. DEQ has also established a PFAS working group to help provide information concerning the science of PFAS as it becomes available and is supporting EPA, following EPA's lead on PFAS strategies as they unfold. Additionally, the Virginia Department of Health (VDH) has been directed by the 2020 General Assembly to research MCLs for PFAS and provide an update to the General Assembly on their findings by November 1, 2020. VDH has also been directed by the General Assembly to establish MCLs for PFAS in water supplies and waterworks that does not exceed any MCL established by EPA.

As more information related to PFAS becomes available in the future, including site specific monitoring information of PFAS levels present in Virginia's environment, science based decisions will be made concerning future methods of regulating PFAS in Virginia.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, 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.

This regulation is necessary for the protection of public health, safety, and welfare. The regulation is clearly written and easily understandable.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The regulation is effective and continues to be needed and will be retained.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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 applicable law, will minimize the economic impact of regulations on small businesses.

This regulation continues to be needed. The general permit covers point source discharges of wastewater from potable water treatment plants. Repealing this regulation would require these dischargers to obtain individual permits to conduct these activities.

Comments were received during the periodic review from the Southern Environmental Law Center and the Potomac Riverkeeper Network requesting the regulation be amended to include requirements related to PFAS. Commenters requested PFAS monitoring to be conducted and disclosed. Commenters also requested potable water treatment plant discharges containing PFAS to not be permitted under the general permit, but be issued individual permits with PFAS effluent limitations for each plant.

This regulation establishes procedures for obtaining coverage under this general permit and the applicable limitations and monitoring requirements for point source discharges of wastewaters from potable water treatment plants. This regulation is clearly written and easily understandable.

The regulation does not overlap, duplicate, or conflict with federal or state law or regulation as the State Water Control Board is the delegated authority to regulate point source discharges to surface water.

The State Water Control Board last re-issued this regulation in 2018. This regulation is evaluated and necessary changes are made to the regulation when the permit is re-issued.

The general VPDES permit accomplishes the objectives of applicable law, minimizes the costs to a small business owner and simplifies the application process. Without the general permit, a small business owner would be required to obtain an individual permit, which would increase the complexity of a permit application and the costs to obtain permit coverage.

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 have a direct impact on the family or family stability.