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9VAC25-630-10 et seq. Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management

Presentation of Proposed Amendments for the State Water Control Board

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Statutory Authority

- § 62.1-44.17:1.1 authorizes the State Water Control Board to establish and implement the Poultry Waste Management Program
- This section contains provisions that the Board must, at a minimum, include in its regulatory program for permitting confined poultry feeding operations under a general permit
- The statute also affords broad authority over the commercial poultry processor, poultry waste broker and poultry waste end-user related to poultry waste and nutrient management

Background

- The VPA Regulation and General Permit for Poultry Waste Management covers pollutant management activities of the following:
 - poultry growers (owners of confined poultry feeding operations);
 - poultry waste brokers;
 - poultry waste end-users; and
 - commercial poultry processors
- Establishes storage, utilization, tracking and accounting requirements related to poultry waste (also known as poultry litter), including transferred poultry waste
- The VPA Regulation and General Permit does not authorize discharges to State Waters

Background - continued

- First term became effective on December 1, 2000 and expired on November 30, 2010
- Second term became effective on December 1, 2010 and expires on November 30, 2020
- This regulatory action will provide for a third ten (10) year term of the regulation and general permit
- Currently, there are 954 confined poultry feeding operations in the Commonwealth covered under the general permit

Current Requirements – Confined Poultry Operations

- Poultry growers that own poultry operations that confine 200 animal units (20,000 chickens or 11,000 turkeys) or more must obtain a permit
- The confined operation that does not discharge pollutants to State Waters can be covered under the VPA general permit

Current Requirements – Permitted Poultry Growers

- The confined poultry feeding operation shall be designed and operated to prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm
- Poultry growers must:
 - monitor waste and soils (soils - only if land applying poultry waste on property under the control of the owner of the poultry operation);
 - implement a site specific nutrient management plan;
 - store and maintain poultry waste properly;
 - maintain land application records (when applicable); and
 - maintain poultry waste transfer records (when applicable)

Current Requirements – Poultry Waste Brokers and End-Users

- Poultry waste brokers must:
 - register with the Department;
 - maintain and report poultry waste transfer records;
 - store and maintain poultry waste properly; and
 - maintain land application records (when applicable)
- Poultry waste end-users must:
 - maintain poultry waste transfer records;
 - store and maintain poultry waste properly; and
 - maintain land application records (when applicable)
- Brokers or end-users that do not comply with the technical regulations found in sections 60, 70 and 80 of 9VAC25-630 may be required to be covered under the general permit

Current Requirements – Poultry Waste Storage (all entities)

- Waste storage capacity must be adequate to accommodate periods when the ground is:
 - ice covered;
 - snow covered;
 - saturated; and
 - when land application should not occur
- Storage prevents contact with surface water and ground water
- Storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain
 - unless the poultry grower has no land outside the floodplain and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures

Current Requirements – Poultry Waste Storage (all entities) continued

- When poultry waste is stockpiled outside of the growing house for more than 14 days, the following conditions apply:
 - The waste shall be covered to protect it from precipitation and wind;
 - Stormwater shall not run onto or under the stored poultry waste;
 - The waste storage shall be separated from the seasonal high water table two feet, or one foot with impermeable barrier; and
 - For poultry waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs

Current Requirements – Poultry Waste Utilization

- Poultry waste generated by a permitted poultry grower may be land applied under a site specific nutrient management plan or transferred off-site to another entity.
- Transferred poultry waste must be utilized in accordance with the technical regulations found in section 80 of 9VAC25-630.
 - The technical regulations mirror the permit requirements related to land application timing and buffer setbacks.
 - The application rate can be established by one of the following methods: outlined in a nutrient management plan, using the standard rate of 1.5 tons per acre once every three years, soil test recommendations, and Phosphorus crop removal.

Current Requirements – Poultry Waste Tracking and Accounting (all entities)

- Poultry waste that is transferred from a permitted poultry grower or poultry waste broker to an end-user or another broker is considered transferred poultry waste.
- When someone transfers 10 tons or more of poultry waste, the entities must record and maintain the following items:
 - date;
 - tons;
 - waste analysis;
 - locality where waste will be used or stored;
 - nearest stream or waterbody to land application or storage location,;
 - name and address of source and recipient; and
 - signature of recipient (end-user or broker).

Current Requirements – Commercial Poultry Processors

- In accordance with the § 62.1-44.17:1.1. of the Code of Virginia the Commercial Poultry Processors shall file a plan under which the processor shall provide:
 1. technical assistance;
 2. education programs;
 3. provide a toll-free waste hotline;
 4. participate in the development of a transportation/alternative use equal matching grant program;
 5. conduct research on: reduction of phosphorus, innovative best management practices, water quality issues, or alternative uses; and
 6. conduct research on nutrient reduction strategies in feed.
- The Processor shall report annually on the activities pursuant to its plan.

Regulatory Action - Public Participation Process

- Notice of Intended Regulatory Action (NOIRA) was published in the Virginia Register of Regulations on October 1, 2018
- 30-day public comment period ended on October 31, 2018
- The commenters requested to participate on the Technical Advisory Committee (TAC) and in favor of reissuing the general permit in 2020
- A TAC was formed to assist staff throughout this process.
- Four (4) public noticed TAC meetings:
 - March 25, 2019; July 18, 2019; October 19, 2019; and January 6, 2020

Proposed Language (overview)

- Revise effective and expiration dates
- Add two definitions to Section 10 - Definitions
- Add language related to the commercial poultry processor's duty to comply
- Add and update citations found within the regulation and general permit related to the regulations for water quality standards and nutrient management
- Amend language in the section for authorization to manage pollutants and continuation of the general permit coverage

Proposed Language (overview) - continued

- Reorganize conditions in Section 50 - Contents of the general permit
 - Separate conditions into three subject areas: site conditions, poultry waste transfer and utilization conditions, and other special conditions
- Revise to make minor technical changes and provide clarification to conditions in the regulation and general permit
- Revise both Registration Statements (permit applications) and the Poultry Litter Fact Sheet

Proposed Language – Poultry Waste Storage (all entities)

- Add clarification that the Federal Emergency Management Agency (FEMA) floodplain delineation maps are the appropriate tools to determine the location of the floodplain when siting poultry growing operations and waste storage facilities
- Add new setback condition for siting temporary poultry waste storage
 - 200 feet from any occupied dwelling not on the permittee's property
 - unless the occupant of the dwelling signs a waiver of the setback
- Add new site condition to set standard to managed impervious surfaces such as concrete end pads or load out pads and surrounding areas and ventilation outlets in a manner so as not to cause a discharge to State Waters

Proposed Language - Poultry Waste Utilization and Transfer

- Add “county” as a new item to the poultry waste transfer data recordkeeping (all entities)
- Add a phased in reporting requirement for the permitted grower, permitted broker and permitted end-user
- Add a new condition to clarify land application requirements in cases of waste storage emergencies (permitted poultry grower)
 - Allows land application of poultry waste outside of the land application schedule found in the nutrient management plan so long as the land application information is documented and the Department is notified

Proposed Language - Tracking and Accounting Requirement for Poultry Waste Brokers (Technical Regulations - Section 60)

- Add “county” as a new item to the poultry waste transfer data recordkeeping
- Amend recordkeeping timeframes for poultry waste transfers from a calendar year to a state fiscal year
- Amend reporting timeframes for poultry waste transfers from February 15 to September 15

Proposed Language – Tracking and Accounting Requirements for Poultry Waste End-Users (Technical Regulations - Section 70)

- Add “county” as a new item to the poultry waste transfer data recordkeeping
- Add a phased in reporting requirement for the end-user

Proposed Language – Commercial Poultry Processor Activities (Technical Regulations - Section 90)

- Add a new section to address activities performed by the commercial poultry processor on the contract grower's farm related to poultry waste and nutrient management
- The new section specifies and requires the commercial processor to do the following:
 - clean up and properly dispose of materials that are spilled in relation to activities in which the commercial processor performs, and
 - submit an operation and maintenance manual that outlines proper procedures to be used while commencing with typical farming activities

Issues Where Consensus was Not Achieved with Members of TAC

- There were four (4) main issues where the members of the TAC did not agree:
 - temporary storage;
 - reporting of waste amendments;
 - permitted poultry grower reporting; and
 - poultry waste end-user reporting

Temporary Storage

- Several TAC members recommended that staff consider amending the storage requirements to provide more flexibility for the grower and end-user.
- A proposal was drafted to allow an additional option for temporary storage of poultry waste including visual inspections and recordkeeping.
- The members of the TAC had comprehensive discussions during the TAC meetings over the proposed temporary storage requirements.

Temporary Storage - continued

- The majority of the TAC members supported the amendments to the temporary storage with the additional inspections and recordkeeping
- Two (2) members stated that they would support the draft temporary storage amendments only if DEQ required permitted growers to report waste amendments
- Litter (poultry waste) amendments are widely used by the poultry industry for bird health and welfare to suppress ammonia releases while the birds are confined in the growing houses

Temporary Storage - Proposed Language

- The proposal does not include an additional option for the temporary storage of poultry waste for two (2) reasons:
 - 1) the lack of research data related to typical field-size waste piles, and
 - 2) the uncertainty of how safe it is to extend the length of time for poultry waste to be uncovered

Reporting of Litter Amendments

- In response to the draft proposal that provided an option for a slight extension of uncovered storage, two (2) TAC members recommended that DEQ require the reporting of waste amendment use, primarily related to ammonia loss during storage
- One (1) other TAC member was a supporter of the addition if credit could be received in the Bay model
- The other TAC members were opposed to requiring the reporting of waste amendment use

Reporting of Litter Amendments – Proposed Language

- The proposed regulation does not include the requirement to report waste amendments for two (2) reasons:
 - 1) the lack of research data related to waste amendments and their effectiveness on ammonia volatilization on waste stored outside; and
 - 2) since the proposal does not include an extension of uncovered temporary storage, there is no need to require the reporting of waste amendment use

Permitted Poultry Grower Reporting

- There was a recommendation from two (2) TAC members that DEQ require permitted growers to report poultry waste transfers
- Several other members of the TAC felt that adding a requirement to submit records is unnecessary, as DEQ receives this information during inspections and can request the data at any time as stated in the regulation

Permitted Poultry Grower Reporting - Proposed Language

- The proposal phases in the requirement for the permitted grower to submit poultry waste transfers records and enables DEQ staff to produce a more timely tracking and accounting dataset of poultry waste movement
 - In 2021: submit on at least an annual basis, upon the request of the Department, and in a format and method determined by the Department
 - In 2022 and thereafter: submit annually, for the preceding state fiscal year (July 1 through June 30) no later than September 15

Poultry Waste End-User Reporting

- There was a recommendation from two (2) TAC members that DEQ require end-users to report the records that the current regulation requires they maintain
- Several other members of the TAC expressed their concerns that requiring end-user reporting could result in potential end-users being reluctant to use waste, therefore causing a reduction in poultry waste transfers and the “stranding” of poultry waste on growers’ farms

Poultry Waste End-User Reporting - continued

- During one (1) of the TAC meetings, staff in the DEQ Chesapeake Bay Program Office gave a presentation on the Bay model and credit given to specific best management practices
 - Based on that information and discussion, the grower and broker transfer records are sufficient to meet the Bay model requirements for poultry waste transfer
- However, two (2) members of the TAC felt that a requirement for end-users to report their records could be used to better characterize poultry waste utilization and compliance with the technical requirements

Poultry Waste End-User Reporting - Proposed Language

- The proposal phases in the requirement for the poultry waste end-user to submit poultry waste transfers records and land application records
 - In 2021 and 2022: submit on at least an annual basis, upon the request of the Department, and in a format and method determined by the Department
 - Beginning in 2023 and thereafter: submit annually, for the preceding state fiscal year (July 1 through June 30) no later than September 15

Questions?

Staff Recommendation

- The staff recommends that the State Water Control Board:
 - approve for public comment and hearing the proposed amendments to the Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management as presented, and
 - authorize staff to act as the hearing officer.