



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9VAC25-31
<b>Regulation title</b>	Virginia Pollutant Discharge Elimination System Permit Regulation (VPDES)
<b>Action title</b>	Removal of references to delegation of authority to DMME for VPDES permits related to coal surface mining
<b>Final agency action date</b>	August 4, 2011
<b>Document preparation date</b>	May 31, 2011

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 14 (2010) and 58 (99).

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

This final exempt regulatory action is being taken to implement Chapter 252 of the 2011 Acts of Assembly. The regulation is being amended to remove references to the delegation of authority from the State Water Control Board to the Director to the Department of Mines, Minerals, and Energy to issue permits related to coal surface mining. The statute was recently revised to clarify that the Director of the Department of Mines, Minerals, and Energy has the authority to issue VPDES permits for coal surface mining operations. This regulatory change does not impact the current process that is used to issue VPDES permits to coal surface mining operations.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

On August 4, 2011, the State Water Control Board took final action to adopt amendments to the regulation entitled "Virginia Pollutant Discharge Elimination System Permit Regulation (VPDES)," specifically amending 9VAC25-31-940. The regulatory action will be filed as soon as possible, consistent with the Administrative Process Act.

The regulation amendments are 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 Administrative Process Act because they are necessary to conform to Virginia statutory law.

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
940		The regulation is being amended to remove references to the State Water Control Board delegating authority to the Department of Mines, Minerals and Energy for the issuance of coal surface mining operations requiring VPDES permits.	The regulations no longer require the State Water Control Board to delegate to the Department of Mines, Minerals and Energy the authority to issue VPDES permits for coal surface mining operations. This regulatory change is needed as a result of changes made to § 45.1-254 of the Code of Virginia. This regulatory change does not impact the current process that is used to issue VPDES permits to coal surface mining operations. This section is also being revised to cite current statutory references.

**Regulatory flexibility analysis**

*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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.*

Since the regulatory change is being made to conform to state law, the board does not have any discretion concerning alternative regulatory methods. State law specifies the Department of Mines, Minerals and Energy has the authority to issue VPDES permits for coal surface mining operations. This regulatory change does not impact the current process that is used to issue VPDES permits to coal surface mining operations.

The regulatory change does not impact small businesses. The change simply removes a requirement for the State Water Control Board to delegate permitting and enforcement authority for VPDES permits related to coal surface mining operations to the Department of Mines, Minerals and Energy.

### Family impact

*Assess the impact of this regulatory action on the institution of the family and family stability.*

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It is not anticipated that this regulatory amendment will have a direct impact on families. The regulation simply removes a requirement for the State Water Control Board to delegate permitting and enforcement authority for VPDES coal surface mining operations to the Department of Mines, Minerals and Energy. This regulatory change does not impact the current process that is used to issue VPDES permits to coal surface mining operations.