



Exempt Action Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-830
Regulation title	Chesapeake Bay Preservation Area Designation and Management Regulations
Action title	Transfer of the Chesapeake Bay Preservation Area Designation and Management Regulations from the Soil and Water Conservation Board to the State Water Control Board
Final agency action date	August 26-27, 2013
Document preparation date	August 23, 2013

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.

As of a result of actions by the 2013 General Assembly (HB2048 & SB 1279) certain water quality programs previously administered by the Department of Conservation and Recreation will now be administered by the Department of Environmental Quality. The Department of Environmental Quality and the State Water Control Board will have oversight of water quality planning and laws dealing with stormwater management, erosion and sediment control and the Chesapeake Bay Preservation Areas.

In this regulatory action Code references for the Chesapeake Bay Preservation Area Designation and Management Regulations have been changed from Title 10.1 to 62.1 and section references have been changed from 4VAC50-90 to 9VAC25-830 to reflect the change in administration of the program from the Department of Conservation and Recreation and the Soil

and Water Conservation Board to the Department of Environmental Quality and the State Water Control Board.

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.

The State Water Control Board adopted the regulations at its August 26-27, 2013 Board Meeting.

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.

Code references for the Chesapeake Bay Preservation Area Designation and Management Regulations have been changed from Title 10.1 to 62.1 and section references have been changed from 4VAC50-90 to 9VAC25-830 to reflect the change in administration of the program from the Department of Conservation and Recreation and the Soil and Water Conservation Board to the Department of Environmental Quality and the State Water Control Board.

Section numbers follow those found in 4VAC50-90 where possible to facilitate the transfer of administration of the regulations. References to the Department of Conservation and Recreation and the Soil and Water Conservation Board have been revised to the Department of Environmental Quality and the State Water Control Board. In addition, duplicative references to the Code of Virginia Sections for the Erosion and Sediment Control Law and the Virginia Stormwater Management Act have been replaced by inclusion of the references as part of new definitions.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
4VAC50-90	9VAC25-830	Chapter number	Chapter number changed from Chapter 90 to Chapter 830 to reflect transfer of administration of program.
4VAC50-90-40	9VAC25-830-40	Definitions.	Definition of "Act" revised to read: "Act" means the Chesapeake Bay Preservation Act, found in Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 24-3.1 (§ 10.1-2100 et seq.) of Title 40.1-62.1 of the Code of Virginia." Revised to reflect transfer of administration of program and transfer of regulations.
4VAC50-	9VAC25-830-	Definitions.	Definition added: "Erosion and Sediment

90-40	40		<u>Control Law</u> " means Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia. Definition added to clarify requirements.
4VAC50-90-40	9VAC25-830-40	Definitions.	Definition added: " <u>Virginia Stormwater Management Act</u> " means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia. Definition added to clarify references and requirements.
4VAC50-90-130 8	9VAC25-830-130 8	General Performance criteria.	Correct date and title of reference: "8. Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from this chapter provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the January 1997 <u>March 2011</u> edition of " <u>Virginia's Forestry Best Management Practices for Water Quality in Virginia Technical Guide Manual, Fifth Edition.</u> " The Virginia Department of Forestry will oversee and document installation of best management practices and will monitor in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas."
4VAC50-90-140 3	9VAC25-830-140 3	Water quality impact assessment – Buffer area requirements.	Grammatical correction – insert missing word – "runoff": "3. Buffer area requirements. The 100-foot wide buffer area shall be the landward component of the Resource Protection Area as set forth in subdivision B 5 of 4VAC50-90-80 <u>9VAC25-830-80</u> . Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this section, the 100-foot wide buffer area is not reduced in width. To minimize the adverse effects of human activities on the other components of the Resource Protection Area, state waters, and aquatic life, a 100-foot wide buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from <u>runoff</u> shall be retained if present and established where it does not exist."
4VAC50-90-140 6 a	9VAC25-830-140 6 a	Water quality impact assessment.	Text deleted: "...Local governments should notify the board of all development requiring such an assessment. Upon request, the board will provide review and comment regarding any water quality impact assessment in accordance with the advisory state review requirements of § 10.1-2112 of

			the Act. Text deleted to reflect current practice.
4VAC50-90	9VAC25-830-210	Section Title: Local assistance manual.	Title revised to clarify and to reflect common practice: "Local assistance manual <u>guidance.</u> "
4VAC50-90 A	9VAC25-830-210 A	Local assistance manual.	Local assistance guidance: Revised to clarify requirements: "A. The department will prepare a manual to provide guidance to assist local governments in the preparation administration of local programs in order to implement the Act and this chapter. The manual guidance will be updated periodically to reflect the most current planning and zoning techniques and effective best management practices and amendments to the Act or regulations . The manual guidance will be made available to the public."
4VAC50-90 B	9VAC25-830-210 B	Local assistance manual.	Local assistance guidance: Revised to clarify requirements: "B The manual guidance will recommend a schedule..."
4VAC50-90 C		Local assistance manual.	Delete subsection: no longer needed – removal of redundant statement.
4VAC50-90	9VAC25-830-230	Planning district comments.	Revise to clarify requirements: "Local governments are encouraged to enlist the assistance and comments of regional planning district agencies early in the development management of their local programs."
4VAC50-60-260	9VAC25-830-260	Administrative proceedings.	Text revised to clarify requirements: "Subdivision 8...in accordance with the provisions of the Administrative Process Act. When the board determines to decide such compliance, it will give the subject local government at least 15 days notice of its right to appear before the board at a time and place specified for the presentation of factual data, argument and proof as provided by § 2.2-4019 of the Code of Virginia. The Administrative Process Act (§ 2.2-40000 et seq. of the Code of Virginia) shall govern the review activities and proceedings of the board and the judicial review thereof."
4VAC50-90-260 1 b	9VAC25-830-260 1 b	Develop a compliance review process.	Reference to a "corrective action agreement" has been replaced with the "establishment of a corrective action plan": "...The review process shall consist of a self-evaluation by each local government of local program implementation and enforcement as well as an evaluation by department staff. Based on these evaluations, the department shall provide the results and compliance recommendations to the board in the form of a corrective action agreement should deficiencies be found; otherwise, the board may (i) find the program compliant. When, or

			if deficiencies are found, the board will establish <u>a corrective action plan and a schedule</u> for the local government to come into compliance. The board shall provide a copy of its decision to the local government that specifies the deficiencies, actions needed to be taken, and the approved compliance schedule. If the local government has not implemented the necessary compliance actions identified by the board within 30 days following receipt of the corrective action agreement <u>the schedule established by the board</u> , or such additional period as is granted..." Revised to reflect current process and procedures.
4VAC50-90-270	9VAC25-830-270	Legal proceedings.	Revised to clarify requirements: "Subdivision 10...unless it finds extraordinary circumstances, initiate an administrative a proceeding under the Act..."
	9VAC25-830		New "Part IX" added and entitled "Miscellaneous".
	9VAC25-830-280		New section for "Delegation of authority". New requirement added: " <u>The director, or his designee, may perform any act of the board provided under this chapter, except as limited by §62.1-44.14 of the Code of Virginia.</u> "

Enter any other statement here

Family impact

Assess the impact of this 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 this regulatory action 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.

"ACS" - Alternative Conservation System

"Act" - the Chesapeake Bay Preservation Act

"BMP" – Best management practice

"T" – soil loss tolerance level

"VPDES" - Virginia Pollutant Discharge Elimination System

"VSMP" - Virginia Stormwater Management Program