



Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Soil and Water Conservation Board
Virginia Administrative Code (VAC) citation	4VAC50-50
Regulation title	Erosion and Sediment Control Certification Regulations
Action title	Conforming 4VAC50-50 through exempt action amendments, to Virginia statutory law changes (Chapters 785 and 819 of the 2012 Virginia Acts of Assembly) in order to better integrate Board water quality programs so that those regulatory programs can be implemented in a consolidated and consistent manner, resulting in greater efficiencies (one-stop shopping) for those being regulated.
Final agency action date	September 28, 2012
Document preparation date	October 2, 2012

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, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

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 exempt action is being taken in accordance with Administrative Process Act exemptions, specifically § 2.2-4006 (3) and (4)(a) of the Code of Virginia. The majority of the amendments are being made to conform the Erosion and Sediment Control Certification Regulations (4VAC50-50) to changes in Virginia statutory law in response to the Erosion and Sediment Control, Stormwater Management, and Chesapeake Bay Preservation Acts, integration of

programs bill [Chapters 785 and 819 of the 2012 Virginia Acts of Assembly; (HB1065 - Delegate Sherwood and SB407 - Senator Hanger)]. The legislation integrated elements of the Erosion and Sediment Control Act, the Stormwater Management Act, and the Chesapeake Bay Preservation Act (where appropriate; no Bay Act program expansion) so that those regulatory programs could be implemented in a consolidated and consistent manner, resulting in greater efficiencies (one-stop shopping) for those being regulated. The bill also abolished the Chesapeake Bay Local Assistance Board and transferred its powers and responsibilities to the Virginia Soil and Water Conservation Board. Accordingly, this consolidation legislation has resulted in necessary amendments to each of the referenced Act's attendant regulations.

Amendments were also made to address style, form, or corrections of technical errors.

The substantive elements of this action include:

- 1) Changing the name of the regulations to Erosion and Sediment Control and Stormwater Management Certification Regulations to recognize the broadened scope of the certification program to include stormwater training and certification.
- 2) Definitional changes include the following:
 - Updating definitions for "Certification", "Certified combined administrator for ESC", "Certified project inspector for ESC", "Certified plan reviewer for ESC", "Certified program administrator for ESC", "Classification", "Combined administrator for ESC", "Erosion and Sediment Control Plan"-or "ESC plan", "Plan reviewer", and "Program administrator".
 - Striking definitions for "Act", "Inspector", "Program authority", and "State erosion and sediment control program" or "state program".
 - Adding new definitions for "Certified combined administrator for SWM", "Certified project inspector for SWM", "Certified plan reviewer for SWM", "Certified program administrator for SWM", "Combined administrator for SWM", "ESC", "ESC Act", "Project Inspector", "Stormwater management plan" or "SWM plan", "SWM", "SWM Act", "Virginia Erosion and Sediment Control Program" or "VESCP", "Virginia Erosion and Sediment Control Program authority" or "VESCP authority", "Virginia Stormwater Management Program" or "VSMP", and "Virginia Stormwater Management Program authority" or "VSMP authority"
 - [Section 10]
- 3) Expanding the series of classifications currently available in the certification program for erosion and sediment control to include a parallel track in stormwater that includes Program administrator for SWM, Plan reviewer for SWM, Project inspector for SWM, and Combined administrator for SWM. [Section 40 (A)]
- 4) Recognizing that a professional soil scientist as defined in § 54.1-2200 et seq. shall qualify as a certified plan reviewer for ESC and will not require a certificate of competence from the Board. [Section 40 (B)]

- 5) Establishing a dual certificate upon request for an individual who holds a valid and unexpired certificate of competence issued by the Board in the classification of ESC or SWM, or who obtains such a certificate, and who later successfully obtains an additional certificate of competence from the Board in the parallel ESC or SWM classification. [Section 40 (C)]

- 6) Within the eligibility requirements in 4VAC50-50-50 the amendments include:
 - Establishing the availability of stormwater training programs for project inspectors for SWM, plan reviewers for SWM, administrators for SWM, and combined administrators for SWM and stipulating which programs must be taken for each of these classifications.
 - Clarifying that both certifications and recertifications are valid for a period of three years.
 - Expanding the subsection on recertifications to clarify the recertification process and those professional entity's that may be fully or partially exempt from recertification requirements should they hold an appropriate and valid professional license.
 - [Section 50]

- 7) Clarifying that for the purposes of VESCP or VSMP compliance reviews and evaluations, the certification requirements of § 10.1-561.1 and § 10.1-603.4:2 shall be deemed to have been met if the VESCP or the VSMP authority has a person or persons enrolled in the Board's ESC or SWM training programs for the necessary classifications and such person or persons obtains certification within one year of completing the necessary training programs. [Section 55]

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 September 28, 2012, the Virginia Soil and Water Conservation Board approved, authorized, and directed the filing of amendments to the Erosion and Sediment Control Certification Regulations (4VAC50-50) as an exempt action. That authorization was related to those changes that are exempt from the Administrative Process Act pursuant to § 2.2-4006 (3) and (4)(a) of the Code of Virginia. They noted that this authorization extends to, but is not limited to, the drafting of the documents and documentation as well as the coordination necessary to gain approvals from the Virginia Registrar of Regulations for the publication of this final regulatory action.

Family impact

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

It is not anticipated that this regulation will have a direct impact on the institution of the family or family stability. However, the improvement of water quality, through the implementation of management programs and best management practices to achieve it, does have positive public health and safety benefits that have an indirect impact on families.