



[townhall.virginia.gov](http://townhall.virginia.gov)

## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25 - 870
<b>VAC Chapter title(s)</b>	Virginia Stormwater Management Program Regulation
<b>Action title</b>	<b>Final Exempt CH 870 Changes in Response to 2022 Legislative Changes</b>
<b>Final agency action date</b>	June 22, 2022
<b>Date this document prepared</b>	May 13, 2022

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, 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*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

This regulatory action amends the Virginia Stormwater Management Program Regulation (9VAC25-870) to incorporate changes resulting from Chapter 356 (Senate Bill 657), Chapter 32 (House Bill 1224), and Chapter 160 (House Bill 184) of the 2022 Acts of Assembly.

SB657 limits the authority of the State Water Control Board to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. Changes to 9VAC25-870 included changing designations from "board" to "department" where appropriate; a change in the definition of "Board"; the addition of a definition for "controversial permit"; the addition of language establishing "permit rationale"; the addition of language establishing "criteria for requesting and granting a public hearing in a permit action"; the addition of language related to "controversial permits" and "controversial permits reporting"; and the correction of Code references where necessary to implement the new statutory requirements.

HB1224 directs the State Water Control Board to update its regulations providing for the certification and use of a proprietary best management practice (BMP) if another state, regional, or national program has verified its nutrient or sediment removal effectiveness and its having met or exceeded all of such program's established test protocol requirements. Changes to the regulation included removal of two subdivisions from 9VAC25-870-65.

HB184 authorizes a locality that administers a Virginia Stormwater Management Program (VSMP) or a Virginia Erosion and Stormwater Management Program (VESMP) to administer such program of a regional industrial facility authority of which the locality is a member. This administration is to be conducted in accordance with an agreement entered into by relevant localities and the existing VSMP or VESMP for the property. Changes to the regulation included adding a subsection to 9VAC25-870-102 articulating this authority.

### Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

---

Section 2.2-4006 A.4.a of the Code of Virginia allows the Board to adopt this regulatory amendment to conform to changes in Virginia statutory law. This regulatory action will incorporate statutory changes in Chapter 356, Chapter 32, and Chapter 160 of the 2022 Acts of Assembly into the Virginia Stormwater Management Program Regulation (9VAC25-870).

### Statement of Final Agency Action

*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 approved this amendment to 9VAC25-870 on June 22, 2022, as a final regulation, and affirmed that the Board will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision.