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Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9 VAC25-40
VAC Chapter title(s)	Regulation for Nutrient Enriched Waters and Dischargers within the Chesapeake Bay Watershed
Action title	Final Exempt CH 40 Changes in Response to 2022 Board Bill
Final agency action date	August 25, 2022
Date this document prepared	June 18, 2022

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 changes the existing language of the regulation (9VAC25-40) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

Changes to the regulations included adding the statutory the definition of "Board" and "Department" to the regulation to implement the new statutory requirements and changing designations from "board" to "department" where appropriate.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

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). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “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.”

SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), 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. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

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 adopted these regulatory amendments to 9VAC25-40 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.