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Exempt Action Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9VAC25-830
Regulation title(s)	Chesapeake Bay Preservation Area Designation and Management Regulations
Action title	<i>Amendments to the Chesapeake Bay Preservation Act to Address 2015 Legislation Related to Daylighting of Streams</i>
Final agency action date	June 25, 2015
Date this document prepared	May 20, 2015

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) or an agency's basic statute, the agency is not required, however, 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 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The 2015 General Assembly passed legislation (HB2067) which was signed by the Governor to amend and reenact §§ 62.1-44.15:68 and 62.1-44.15:72 of the Code of Virginia, relating to daylighting of streams. The approved Acts of Assembly Chapter 674 provides that the State Water Control Board (SWCB), when developing the criteria for a Resource Protection Area (RPA) under the Chesapeake Bay Preservation Act, shall not require that a daylighted stream become an RPA. The bill requires any locality that does not designate an RPA adjacent to a daylighted stream to use a water quality impact assessment to ensure that development adjacent to the stream does not result in the degradation of the stream. The locality's assessment must (i) be consistent with the SWCB's criteria for water quality impact assessments in RPAs, (ii) identify the impacts of proposed development on water quality, and (iii) determine measures to mitigate adverse impacts. The bill defines a daylighted stream as a stream that has been previously diverted into a culvert, pipe, or other underground drainage system and is redirected

into an aboveground channel using natural channel design concepts. The bill does not limit a locality's authority to include such a stream within an RPA.

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.

*RPA: Resource Protection Area
SWCB: 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 amendments to the Chesapeake Bay Preservation Area Designation and Management Regulations at its meeting on June 25, 2016.

Family impact

Please 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.

There is no anticipated impact of this regulatory action on the institution of the family and family stability.

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.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC25-830-40		Definitions.	Insert definition of "Daylighted stream". "Daylighted stream" means a stream that had been previously diverted into an underground drainage system, has been redirected into an aboveground channel using natural channel design concepts as defined in § 62.1-44.15:51, and where the adjacent lands would meet the criteria for being designated as a Resource Protection Area (RPA) as defined by the Board under this article.
	9VAC25-830-80-E		<p>Added exemption for locality designation of Resource Protection Area adjacent to a daylighted stream.</p> <p><u>E. A locality is not required to designate a Resource Protection Area adjacent to a daylighted stream. However, a locality that elects not to designate a Resource Protection Area adjacent to a daylighted stream shall use a water quality assessment as identified in 9VAC25-830-140 6 to ensure that proposed development on properties adjacent to the daylighted stream do not result in the degradation of the stream. The objective of this assessment is to ensure that practices on properties adjacent to daylighted streams are effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution.</u></p>

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

Amending the regulation is nondiscretionary based on the statutory mandate.