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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Department of Environmental Quality
<b>Virginia Administrative Code (VAC) citation(s)</b>	9 VAC 25-830; 9 VAC 25-840; 9 VAC 25-850; 9 VAC 25-870; 9 VAC 25-880; 9 VAC 25-890
<b>Regulation title(s)</b>	Chesapeake Bay Preservation Area Designation and Management Regulations; Erosion and Sediment Control Regulations; Erosion and Sediment Control and Stormwater Management Certification Regulations; Virginia Stormwater Management Program Regulation; General VPDES Permit for Discharges of Stormwater from Construction Activities; General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems
<b>Action title</b>	Consolidation of Virginia Erosion Control and Stormwater Management Programs
<b>Date this document prepared</b>	December 21, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

Chapters 758 and 68 of the 2016 Acts of Assembly (House Bill 1250 and Senate Bill 673) combine the existing Virginia Stormwater Management Act (VSMA) and Virginia Erosion and Sediment Control Law (VESCL) to create the Virginia Erosion and Stormwater Management Act (VESMA) and directs the State Water Control Board (the Board) to permit, regulate, and control both erosion and stormwater runoff. In order for this legislation to become effective, the Board is required to initiate a regulatory action to consolidate and clarify program requirements, eliminate redundancies, and correct inconsistencies between the erosion and sediment control and stormwater management program regulations. Affected regulations may include 9VAC25-830 – Chesapeake Bay Preservation Area Designation and Management Regulations, 9VAC25-840 – Erosion and Sediment Control Regulations, 9VAC25-850 – Erosion and Sediment Control and Stormwater Management Certification Regulations, 9VAC25-870 – Virginia Stormwater Management Program Regulation, 9VAV25-880 – General VPDES Permit for Discharges of Stormwater from Construction Activities, and 9VAC25-890 – General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems.

### Acronyms and Definitions

*Please define all acronyms or technical definitions used in the Agency Background Document.*

- CBPA – Chesapeake Bay Preservation Area
- DEQ – Department of Environmental Quality
- MS4 – Municipal Separate Storm Sewer System
- SWCB – State Water Control Board
- VESCL – Virginia Erosion and Sediment Control Law
- VESCP – Erosion and Sediment Control Program
- VESMA – Virginia Erosion and Stormwater Management Act
- VESMP – Virginia Erosion and Stormwater Management Program
- VSMA – Virginia Stormwater Management Act
- VSMP – Virginia Stormwater Management Program

### Mandate and Impetus

*Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “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.”*

Chapters 758 and 68 of the 2016 Acts of Assembly (House Bill 1250 and Senate Bill 673) combine the existing statutory programs relating to soil erosion and stormwater management to establish the VESMA and directs the SWCB to permit, regulate, and control both erosion and stormwater runoff. The legislation requires any locality that operates a MS4 or a VSMP to adopt a VESMP that regulates any land-disturbing activity that disturbs an area of 10,000 square feet or more, or 2,500 square feet or more if located within a CBPA. Any locality that does not operate a MS4 and for which DEQ is currently administering a VSMP is required to (i) adopt a VESMP; (ii) adopt a VESMP with DEQ conducting stormwater management plan review and making recommendations on the compliance of each plan with the applicable post-development technical criteria; or (iii) continue to operate a separate VESCP that regulates any land-disturbing activity that disturbs an area of 10,000 square feet or more, or 2,500 square feet or more if located within a CBPA. Any eligible locality that chooses the third option is required to have a VSMP administered on its behalf by the SWCB for any land-disturbing activity that disturbs an area of one acre or more, including an activity that disturbs less than one acre but is part of a larger common plan of development that results in one acre or more of land disturbance. Towns are afforded additional options in relation to the counties in which they are located.

### Legal basis

*Please identify: (1) the agency (includes any type of promulgating entity); and, (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.*

The basis of this regulatory action includes the following changes to the Code of Virginia, relating to the State Water Control Law, Stormwater Management Act, Erosion and Sediment Control Law, and Chesapeake Bay Preservation Act:

- Amendment and reenactment to sections 62.1-44.3, 62.1-44.5, 62.1-44.15, 62.1-44.15:24, 62.1-44.15:25, 62.1-44.15:27, 62.1-44.15:28, 62.1-44.15:29, 62.1-44.15:30, 62.1-44.15:31, 62.1-44.15:33, 62.1-44.15:34, 62.1-44.15:35, 62.1-44.15:37, 62.1-44.15:39, 62.1-44.15:40, 62.1-44.15:41, 62.1-44.15:46, 62.1-44.15:48 through 62.1-44.15:55, 62.1-44.15:57, 62.1-44.15:58, 62.1-44.15:60, 62.1-44.15:62 through 62.1-44.15:65, 62.1-44.15:69, 62.1-44.15:74, 62.1-

44.19:22, 62.1-44.22, 62.1-44.23, 62.1-44.25, 62.1-44.26, 62.1-44.29, 62.1-44.31, and 62.1-44.32;

- Amendment of the Code of Virginia with the addition of sections 62.1-44.15:25.1, 62.1-44.15:27.1, 62.1-44.15:29.1, and 62.1-44.15:51.1; and
- Repeal of sections 62.1-44.15:26, 62.1-44.15:32, 62.1-44.15:36, 62.1-44.15:38, 62.1-44.15:42 through 62.1-44.15:45, 62.1-44.15:47, 62.1-44.15:56, 62.1-44.15:61, and 62.1-44.15:71

### Purpose

*Please describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.*

The proposed regulatory action protects water quality in the Commonwealth of Virginia, which is essential to the health, safety and welfare of Virginia’s citizens and is needed in order to establish the appropriate and necessary requirements related to the discharges of stormwater from construction activities during and after construction. The primary issue to be addressed is the consolidation of the erosion and sediment control and post-construction stormwater management programs in accordance with Chapters 758 and 68 of the 2016 Acts of Assembly.

### Substance

*Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

Only those programmatic changes necessary to implement Chapters 758 and 68 of the 2016 Acts of Assembly are proposed. This includes establishment of administrative requirements related to a VESMP, consolidating program requirements, eliminating duplicative requirements, and resolving conflicting requirements. No substantive changes to existing erosion and sediment control minimum standards or to the post-construction stormwater management technical criteria are proposed as part of this regulatory action.

### Alternatives

*Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

No alternatives to this regulatory action were considered. Existing regulations for erosion and sediment control and post-construction stormwater management programs must be amended in order for the VESMA to become effective.

### Periodic Review and Small Business Impact Review Announcement

*If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”*

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation

(i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

### Public Participation

*Please indicate whether the agency is seeking comments on this regulation, including ideas to assist the agency in the development of the regulation and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you are interested in serving on the panel is \_\_\_\_\_; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulation.*

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The agency is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation. In addition, please see the periodic review/small business impact review announcement section below for details on specific comments requested for the conduct of the review of this regulation being conducted as part of this regulatory action.

A Regulatory Advisory Panel will be appointed. Please refer to the Regulatory Advisory Panel section for further information.

Anyone wishing to submit written comments may do so by mail, email or fax to Ms. Jaime Robb, P.O. Box 1105, Richmond, Virginia 23218, 804-698-4416 (phone), 804-698-4032 (fax) and [Jaime.Robb@deq.virginia.gov](mailto:Jaime.Robb@deq.virginia.gov). Comments may also be submitted through the Public Forum feature of the [Virginia Regulatory Town Hall website](http://www.townhall.virginia.gov) (<http://www.townhall.virginia.gov>). Written comments must include the name and address of the commenter. In order to be considered, comments must be received before midnight on the last day of the public comment period.

### Public Hearing at Proposed Stage

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the [Virginia Regulatory Town Hall website](http://www.townhall.virginia.gov) (<http://www.townhall.virginia.gov>) and on the [Commonwealth Calendar website](https://www.virginia.gov/connect/commonwealth-calendar) (<https://www.virginia.gov/connect/commonwealth-calendar>).

### Regulatory Advisory Panel

*Please indicate, to the extent known, if advisers (e.g., regulatory advisory panel or negotiated rulemaking panel) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using a panel in the development of the proposal; 2) the agency is using a panel in the development of the proposal; or 3) the agency is inviting comment on whether to use a panel to assist the agency in the development of a proposal.*

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The SWCB is using a panel to develop a proposal. Persons interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). The primary function of the panel is to develop recommended regulation amendments for agency consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the panel will be sent to all applicants.