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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 VAC 25-840
VAC Chapter title(s)	Erosion and Sediment Control Regulations
Action title	Amendments to the Erosion and Sediment Control Regulations (9VAC25-840) as a Result of the 2021 Special Session I of the General Assembly.
Final agency action date	June 29, 2021
Date this document prepared	May 14, 2021

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.

The intent of this final regulatory action is to amend language in the Erosion and Sediment Control (ESC) Regulations (9VAC25-840) to reflect changes made to the Code of Virginia (State Water Control Law) by the General Assembly through Chapter 497 (Senate Bill 1258) of the 2021 Special Session I Acts of Assembly.

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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Chapter 497 (Senate Bill 1258) of the 2021 Special Session I Acts of Assembly established that any local VESCP authority that does not operate a regulated MS4 and for which the Department did not administer a VSMP as of July 1, 2020, shall notify the Department if it decides to have the Department provide the local VESCP authority with (i) review of the ESC Plan required by the ESC Law and attendant regulations and (ii) a recommendation on the ESC Plan's compliance with the requirements of the ESC Law and attendant regulations, for any solar project and its associated infrastructure with a rated electrical generation capacity exceeding five (5) megawatts. Furthermore, Chapter 497 established timeframes in which the local VESCP authority shall forward any newly submitted or resubmitted ESC Plan to the Department for review. Upon receipt, the Department shall review the ESC Plan for completeness and for compliance with the requirements of the ESC Law and attendant regulations and provide a recommendation to the local VESCP authority.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

- Board – State Water Control Board
- Department – Department of Environmental Quality
- ESC – Erosion and Sediment Control
- MS4 – Municipal Separate Storm Sewer System
- VESCP – Virginia Erosion and Sediment Control Program
- VSMP – Virginia Stormwater Management Program

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 Board adopted amendments at its meeting on June 29, 2021. In accordance with § 2.2-4006 B of the Code of Virginia (Administrative Process Act), the Board will receive, consider and respond to petitions by any person at any time with respect to reconsideration of this regulation.

Legal Basis

Identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must 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 or promulgating entity's overall regulatory authority.

The Board is authorized to adopt regulations for the effective control of soil erosion, sediment deposition, and nonagricultural runoff to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources under § 62.1-44.15:52 A of the Code of Virginia (Erosion and Sediment Control Law). Furthermore, no person shall engage in any land-disturbing activity until he has submitted to the local VESCP authority an ESC Plan and the plan has been reviewed and approved in accordance with § 62.1-44.15:55 of the Code of Virginia (Erosion and Sediment Control Law). This regulatory amendment is being processed as a final exempt action under § 2.2-4006 A 4 a of the Code of Virginia (Administrative Process Act) as this regulatory action is necessary to conform to the changes in Virginia statutory law where no agency discretion is involved.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The regulatory amendments are necessary to conform the ESC Regulations (9VAC25-840) to changes made to the Code of Virginia (State Water Control Law) by the General Assembly through Chapter 497 of the 2021 Special Session I Acts of Assembly.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The substance of this action is to amend language in the ESC Regulations (9VAC25-840) to reflect changes made to the Code of Virginia (State Water Control Law) by the General Assembly through Chapter 497 of the 2021 Special Session I Acts of Assembly. The amendments seek to spell out the process and procedures by which the Department will provide ESC Plan review for any local VESCP authority that does not operate a regulated MS4 and for which the Department did not administer a VSMP as of July 1, 2020, for any solar project and its associated infrastructure with a rated electrical generation capacity exceeding five (5) megawatts.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this exempt action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. *Please put an asterisk next to any substantive changes.*

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
NA	9VAC25-840-45	NA	<p>Added language to the regulations establishing a local VESCP authority's ability to petition the Department for ESC Plan review for any solar project and its associated infrastructure with a rated electrical generation capacity exceeding five megawatts.</p> <p>1. <u>Any VESCP authority that does not operate a regulated Municipal Separate Storm Sewer System and for which the department did not administer a Virginia Stormwater Management Program as of July 1, 2020, shall notify the department if it decides to have the department provide the VESCP authority with (i) review of the erosion and sediment control plan required by § 62.1-44.15:55 A of the Code of Virginia and (ii) a recommendation on the plan's</u></p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p><u>compliance with the requirements of this chapter, for any solar project and its associated infrastructure with a rated electrical generation capacity exceeding five megawatts.</u></p> <p><u>2. Any VESCP authority that notifies the department pursuant to this section shall, within five days of receiving the erosion and sediment control plan, forward the plan to the department for review. If the plan forwarded to the department is incomplete, the department shall return the plan to the VESCP authority immediately and the application process shall start over. If the plan forwarded to the department is complete, the department shall review the plan for compliance with the requirements of this chapter and provide a recommendation to the VESCP authority. The VESCP authority shall then (i) grant written approval of the plan or (ii) provide written notice of disapproval of the plan in accordance with § 62.1-44.15:55 B of the Code of Virginia.</u></p> <p><u>3. Any VESCP authority that notifies the department pursuant to this section shall, within five days of receiving the resubmittal of a previously disapproved erosion and sediment control plan, forward the resubmitted plan to the department for review. The department shall review the resubmitted plan for compliance with the requirements of this chapter and provide a recommendation to the VESCP authority. The VESCP authority shall then (i) grant written approval of the plan or (ii) provide written notice of disapproval of the plan in accordance with § 62.1-44.15:55 B of the Code of Virginia.</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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting

requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

No alternative regulatory methods were available to accommodate this statutory change.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed 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.

No impact on the institution of the family and family stability is anticipated as a result of this regulatory action.