



Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Soil and Water Conservation Board
Virginia Administrative Code (VAC) citation	4VAC50-30
Regulation title	Erosion and Sediment Control Regulations
Action title	Conforming 4VAC50-30 through exempt action amendments, to Virginia statutory law changes (Chapters 785 and 819 of the 2012 Virginia Acts of Assembly) in order to better integrate Board water quality programs so that those regulatory programs can be implemented in a consolidated and consistent manner, resulting in greater efficiencies (one-stop shopping) for those being regulated.
Final agency action date	September 28, 2012
Document preparation date	October 2, 2012

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), the agency 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 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This exempt action is being taken in accordance with Administrative Process Act exemptions, specifically § 2.2-4006 (3), (4)(a) and (4)(c) of the Code of Virginia. The majority of the amendments are being made to conform the Erosion and Sediment Control Regulations (4VAC50-30) to changes in Virginia statutory law in response to the Erosion and Sediment Control, Stormwater Management, and Chesapeake Bay Preservation Acts, integration of

programs bill [Chapters 785 and 819 of the 2012 Virginia Acts of Assembly; (HB1065 - Delegate Sherwood and SB407 - Senator Hanger)]. The legislation integrated elements of the Erosion and Sediment Control Act, the Stormwater Management Act, and the Chesapeake Bay Preservation Act (where appropriate; no Bay Act program expansion) so that those regulatory programs could be implemented in a consolidated and consistent manner, resulting in greater efficiencies (one-stop shopping) for those being regulated. The bill also abolished the Chesapeake Bay Local Assistance Board and transferred its powers and responsibilities to the Virginia Soil and Water Conservation Board. Accordingly, this consolidation legislation has resulted in necessary amendments to each of the referenced Act's attendant regulations.

This specific action also includes an amendment that is being made to meet the federal requirements of the Effluent Limitations Guidelines set out in Federal Register Volume 74; Number 229; December 1, 2009; Page 63057; Subpart B - Construction and Development Effluent Guidelines; § 450.21 Effluent limitations reflecting the best practicable technology currently available (BPT); "(b) Soil Stabilization. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the permitting authority. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the permitting authority."

Amendments were also made to address style, form, or corrections of technical errors.

The substantive elements of this action include:

- 1) Global updates made throughout the regulation generally include (this represents the majority of changes in the document):
 - Changing "erosion and sediment control program" to "VЕСP"; and
 - Changing "plan approval authority" to "VЕСP authority".
- 2) Definitional changes include the following:
 - Updating definitions for "Agreement in lieu of a plan", "Person", "Program administrator", "Pre-development", and "Stormwater detention".
 - Striking definitions for "Plan approving authority" and "Program authority".
 - Adding new definitions for "Virginia Erosion and Sediment Control Program" or "VЕСP" and "Virginia Erosion and Sediment Control Program authority" or "VЕСP authority".
 - [Section 10]
- 3) Updating the list of entities that may submit annual general erosion and sediment control standards and specifications and clarifying that such standards and specifications or erosion and sediment control plans are submitted to the Department for approval.
[Section 30 (A and B)]

- 4) Including Appropriation Act authorities (Item 360 11 of Chapter 3 of the 2012 Virginia Acts of Assembly, Special Session 1) in the regulation stipulating that public institutions of higher education, including community colleges, colleges, and universities, shall be subject to project review and compliance for state erosion and sediment control requirements by the VESCP authority of the locality within which the land-disturbing activity is located, unless such institution submits annual specifications to the Department of Conservation and Recreation, in accordance with § 10.1-564 A (i), Code of Virginia. This action is authorized to be exempt in the Appropriation Act. [Section 30 (C)]
- 5) Specifying that any VESCP authority which administers a VESCP may charge applicants a reasonable fee to defray the costs of program administration. Clarifying that such fee may be in addition to any fee charged for administration of a Virginia stormwater management program, although payment of fees may be consolidated in order to provide greater convenience and efficiency for those responsible for compliance with the programs. Stipulating that a VESCP authority shall hold a public hearing prior to establishing a schedule of fees and that the fees shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VESCP authority's expense involved. [Section 30 (D)]
- 6) Stipulating that in accordance with federal regulations and to eliminate conflicts with the Stormwater Management Regulations that temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days, rather than the 30 days currently noted. [Section 40 (1)]
- 7) Modifying Minimum Standard 19 specifying that:
 - Stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.
 - Any plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed as specified.
 - For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of § 10.1-561 A of the Code of Virginia and subsection 19 of 4VAC50-30-40 shall be satisfied by compliance with water quantity requirements in the Stormwater Management Act (§ 10.1-603.2 et seq.) and attendant regulations, unless such land-disturbing activities are in accordance with 4 VAC 50-60-48 of the Virginia Stormwater Management Program (VSMP) Permit Regulations (Grandfathering provisions).
 - Compliance with the water quantity minimum standards set out in 4VAC50-60-66 of the Virginia Stormwater Management Program (VSMP) Permit Regulations shall be deemed to satisfy the requirements of Minimum Standard 19.
 - [Section 40 (19)]

- 8) Establishing a new section on reporting stipulating that each VESCP authority shall report to the Department, in a method such as an online reporting system and on a time schedule established by the Department, a listing of each land-disturbing activity for which a plan has been approved by the VESCP authority under the Erosion and Sediment Control Act and associated regulations. [Section 65]
- 9) Clarifying that in all area of jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations that erosion and sediment control shall be addressed for projects disturbing 2,500 square feet or more unless otherwise exempted. [Section 80 (A)]
- 10) Stipulating that each VESCP operated by a county, city, or town shall include provisions for the integration of the VESCP with Virginia stormwater management, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs. This embraces the one-stop-shopping concept of the Erosion and Sediment Control, Stormwater Management, and Chesapeake Bay Preservation Acts, integration of programs bill [Chapters 785 and 819 of the 2012 Virginia Acts of Assembly]. [Section 90 (A)]
- 11) Stipulating that the Department is also authorized to conduct partial program compliance reviews of a VESCP authority. [Section 90 (B)]
- 12) Clarifying the review procedure for an Erosion and Sediment Control Program by the Department and the corrective action agreement process. [Section 90 (B – E)]
- 13) Clarifying that all state agency land-disturbing activities that are not exempt and that have commenced without an approved erosion and sediment control plan shall immediately cease until the state agency has submitted annual standards and specifications for its conduct of land-disturbing activities which has been reviewed and approved by the Department as being consistent with the Act and this chapter, or an erosion and sediment control plan has been submitted to and approved by the Department. [Section 100 (A)]
- 14) Eliminating 4VAC50-30-110 that specified that to carry out its duties under § 10.1-562 of the Code of Virginia, the Board shall develop, adopt, and administer an appropriate local erosion and sediment control program for the locality under consideration. In fulfilling these duties, the Board shall assume the full powers of the local erosion and sediment control program granted by law. The process has changed and the Board will not be assuming power over programs. [Section 110]

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.

On September 28, 2012, the Virginia Soil and Water Conservation Board approved, authorized, and directed the filing of amendments to the Erosion and Sediment Control Regulations (4VAC50-30) as an exempt action. That authorization was related to those changes that are exempt from the Administrative Process Act pursuant to § 2.2-4006 (3), (4)(a) and (4)(c) of the Code of Virginia. They noted that this authorization extends to, but is not limited to, the drafting of the documents and documentation as well as the coordination necessary to gain approvals from the Virginia Registrar of Regulations for the publication of this final regulatory action.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

It is not anticipated that this regulation will have a direct impact on the institution of the family or family stability. However, the improvement of water quality through the implementation of management programs and best management practices to achieve it, does have positive public health and safety benefits that have an indirect impact on families.