



townhall.virginia.gov

Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9 VAC 25-880
VAC Chapter title(s)	General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities
Action title	Amendment to the Construction General Permit Regulation (9VAC25-880) to meet changes made during the 2020 General Assembly session.
Final agency action date	September 24, 2020
Date this document prepared	August 17, 2020

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 Construction General Permit Regulation (9VAC25-880) to reflect changes made to the Code of Virginia (State Water Control Law) by the 2020 General Assembly through HB1310 (Chapter 565 of the 2020 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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."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 565 (House Bill 1310) of the 2020 Acts of Assembly directs the Department of Environmental Quality (Department) to establish a process whereby any person that receives coverage under the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities and that will be transporting fill from a project site for disposal as part of its land-disturbing activities shall disclose to the Department the following information, which the Department shall disclose to every locality where such fill will be disposed of: (i) the source of the fill to be disposed of, (ii) the contents of the fill, and (iii) the location of the disposal.

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
- VPDES – Virginia Pollutant Discharge Elimination System
- 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 State Water Control Board (Board) adopted amendments at its meeting on September 24, 2020. 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 under § 62.1-44.15:25 of the Code of Virginia (Stormwater Management Act) and to promulgate general permits under Va. Code § 62.1-44.15.25.1. 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 Construction General Permit Regulation (9VAC25-880) to changes made to the Code of Virginia (State Water Control Law) by the 2020 General Assembly through Chapter 565 of the 2020 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 the proposed amendments is to clarify the process, whereby any person that receives coverage under the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities and that will be transporting fill from a project site for disposal as part of its land-disturbing activities, for disclosing to the Department the following information: (i) the source of the fill to be disposed of, (ii) the contents of the fill, and (iii) the location of the disposal.

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
9VAC25-880-50 B 4		Registration Statement - offsite support activities	Grammatical – change “offsite” to “off-site” and clarify language of requirement: “4. If offsite <u>off-site</u> support activities will be used, the name and physical location address, when available, of those offsite <u>all off-site</u> support activities, including city or county; latitude and longitude in decimal degrees (six digits – ten-thousandths place); and whether or not the offsite <u>off-site</u> support activity will be covered under this general permit or a separate VPDES permit;”
9VAC25-880-50 B 5		Registration Statement – status of the construction activity	Registration Statement – excavated material: New text added to address transport of excavated material off-site: “5. <u>If excavated material (i.e., fill) will be transported off-site for disposal, the name and physical location address, when available, of all off-site excavated material disposal areas, including city or county; latitude and longitude in decimal degrees (six digits – ten-thousandths place); and the contents of the excavated material;</u> ”
9VAC25-880-50 B 5	9VAC25-880-50 B 6	Registration Statement – Status of the construction activity	Revise numbering to reflect addition of new requirement:

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-880-50 B 6	9VAC25-880-50 B 7	Registration Statement – Nature of the construction activity	Revise numbering to reflect addition of new requirement:
9VAC25-880-50 B 7	9VAC25-880-50 B 8	Registration Statement – stormwater management plans	Revise numbering to reflect addition of new requirement:
9VAC25-880-50 B 8	9VAC25-880-50 B 9	Registration Statement – construction activity	Revise numbering to reflect addition of new requirement:
9VAC25-880-50 B 9	9VAC25-880-50 B 10	Registration Statement – construction activity	Revise numbering to reflect addition of new requirement:
9VAC25-880-50 B 10	9VAC25-880-50 B 11	Registration Statement – name of receiving waters	Revise numbering to reflect addition of new requirement:
9VAC25-880-50 B 11	9VAC25-880-50 B 12	Registration Statement – discharge through MS4	Revise numbering to reflect addition of new requirement:
9VAC25-880-50 B 12	9VAC25-880-50 B 13	Registration Statement – date	Revise numbering to reflect addition of new requirement:
9VAC25-880-50 B 13	9VAC25-880-50 B 14	Registration Statement – Status of the construction activity	Revise numbering to reflect addition of new requirement:
9VAC25-880-50 B 14	9VAC25-880-50 B 15	Registration Statement – total land area	Revise numbering to reflect addition of new requirement:
9VAC25-880-50 B 15	9VAC25-880-50 B 16	Registration Statement – part of a larger plan of development	Revise numbering to reflect addition of new requirement:
9VAC25-880-50 B 16	9VAC25-880-50 B 17	Registration Statement – stormwater pollution prevention plan	Revise numbering to reflect addition of new requirement:
9VAC25-880-50 B 17	9VAC25-880-50 B 18	Registration Statement – Certification statement	Revise numbering to reflect addition of new requirement:

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.