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Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	Primary: 9VAC25-210 Secondary: 9VAC25-660; 9VAC25-670; 9VAC25-680; 9VAC25-690
VAC Chapter title(s)	Virginia Water Protection Permit Program Regulation (9VAC25-210); Virginia Water Protection General Permit for Impacts Less Than One-Half Acre (9VAC25-660); Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities (9VAC25-670); Virginia Water Protection General Permit for Linear Transportation Projects (9VAC25-680); Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (9VAC25-690)
Action title	Final Exempt to amend 9VAC25-210, et al. - CH265 (2021 Special Session I)
Final agency action date	June 29, 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.

This action amends the Virginia Water Protection Permit Program regulations in order to implement House Bill 1983 (Chapter 265 of the 2021 Special Section I Acts of Assembly). The bill provides that when a Virginia Water Protection (VWP) permit applicant is required to purchase wetland or stream mitigation bank credits, but no credits are available (i) in any

mitigation provider's primary service area or (ii) at a cost of less than 200 percent of the price of credits available from a fund dedicated to achieving no net loss of wetland acreage and functions, the applicant may purchase or use credits from a mitigation provider's secondary service area.

In addition, the bill provides certain requirements that the permit applicant must comply with in order to purchase or use such credits from a secondary service area, including minimum tree canopy requirements.

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."

HB 1983 (Chapter 265 of the 2021 Special Section I Acts of Assembly).

Mitigation bank sponsors put forth the concept/request as one means to address the lack of stable credit supply in some watersheds, but particularly the Potomac and James River watersheds. The concept was derived from stakeholder conversations about various options, some of which are already being implemented.

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.

At its Board meeting on June 29, 2021, the State Water Control Board adopted amendments to the following regulations as recommended by staff:

Title	VAC Number	Subsections
Virginia Water Protection Permit Program Regulation	9VAC25-210	-80; -116; -130; -180
Virginia Water Protection General Permit for Impacts Less Than One-Half Acre	9VAC25-660	-30; -60; -70; -80; -100
Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities	9VAC25-670	-30; -60; -70; -80; -100

Virginia Water Protection General Permit for Linear Transportation Projects	9VAC25-680	-30; -60; -70; -80; -100
Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities	9VAC25-690	-30; -60; -70; -80; -100