



townhall.virginia.gov

Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-210
VAC Chapter title(s)	Virginia Water Protection Permit Program Regulation
Action title	Amendment to change the Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.) in response to Chapters 245, 258, and 259 of the 2023 Virginia Acts of Assembly
Final agency action date	June 22, 2023
Date this document prepared	May 17, 2023

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 final exempt regulatory action is necessary to implement Chapters 245, 258, and 259 of the 2023 Acts of Assembly.

Chapter 245 of the 2023 Acts of Assembly provides that notwithstanding any provision of this section restricting the location of the source of credits, the Department may, for tidal wetland impacts, authorize the use of, including without the application of subsection C, a tidal wetland mitigation bank located in an adjacent river watershed when such bank contains the same plant community type and salinity regime as the impacted wetlands, which shall be the preferred form of compensation. This subsection shall apply only (i) to tidal wetland mitigation banks with a polyhaline salinity regime located in subbasins 02080102, 02080107, 02080108, and 02080208 and (ii) when a tidal wetland mitigation bank with the same plant

community type and salinity regime as the impacted wetlands is not available in the same river watershed as the impacted wetland.

Chapters 258 and 259 of the 2023 Acts of Assembly provides that a permit from the Virginia Marine Resources Commission is not required for activity in nontidal waters provided the person performing the activity obtains and complies with a Virginia Water Protection Permit. These acts further provide that in determining whether to issue a Virginia Water Protection Permit, the Department of Environmental Quality shall be guided by the factors set forth in subsection A of §28.2-1205.

This action will amend 9VAC25-210, Virginia Water Protection Permit Program Regulation, to include these new statutory provisions.

These regulatory amendments are exempt from the state administrative procedures for adoption of regulations because they are necessary to conform to Virginia statutory law (§ 2.2-4006(A)(4)(a) of the Code of Virginia).

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). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “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.”

HB1804, HB2181 and SB1074 were passed during the 2023 Session of the General Assembly.

HB1804 provides that notwithstanding any provision of this section restricting the location of the source of credits, the Department may, for tidal wetland impacts, authorize the use of, including without the application of subsection C, a tidal wetland mitigation bank located in an adjacent river watershed when such bank contains the same plant community type and salinity regime as the impacted wetlands, which shall be the preferred form of compensation. This subsection shall apply only (i) to tidal wetland mitigation banks with a polyhaline salinity regime located in subbasins 02080102, 02080107, 02080108, and 02080208 and (ii) when a tidal wetland mitigation bank with the same plant community type and salinity regime as the impacted wetlands is not available in the same river watershed as the impacted wetland.

HB2181 and SB1074 provide that a permit from the Virginia Marine Resources Commission is not required for activity in nontidal waters provided the person performing the activity obtains and complies with a Virginia Water Protection Permit. These acts further provide that in determining whether to issue a Virginia Water Protection Permit, the Department of Environmental Quality shall be guided by the factors set forth in subsection A of §28.2-1205.

The Governor signed these bills into law on March 22, 2023 (HB1804 – Chapter 245 of the 2023 Acts of Assembly, HB2181– Chapter 258 of the 2023 Acts of Assembly, SB1074 – Chapter 259 of the 2023 Acts of Assembly) and these changes will become effective July 1, 2023. This regulatory action is required to conform the existing regulation to changes in Code.

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.

On June 22, 2023, the State Water Control Board approved final amendments to the Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.) and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.