



Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Soil and Water Conservation Board (Authority for these regulations was transferred from the Board of Conservation and Recreation to the Virginia Soil and Water Conservation Board effective July 1, 2004)
Virginia Administrative Code (VAC) citation	4 VAC 50 – 60 (Renumbered from 4 VAC 3 - 20)
Regulation title	Virginia Stormwater Management Program (VSMP) Permit Regulations (Renamed from Stormwater Management Regulations)
Action title	Amend the Stormwater Management Regulations to consolidate Virginia's stormwater management programs within the Department of Conservation and Recreation and to transfer oversight responsibilities to the Virginia Soil and Water Conservation Board
Final agency action date	September 29, 2004
Document preparation date	September 29, 2004

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, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 21 (02) and 58 (99).

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.

The Department of Conservation and Recreation is amending the Virginia Soil and Water Conservation Board's Stormwater Management Regulations (4 VAC 50-60-10 et seq.) pursuant to Chapter 372 of the 2004 Virginia Acts of Assembly (HB1177) to consolidate Virginia's stormwater management programs within the Department of Conservation and Recreation and to transfer oversight responsibilities to the Virginia Soil and Water Conservation Board from the Board of Conservation and Recreation. This action specifically involves:

- 1) transferring and renumbering the regulations from the Board of Conservation and Recreation (formerly 4 VAC 3-20-10 et seq.) to the Virginia Soil and Water Conservation Board (renumbered as 4 VAC 50-60-10 et seq.),
- 2) amending the existing Stormwater Management Regulations to include elements required pursuant to Chapter 372 of the 2004 Virginia Act of Assembly (HB1177),
- 3) incorporating into the regulation amendments, elements of the State Water Control Board’s regulations related to federal NPDES permit issuance for Municipal Separate Storm Sewer Systems (MS4s) and construction activities, and
- 4) incorporating elements related to stormwater management criteria from the Chesapeake Bay Preservation Area Designation and Management Regulations.

Portions of the regulations from the Department of Environmental Quality’s State Water Control Board that were transferred into these regulations include:

9 VAC 25-20 Fees for Permits and Certificates (those portions relevant to MS4 and construction activities)

9 VAC 25-31 Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (those portions relevant to MS4 and construction activities and administration of a program)

9 VAC 25-180 Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation For Discharges Of Storm Water From Construction Activities (entire regulation)

9 VAC 25-750 General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation For Discharges Of Storm Water From Small Municipal Separate Storm Sewer Systems (entire regulation)

[NOTE: Pursuant to enactment clause # 8 of Chapter 372 of the 2004 Virginia Acts of Assembly, “the Virginia Soil and Water Conservation Board, on or after July 1, 2004, shall have authority to transfer relevant provisions in the existing regulations of the State Water Control Board and program administration provisions that may be required by the U.S. Environmental Protection Agency into the Virginia Stormwater Management Act regulations (4 VAC 3-20 et. seq.). These actions shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act. Such amendments shall be effective no earlier than the effective date as set forth in the third enactment clause.”]

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 July 15, 2004, the Virginia Soil and Water Conservation Board authorized the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to prepare those changes necessary to bring the Board’s Stormwater Management Regulations, including any attendant forms, into conformance with changes made to the Code of Virginia including those changes necessary pursuant to Chapter 372 of the 2004 Virginia Acts of Assembly (HB1177) and any other non-discretionary changes to conform with the Virginia Acts of Assembly or with federal law and regulations enacted since the last regulatory amendment.

On September 13, 2004, the Office of the Attorney General stated that the Virginia Soil and Water Conservation Board “has the authority to promulgate regulations under applicable law,

including Chapter 1 of Title 10.1 of the Code of Virginia” and that because the “promulgation of regulations is necessary to conform to changes in Virginia statutory law where no agency discretion is involved, the requirements of § 2.2-4006.A.4.a have been met.”

On September 16, 2004, the Virginia Soil and Water Conservation Board authorized the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to publish the final regulatory amendments necessary to bring the Board’s Stormwater Management Regulations, including any attendant forms, into conformance with changes made to the Code of Virginia including those changes necessary pursuant to Chapter 372 of the 2004 Virginia Acts of Assembly (HB1177) and any other non-discretionary changes to conform with the Virginia Acts of Assembly or with federal law and regulations enacted since the last regulatory amendment. This action authorized by the Board included the transfer of the regulations from the Board of Conservation and Recreation to the Virginia Soil and Water Conservation Board and the transfer of certain regulations from the Virginia State Water Control Board into these regulations.

[NOTE: Pursuant to enactment clause # 5 of Chapter 372 of the 2004 Virginia Acts of Assembly, “the Virginia Stormwater Management Act regulations (4 VAC 3-20 et seq.) shall be transferred from the Board of Conservation and Recreation to the Virginia Soil and Water Conservation Board on July 1, 2004 and the Virginia Soil and Water Conservation Board may amend, modify, or delete provisions in the these regulations in order to implement this Act. Such regulations that are in effect shall remain in full force and effect until altered, amended, or rescinded by the Virginia Soil and Water Conservation Board.”

The Secretary of Natural Resources on September 24, 2004 approved the Department to proceed with submitting this regulation to the Virginia Register for publishing as an exempt final action.

Accordingly, the Director of the Department of Conservation and Recreation certifies this final action to the regulation entitled “Virginia Stormwater Management Program (VSMP) Permit Regulations” (4 VAC 50-60-10 et seq.) on this day, September 29, 2004. Although exempt, pursuant to § 2.2-4006.A.4.a the agency will receive, consider and respond to petitions by any interested person at any time with respect to consideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the provisions of § 2.2-4015, except in the case of emergency regulations, which shall become effective as provided in subsection B of § 2.2-4012. Accordingly, the agency is specifying a later effective date. Pursuant to the September 16, 2004 Board motion authorizing the publication of these regulatory amendments, **“this regulation shall have an effective date of January 1, 2005 or 30 days after the U.S. Environmental Protection Agency’s authorization for delegation of program authority for administering the issuance of national pollutant discharge elimination system permits for the control of stormwater discharges from MS4 and construction activities to the Virginia Soil and Water Conservation Board, whichever is the latter”**.

[NOTE: Authority to seek program delegation is pursuant to enactment clause # 4 of Chapter 372 of the 2004 Virginia Acts of Assembly stating that “the Department of Conservation and Recreation shall on or after July 1, 2004, seek authorization for delegation of program authority for the Virginia Soil and Water Conservation Board for the issuance of national pollutant discharge elimination system permits for the control of

stormwater discharges from MS4 and construction activities from the U.S. Environmental Protection Agency under the federal Clean Water Act.”]

[NOTE: This regulation’s effective date is pursuant to enactment clause # 3 of Chapter 372 of the 2004 Virginia Acts of Assembly stating that the transfer of the “responsibility for administering the issuance of national pollutant discharge elimination system permits for the control of stormwater discharges from MS4 and construction activities shall become effective on January 1, 2005, or upon the U.S. Environmental Protection Agency's authorization for delegation of program authority to the Virginia Soil and Water Conservation Board, whichever is the latter.”]

Family impact

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

The Virginia Stormwater Management Program (VSMP) Permit Regulations do not have a direct impact on the institution of family and family stability.