



Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Soil and Water Conservation Board
Virginia Administrative Code (VAC) citation	4VAC50-60
Regulation title	Virginia Stormwater Management Program (VSMP) Permit Regulations
Action title	Conforming 4VAC50-60 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 (2), (3), (4)(a) and (4)(c) of the Code of Virginia. The majority of the amendments are being made to conform the Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60) 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); "(f) Surface Outlets. When discharging from basins and impoundments, utilize outlet structures that withdraw water from the surface, unless infeasible."

Amendments were also made to address style, form, or corrections of technical errors, as well as, to reflect Board internal practice and procedures.

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):
 - Inserting "state" before "Permit" to differentiate it from a locality's VSMP permit;
 - Changing "Permit issuing authority" to "VSMP authority", "Department" or "Board" or a combination of these selections as may be applicable;
 - Changing "Local stormwater management program" or "local program" to "VSMP"
 - Changing "Plan approval authority" to "VSMP authority";
 - Changing "Qualifying local stormwater management program" or "qualifying local program" to "VSMP authority" or "VSMP" as may be applicable;
 - Changing "Stormwater program administrative authority" to "VSMP authority", "Department" or "Board" or a combination or derivation of these selections as may be applicable;
 - Changing "Local erosion and sediment control program" to "VESCP"; and
 - Clarifying where necessary different requirements between a locality's VSMP authority and other VSMP authorities.
- 2) Definitional changes include the following:
 - Updating definitions for "Chesapeake Bay Preservation Act land-disturbing activity" (to reflect new regulatory numbers), "Co-operator", "Draft state permit", "Environmental Protection Agency", "Existing state permit", "General permit",

"Illicit discharge", "Inspection", "Land disturbance", "Major modification" "Minor modification" "Municipal Separate Storm Sewer System Management Program" or "MS4 Program", "New discharger", "New permit", "Nonpoint source pollution", "Operator", "Permit" or "VSMP authority permit", "Permittee", "Person", "Predevelopment", "Proposed state permit", "Qualified personnel", "Revoked state permit", "Schedule of compliance", "Stormwater management plan", "Upset", "Virginia Stormwater Management Program" or "VSMP", and "VSMP application" or "application".

- Striking definitions for "Local stormwater management program" or "local program", "Permit-issuing authority", "Qualifying local stormwater management program" or "qualifying local program", "Stormwater management program", "Stormwater program administrative authority", and "Virginia Stormwater Management Program permit" or "VSMP permit".
 - Adding new definitions for "State permit", "Virginia Erosion and Sediment Control Program" or "VESCP", "Virginia Erosion and Sediment Control Program authority" or "VESCP authority", and "Virginia Stormwater Management Program authority" or "VSMP authority".
 - PART I [Section 10]:
- 3) In order to remain compliant with federal regulations, adding a missing Effluent Limitation Guideline to state regulations that reads "[u]tilize outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments". PART II [Section 54 F]
 - 4) Clarifying that linear projects are no longer exempt and must now control postdevelopment stormwater runoff in accordance with a site-specific stormwater management plan or a comprehensive watershed stormwater management plan. This action is in accordance with amendments made to § 10.1-603.7 of the Code of Virginia that conformed state law to federal requirements. PART II B [Section 76]
 - 5) Stipulating under the hearings section that "[t]he provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to decisions rendered by localities but appeals shall be conducted in accordance with local appeal procedures". This change ensures conformance with § 10.1-603.13 of the Code of Virginia. PART III A [Section 118]
 - 6) Clarifying the review procedure for a Virginia Stormwater Management Program by the department. Introduces the term "corrective action agreements" that are already utilized in the Erosion and Sediment Control Program. Also stipulates that the Department shall provide results and compliance recommendations to the Board in the form of a corrective action agreement if deficiencies are found within 120 days (formerly 90 days) of the completion of a review otherwise the Board may find the program compliant. PART III B [Section 144]
 - 7) Updating the application process and adoption timelines that all localities must follow that are required to adopt a VSMP or towns electing to adopt a VSMP. Strikes language that requires the Department under certain circumstances to operate a local VSMP in

accordance with changes in the law as this is no longer the practice. PART III C [Section 150]

- 8) Clarifying annual standards and specifications and state permit coverage requirements for state agency projects. PART IV [Section 170]
- 9) Clarifying state and local authorities regarding the establishment of fees to support program activities under the Stormwater Management Act and this chapter including a VSMP authorities’ ability to raise or lower fees set out in the statewide fee schedule. Making technical corrections to antiquated terms such as “qualifying local program” replacing it with “VSMP authority” or “VSMP” as found to be applicable. PART XIII [Section 700]
- 10) Stipulating the Department’s authority (pursuant to § 10.1-603.4 of the Code of Virginia) to:
 - Assess re-inspection fees to recoup the costs associated with each visit to a land-disturbing project site that was necessary to check on the status of project site items noted to be in noncompliance and documented as such on a prior project inspection.
 - Assess business transaction costs associated with the processing of credit card payments.
 - PART XIII [Section 730]
- 11) Clarifying procedural items in the section on fees (pursuant to § 10.1-603.4 of the Code of Virginia) for an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities as follows:
 - That the Department will charge \$750 for large construction activities and \$450 for small construction activities upon the effective date of the regulations.
 - How much the 28% payable to the Department of the applicant fee is.
 - What the fees are for a Chesapeake Bay Preservation Act Land-Disturbing Activity.
 - Removes fees associated with Small Construction Activity/Land Clearing of sites within designated areas of Chesapeake Bay Act localities.
 - PART XIII [Section 820]
 - Makes parallel changes where applicable in Section 825 on permit modification fees and in Section 830 on maintenance fees.

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 Virginia Stormwater Management Program (VSMP)

Permit Regulations (4VAC50-60) as an exempt action. That authorization was related to those changes that are exempt from the Administrative Process Act pursuant to § 2.2-4006 (2), (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.