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Fast-Track Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9 VAC 25-875
VAC Chapter title(s)	Virginia Erosion and Stormwater Management Regulation
Action title	Amend and update the Virginia Erosion and Stormwater Management Regulation to correct technical errors
Date this document prepared	May 8, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), 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, 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.

The intent of this fast-track regulatory action is to correct technical errors in the Virginia Erosion and Stormwater Management (VESM) Regulation (9VAC25-875, effective July 1, 2024) that have been identified since publication in the *Virginia Register of Regulations* on December 4, 2023. (40:8 VA.R. 461-557, December 4, 2023.)

The technical corrections will improve clarity and certainty by making the VESM Regulation internally consistent, removing outdated requirements, and accurately reflecting requirements in the State Water Control Law. Chapter 3.1 of Title 62.1 of the Code of Virginia (§ 62.1-44.2 et seq.).

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.

- BMP: Best management practice
- DEQ (or Department): Department of Environmental Quality
- ESCL: Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program, Code of Virginia § 62.1-44.15:51 et seq., effective July 1, 2024
- MS4: Municipal Separate Stormwater Sewer System
- VAC: Virginia Administrative Code
- VESCP: Virginia Erosion and Sediment Control Program
- VESMP: Virginia Erosion and Stormwater Management Program
- VESM Regulation: Virginia Erosion and Stormwater Management Regulation, 9VAC25-875
- VPDES: Virginia Pollutant Discharge Elimination System

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 25, 2024, the State Water Control Board:

1. Authorized DEQ to promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization constituted its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) DEQ does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
2. Authorized DEQ to set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) DEQ does not find it necessary to make any changes to the proposal.

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, 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."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

Section 62.1-44.15:28 of the Code of Virginia (effective July 1, 2024) authorizes the Board to adopt regulations that establish requirements for the effective control of soil erosion, sediment deposition, and stormwater, including nonagricultural runoff, that shall be met in any Virginia Erosion and Stormwater Management Program (VESMP) to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources; subsection 3 requires the Board's regulations to be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the

Commonwealth, including data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services; and subsection 6 requires the regulations to establish water quality and water quantity technical criteria that shall be periodically modified as required in order to reflect current engineering methods.

This rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because the regulated community and other stakeholders who have been involved in the process to adopt the VESM Regulation and develop the new Virginia Stormwater Management Handbook (GM24-2001, available here: <https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=7706>) have requested changes that clarify requirements for localities that implement erosion and stormwater management programs or erosion and sediment control programs and correct other technical errors that have been identified since publication of the final regulation in December 2023.

The limited scope of this rulemaking benefits the regulated community, localities, DEQ, and other stakeholders by correcting technical errors and improving clarity in a timely manner.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

Promulgating Entity

The promulgating entity for this regulation is the State Water Control Board.

State Requirements

Section 62.1-44.15 (3a) of the Code of Virginia (effective July 1, 2024) requires the Board to establish such standards of quality and policies for any state waters consistent with the general policy set forth in the State Water Control Law; subsection (5) requires the Board to issue, revoke, or amend certificates and land-disturbance approvals under prescribed conditions for (a) the discharge of sewage, stormwater, industrial wastes, and other wastes into or adjacent to state waters; and subsection (10) requires the Board to adopt such regulations as it deems necessary to enforce the general soil erosion control and stormwater management program and water quality management program of the Board in all or part of the Commonwealth.

Additional authority for the Board to adopt and amend regulations for erosion control and stormwater management is in § 62.1-44.15:28 as cited above.

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 is intended to solve.

The proposed regulatory action protects water quality in the Commonwealth of Virginia which is essential to the health, safety and welfare of Virginia’s citizens and is needed in order to establish appropriate and necessary permitting requirements for discharges of stormwater. The goal of this regulatory action is to amend Chapter 875 to improve clarity and certainty by making the VESM Regulation internally consistent,

removing outdated requirements, and accurately reflecting requirements in the State Water Control Law, Chapter 3.1 of Title 62.1 of the Code of Virginia (§ 62.1-44.2 et seq.).

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.

Technical corrections and changes to the Virginia Erosion and Stormwater Management Regulation include:

- Correcting cross-references to Chesapeake Bay Preservation Area requirements (e.g., 9VAC25-875-70, 9VAC25-875-250, and 9VAC25-875-470);
- Moving subsection G of 9VAC25-875-300 to 9VAC25-875-550 E so that the requirement for owners to maintain, inspect, and repair erosion and sediment control structures is in the part of the regulation that has other owner requirements, not the part of the regulation that is specific to localities;
- Updating the Department's provisions for reviewing and evaluating a locality's erosion and sediment control program (9VAC25-875-370 D) so that they are consistent with the requirements in the State Water Control Law;
- Removing requirements related to grandfathering that are no longer applicable (9VAC25-875-490); and
- Clarifying that an erosion and sediment control plan, which is included in a stormwater pollution prevention plan for land-disturbing activity, must be consistent with the erosion and sediment control criteria, techniques, and methods (minimum standards, 9VAC25-875-560).

Collectively, these and other technical corrections will provide clarity and improve understanding of the regulation.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

1. Public: There are no direct impacts on public health as the amendments update existing regulatory requirements, so they reflect current requirements in the State Water Control Law, clarify requirements, and improve understanding of the regulation, which in turn contributes to the efficient and effective functioning of government. There are no disadvantages to the public.

2. DEQ: The amendments update existing regulatory requirements and will allow DEQ and localities that implement erosion and stormwater management programs or erosion and sediment control programs to utilize regulations that reflect current requirements in the State Water Control Law, and improve the understanding of the regulation, which in turn contributes to the efficient and effective functioning of government. This is an advantage. There are no disadvantages to the agency or the Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements and therefore no requirements that exceed federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

There is no state agency which will bear any identified disproportionate material water quality impact due to the proposal which would not be experienced by other state agencies.

Localities Particularly Affected

There is no locality which will bear any identified disproportionate material water quality impact due to the proposal which would not be experienced by other localities.

Other Entities Particularly Affected

There is no entity which will bear any identified disproportionate material water quality impact due to the proposal which would not be experienced by other entities.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources 	<p>The regulatory change will not result in any cost to DEQ.</p>
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<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	The regulatory change will not result in any cost to any state agency.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The direct benefit to state agencies of making technical corrections and improving clarity of requirements will be to save time for localities and the regulated community, improve understanding of regulatory requirements, and result in better compliance with the minimum standards for erosion and sediment control and stormwater management program requirements.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	No impacts to any locality are anticipated.
Benefits the regulatory change is designed to produce.	ORM Economic Impact form, Table 2

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	ORM Economic Impact form, Tables 1a, 3 and 4
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	ORM Economic Impact form, Tables 1a, 3 and 4
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	ORM Economic Impact form, Tables 1a, 3 and 4

Benefits the regulatory change is designed to produce.	Updating regulations will allow localities to perform better for a lower cost in many cases; promotes the efficient and effective functioning of government.
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Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There are no practical alternatives. Leaving technical errors in Chapter 875 will likely cause misunderstanding, confusion, and inconsistent application of regulatory requirements for DEQ and the localities that implement erosion and stormwater management or erosion and sediment control programs.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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.

There are no alternatives to this regulatory action other than continuing to operate with the existing language with no updates.

This regulatory change is very limited in scope to include technical changes for consistency with state law and/or to provide clarify and certainty. This action does not change the substantive requirements for owners and operators to submit plans, obtain permits, and maintain compliance with requirements to control erosion and stormwater runoff from land-disturbing activities. In addition, it does not change the technical requirements, such as erosion and sediment control minimum standards and post-construction stormwater management criteria that protect public health and the environment.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

DEQ is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to Rebecca Rochet, Deputy Director, Water Permitting Division, Virginia Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia 23218, or Rebecca.Rochet@deq.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
9VAC25-875-70 A 2		Land-disturbing activity that disturbs 2,500 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of this chapter is applicable...	Changes applicable article in Part V from Article 3 to Article 5: Land-disturbing activity that disturbs 2,500 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 and Article 35 (9VAC25-875-570740 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of this chapter is applicable... This is a technical correction to the regulation to clarify applicable

			requirements in Chesapeake Bay Preservation Areas.
9VAC25-875-250 A 1		1. Land-disturbing activity that disturbs 10,000 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-470 et seq.) of this chapter.	Removes upper limit of one acre to make the requirement to comply with erosion and sediment control criteria consistent with the statutory requirement at § 62.1-44.15:55 (effective July 1, 2024): 1. Land-disturbing activity that disturbs 10,000 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and not in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-470 et seq.) of this chapter. This is a technical correction to the regulation to be consistent with state law.
9VAC25-875-250 A 2		2. Land-disturbing activity that disturbs 2,500 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 of Part V of this chapter.	Removes upper limit of one acre to make requirement to comply with erosion and sediment control criteria consistent with statutory requirement at § 62.1-44.15:55 (effective July 1, 2024) and cites both articles in Part V that are applicable to land disturbing activities in a Chesapeake Bay Preservation Area: 2. Land-disturbing activity that disturbs 2,500 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 <u>and Article 5 (9VAC25-875-740 et seq.)</u> of Part V of this chapter. These are technical corrections to the regulation to be consistent with state law and to clarify applicable requirements in Chesapeake Bay Preservation Areas.
9VAC25-875-280 9		9. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory	Specifies that regulations adopted pursuant to the ESCL are 9VAC25-875:

		<p>authority of and approved by local wetlands boards, the Virginia Marine Resources Commission, or the U.S. Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to the ESCL and the regulations adopted pursuant thereto;</p>	<p>9. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Virginia Marine Resources Commission, or the U.S. Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to the ESCL and the regulations adopted pursuant thereto <u>this chapter</u>;</p> <p>This is a technical correction to the regulation.</p>
<p>9VAC25-875-300 A and B</p>		<p>A. The VESCP authority shall review erosion and sediment control plans that detail the criteria, techniques, and methods as defined in 9VAC25-875-550 for land-disturbing activities described in 9VAC25-875-560. Activities not required to comply with VESCL are defined in 9VAC25-875-280. B. When determined that the plan meets the minimum criteria, techniques, and methods as defined in 9VAC25-875-550, the VESCP authority shall review erosion and sediment control plans submitted and grant written approval within 60 days of the receipt of the plan.</p>	<p>A. The VESCP authority shall review erosion and sediment control plans <u>prepared in accordance with 9VAC25-875-550</u> and detail the criteria, techniques, and methods as defined in 9VAC25-875-550<u>560</u> for land-disturbing activities described in 9VAC25-875-560. Activities not required to comply with VESCL are defined in 9VAC25-875-280. B. When determined that the plan meets the minimum criteria, techniques, and methods as defined in 9VAC25-875-550<u>560</u>, the VESCP authority shall review erosion and sediment control plans submitted and grant written approval within 60 days of the receipt of the plan.</p> <p>This is a technical correction to the regulation to correct the regulatory citations for the preparation of erosion and sediment control plans, as well as the location of the criteria, techniques, and methods for erosion and sediment control plans.</p>
<p>9VAC25-875-300 G</p>		<p>G. All erosion and sediment control structures and systems shall be maintained, inspected, and repaired as needed to ensure continued performance of their intended function. A statement describing the maintenance responsibilities of the individual responsible for carrying out the land-disturbing activity shall be included in the approved</p>	<p>9VAC25-875-300 is intended to outline the requirements for a VESCP authority to review erosion and sediment controls plans.</p> <p>Subsection G is being relocated to 9VAC25-875-550 E as this requirement outlines a requirement of the actual plan, not a requirement for the VESCP authority in reviewing plans.</p>

		<p>erosion and sediment control plan.</p>	
<p>9VAC25-875-370 D</p>		<p>If deficiencies noted in the review will cause the VESCP to be inconsistent with the ESCL or this chapter, the department shall provide the VESCP authority with a copy of the department's decision that specifies the deficiencies, action needed to be taken, and an approved corrective action plan and schedule required to attain the minimum standard of effectiveness. If the VESCP authority has not implemented the necessary compliance actions identified by the department within the corrective action schedule, or such additional period as is granted to complete the implementation of the corrective action, then the department shall have the authority to (i) issue a special order to any VESCP authority imposing a civil penalty set out in § 62.1-44.15 of the Code of Virginia or (ii) revoke its approval of the VESCP.</p>	<p>Removes revocation of the VESCP as an alternative when a VESCP authority fails to implement necessary compliance actions identified by the Department and replaces it with options specified in § 62.1-44.15 (19):</p> <p>If deficiencies noted in the review will cause the VESCP to be inconsistent with the ESCL or this chapter, the department shall provide the VESCP authority with a copy of the department's decision that specifies the deficiencies, action needed to be taken, and an approved corrective action plan and schedule required to attain the minimum standard of effectiveness. If the VESCP authority has not implemented the necessary compliance actions identified by the department within the corrective action schedule, or such additional period as is granted to complete the implementation of the corrective action, then the department shall have the authority to (i) issue a special order to any VESCP authority imposing a civil penalty set out in § 62.1-44.15 of the Code of Virginia or (ii) revoke its approval of the VESCP <u>fails to bring its program into compliance in accordance with the compliance schedule, then the department is authorized to (i) issue a special order to any locality imposing a civil penalty not to exceed \$ 5,000 per violation with the maximum amount not to exceed \$ 50,000 per order for noncompliance with the state program, to be paid into the state treasury and deposited in the Stormwater Local Assistance Fund established in § 62.1-44.15:29.1 of the Code of Virginia or (ii) with the consent of the locality, provide in an order issued against the locality for the payment of civil charges for violations in lieu of civil penalties, in specific sums not to exceed the limit stated in this subdivision.</u></p> <p>This is a technical correction to the regulation to make it consistent with</p>

			state law (§ 62.1-44.15 (19) (effective July 1, 2024)).
9VAC25-875-470 A 2		Land-disturbing activity that disturbs 2,500 square feet or more, although a locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of this chapter is applicable...	<p>Changes applicable article in Part V from Article 3 to Article 5:</p> <p>Land-disturbing activity that disturbs 2,500 square feet or more, although a locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 and Article 3 5 (9VAC25-875-570740 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of this chapter is applicable...</p> <p>This is a technical correction to the regulation to clarify applicable requirements in Chesapeake Bay Preservation Areas.</p>
9VAC25-875-490 A and C		<p>A. Any land-disturbing activity shall be considered grandfathered by the VESMP authority and shall be subject to the technical criteria of Article 4 (9VAC25-875-670 et seq.) of this part provided:</p> <p>1. A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012; (ii) provided a layout as defined in 9VAC25-875-670; (iii) will comply with the technical criteria of Article 4 of this part; and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge and such that there is no increase in the volume or rate of runoff;</p>	<p>Deletes subsections A and C and relabels remaining sections accordingly.</p> <p>Subsections A and C are no longer applicable because land-disturbing activities that were grandfathered under subsection A were only subject to the technical criteria of Article 4 for one 5-year permit cycle after 2014 (subsection C). Applicability ended with the re-issuance of the General VPDES Permit for Discharges of Construction Stormwater, 9VAC25-880, when it became effective on July 1, 2019.</p> <p>This is a technical correction to the regulation to remove requirements that are no longer applicable.</p>

		<p>2. A permit has not been issued prior to July 1, 2014; and</p> <p>3. Land disturbance did not commence prior to July 1, 2014. Any land-disturbing activity shall be considered grandfathered by the VESMP authority and shall be subject to the technical criteria of Article 4 provided that a proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan was adopted prior to July 1, 2012, a permit has not been issued prior to July 1, 2014, and land disturbance did not commence prior to July 1, 2014.</p> <p>C. Land disturbing activities grandfathered under subsections A and B of this section shall remain subject to the technical criteria of Article 4 of this part for one additional permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.</p>	
<p>9VAC25-875-500 B</p>		<p>B. An erosion and sediment control plan consistent with the requirements of 9VAC25-875-550 must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VESCP authority, VESMP authority, or the department.</p>	<p>B. An erosion and sediment control plan consistent with the requirements of 9VAC25-875-550 <u>and 9VAC25-875-560</u> must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VESCP authority, VESMP authority, or the department.</p> <p>This is a technical correction to clarify that erosion and sediment control plans must meet the requirements of both 9VAC25-875-550 and 9VAC25-875-560.</p>
<p>9VAC25-875-550 A</p>		<p>A. An erosion and sediment control plan shall be filed for</p>	<p>Clarifies requirements for erosion and sediment control plans by adding the</p>

		<p>a development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit of land will be so treated to achieve the conservation objectives in 9VAC25-875-560. The erosion and sediment control plan may include:</p>	<p>name of the requirements that are in 9VAC25-875-560:</p> <p>A. An erosion and sediment control plan shall be filed for a development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit of land will be so treated to achieve the conservation objectives and <u>minimum standards</u> in 9VAC25-875-560. The erosion and sediment control plan may include:</p> <p>This is a technical correction to the regulation to properly refer to the minimum standards in 9VAC25-875-560. Minimum Standards.</p>
	9VAC25-875-550 E		<p>E. All erosion and sediment control structures and systems shall be maintained, inspected, and repaired as needed to ensure continued performance of their intended function. A statement describing the maintenance responsibilities of the individual responsible for carrying out the land-disturbing activity shall be included in the approved erosion and sediment control plan.</p> <p>This language was relocated from 9VAC25-875-300 E for clarification as it relates to the requirements of the erosion and sediment control plan contents, not the review performed by the VESCP authority.</p>
9VAC25-875-560	9VAC25-875-560 A	An erosion and sediment control plan...	<p><u>A.</u> An erosion and sediment control plan...</p> <p>Added Subsection “A” and “B” labels to comply with regulatory formatting requirements.</p>
	9VAC25-875-560 B		<p><u>B.</u> All land-disturbing activities shall be conducted in a manner that is consistent with the applicable requirements of subsection A of this section.</p> <p>Subsection B provides certainty to the regulated community by clearly stating a requirement that has been implied by the regulation, that all land-disturbing</p>

			<p>activities shall be conducted in a manner consistent with the minimum standards.</p>
<p>9VAC25-875-850 Definition of "Maximum extent practicable"</p>		<p>"Maximum extent practicable" or "MEP" means the technology-based discharge standard for municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, and BMPs to attain compliance with water quality standards.</p>	<p>Adds condition to ensure use of the term, as defined in the section, is consistent with and limited to MS4s:</p> <p>"Maximum extent practicable" or "MEP" means, <u>in the context of a municipal separate stormwater sewer system</u>, the technology-based discharge standard for municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, and BMPs to attain compliance with water quality standards.</p> <p>This is a technical correction to ensure, where the term is used in other parts of the regulation, the meaning is appropriate for the context.</p>