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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-875
VAC Chapter title(s)	Virginia Erosion and Stormwater Management Regulation
Action title	Amend the regulations to change the statewide permit fee schedule in accordance with Chapter 2 of the 2024 Special Session I Acts of Assembly
Date this document prepared	July 24, 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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The intent of this regulatory action is to amend or modify provisions of the Virginia Erosion and Stormwater Management Regulation (9VAC25-875) to change the statewide permit fee schedule for the Virginia Pollutant Discharge Elimination System Permit for Discharges of Stormwater from Construction Activities and municipal separate storm sewer system permits in accordance with Chapter 2 (Budget Bill, Item 363 J) of the 2024 Special Session I Acts of Assembly.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

Board – Virginia State Water Control Board
Department or DEQ – Department of Environmental Quality
MS4 – Municipal Separate Storm Sewer System
NOIRA – Notice of Intended Regulatory Action
VPDES – Virginia Pollutant Discharge Elimination System

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.”

Chapter 2 (Budget Bill, Item 363 J) of the 2024 Special Session I Acts of Assembly directs the Board to amend the existing permit fee schedule such that the fees for the VPDES Permit for Discharges of Stormwater from Construction Activities and MS4 permits are set at an amount representing no less than 60 percent, not to exceed 62 percent, of the direct costs for the administration, compliance, and enforcement of such permits.

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.

The Board is authorized to adopt regulations, including a statewide fee schedule, pursuant to § 62.1-44.15:28 of the Code of Virginia.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The regulatory amendments are necessary to conform the Virginia Erosion and Stormwater Management Regulation (9VAC25-875) to Chapter 2 of the 2024 Special Session I Acts of Assembly.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The substance of this action is to amend or modify language in the Virginia Erosion and Stormwater Management Regulation (9VAC25-875) to reflect Chapter 2 (Budget Bill, Item 363 J) of the 2024 Special Session I Acts of Assembly. The amendments seek to amend the existing statewide permit fee schedule such that the fees for the VPDES Permit for Discharges of Stormwater from Construction Activities and MS4 permits are set at an amount representing no less than 60 percent, not to exceed 62 percent, of the direct costs for the administration, compliance, and enforcement of such permits.

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.

No alternatives to this regulatory action were considered. The regulatory amendments are necessary to conform the Virginia Erosion and Stormwater Management Regulation (9VAC25-875) to Chapter 2 (Budget Bill, Item 363 J) of the 2024 Special Session I Acts of Assembly.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a small business impact review.

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. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The agency is seeking comments on this regulation, including but no limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall website 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 p.m. on the last day of the public comment period.

Public Hearing at Proposed Stage

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall.

Regulatory Advisory Panel

Please indicate, to the extent known, if advisers (e.g., regulatory advisory panel or negotiated rulemaking panel) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using a panel in the development of the proposal; 2) the agency is using a panel in the development of the proposal; or 3) the agency is inviting comment on whether to use a panel to assist the agency in the development of a proposal.

The Board is using a panel to develop a proposal. Persons interested in assisting in the development of a proposal should notify the Department's contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). The primary function of the panel is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the panel will be sent to all applicants.