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Exempt Action: Final Regulation 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	Amendment to the Virginia Erosion and Stormwater Management Regulation (9VAC25-875 et seq.) in response to changes to 40 CFR Part 122
Final agency action date	September 16, 2024
Date this document prepared	July 11, 2024

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.

Revisions to 9VAC25-875-970 and 9VAC25-875-980 are necessary to maintain consistency with federal regulations. Amendments to 40 CFR Part 122, effective July 12, 2023, 88 FR 37994, replaced the term "urbanized area" with "urban area with a population of 50,000 or more people as determined by the latest Decennial Census by the Bureau of the Census" due to changes made by the Census Bureau. The amendments to the Virginia Erosion and Stormwater Management Regulation (9VAC25-875) maintain consistency with federal regulations and, as such, are exempt from the state administrative procedures for adoption of regulations because they are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation (§ 2.2-4006(A)(4)(c) of the Code of Virginia).

The Virginia Erosion and Stormwater Management Regulation (9VAC25-875 et seq.) will be updated to be consistent with the amended federal regulations.

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."

The Virginia Department of Environmental Quality (DEQ) has delegated authority from the U.S. Environmental Protection Agency (EPA) to implement the Virginia Pollutant Discharge Elimination System (VPDES) permit program in the Commonwealth. The VPDES permit program must be consistent with EPA's programs.

In July 2023, EPA published a final rule amending 40 CFR Part 122 (88 FR 37994) to be consistent with the Census Bureau's decision to discontinue its practice of publishing the location of "urbanized areas" along with the 2020 Census and future censuses. The EPA's final rule replaced the term "urbanized area" in the Phase II regulations for small municipal separate storm sewer systems (MS4s) with the phrase "urban areas with a population of 50,000 or more people," which is the Census Bureau's longstanding definition of the term urbanized areas. This change allows permitting authorities to use 2020 Census and future Census data in a manner that is consistent with existing longstanding regulatory practice.

This regulatory action is required to conform the existing regulation to changes in federal regulations for the federally delegated VPDES permit program. The amendments to the Virginia Erosion and Stormwater Management Regulation (9VAC25-875) maintain consistency with federal regulations and, as such, are exempt from the state administrative procedures for adoption of regulations because they are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation (§ 2.2-4006(A)(4)(c) of the Code of Virginia).

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 September 16, 2024, the State Water Control Board approved final amendments to the Virginia Erosion and Stormwater Management Regulation (9VAC25-875 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.