



## Virginia Regulatory Town Hall

### Emergency Regulation Agency Background Document

|                            |  |
|----------------------------|--|
| <b>Agency Name:</b>        | State Water Control Board  |
| <b>VAC Chapter Number:</b> | 9 VAC 25-770-10 et seq.  |
| <b>Regulation Title:</b>   | Financial Responsibility Requirements for Mitigation Associated with Tidal Dredging Projects |
| <b>Action Title:</b>       | Financial Responsibility Requirements for Mitigation Associated with Tidal Dredging Projects |
| <b>Date:</b>               | September 24, 2002   |

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

#### Emergency Preamble

*Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an “emergency situation” means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).*

*Please include a brief summary of the emergency action. There is no need to state each provision or amendment.*

Promulgating this emergency regulation is a necessary action because statutory changes to Section 62.1-44.15 5(c) of the Code of Virginia, passed by the 2002 General Assembly (HB91/SB 327), requires the Board to promulgate regulations to be effective within 280 days of their enactment.

The emergency regulation specifies the mechanisms by which the Board may require evidence of financial responsibility to ensure completion of compensatory mitigation requirements for certain

tidal dredging projects. The regulation also allows persons obtaining Virginia Water Protection (VWP) permits to satisfy the financial responsibility requirement by submitting evidence that the permit holder has demonstrated appropriate financial responsibility to the U. S. Army Corps of Engineers, to avoid duplication between Virginia's and the federal program. These requirements apply only to tidal dredging projects and not to non-tidal dredging projects or any other types of projects requiring VWP permits.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.*

*Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.*

---

The basis for this regulation is amendments to Section 62.1-44.15 5(c) of the Code of Virginia, passed by the 2002 General Assembly (HB91/SB 327), as follows:

*(5c) Any certificate issued by the Board under this chapter relating to dredging projects governed under Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 may be conditioned upon a demonstration of financial responsibility for the completion of compensatory mitigation requirements. Financial responsibility may be demonstrated by a letter of credit, a certificate of deposit or a performance bond executed in a form approved by the Board. If the U.S. Army Corps of Engineers requires demonstration of financial responsibility for the completion of compensatory mitigation required for a particular project, then the mechanism and amount approved by the U.S. Army Corps of Engineers shall be used to meet this requirement.*

The Office of the Attorney General has certified that the agency has the statutory authority to promulgate this emergency regulation and the regulation comports with applicable state and/or law.

### Substance

*Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

DEQ has developed emergency regulations that require a person obtaining a VWP permit for certain tidal dredging projects to demonstrate to the Board evidence of financial responsibility for the completion of any required compensatory mitigation associated with the project. The regulations specify when the Board may require financial responsibility, how the amount of financial responsibility should be calculated, and the mechanisms by which to demonstrate such responsibility. The new regulation also specifies when the permit holder must demonstrate financial responsibility and when the permit holder may be released from the obligation to demonstrate. To avoid duplication between the state and federal programs, the regulation allows permit holders to satisfy their financial responsibility requirement by submitting evidence that the permit holder has demonstrated appropriate financial responsibility to the U. S. Army Corps of Engineers for the same dredging project. These requirements apply only to tidal dredging projects and not to non-tidal dredging projects or any other types of projects requiring VWP permits.

The provisions are essential to protect the health, safety and welfare of Virginians, as they require a person to demonstrate the financial capability to mitigate the environmental effects of dredging before beginning any dredging activities.

### Alternatives

*Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.*

The alternative of not developing a regulation for the provision of financial responsibility for mitigation for tidal dredging projects is not feasible as this regulatory development is mandated by action of the 2002 General Assembly. We are avoiding unnecessary duplication by including the provision that no additional financial responsibility will be required if other regulatory entities are already requiring such assurance.

### Family Impact Statement

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The regulation is not expected to have any impact on the institution of the family and family stability. However, in the event a community association conducting a tidal dredging project were unable to complete the work, the regulation would have a beneficial effect on families in that with financial assurance in place, individual property owners would not be held liable for completion of the work.