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Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-840 (primary) 9VAC25-870 (secondary) 9VAC25-880 (secondary)
VAC Chapter title(s)	Erosion and Sediment Control Regulations (primary) Virginia Stormwater Management Program (VSMP) Regulation (secondary) General VPDES Permit for Discharges of Stormwater from Construction Activities (secondary)
Action title	Amendment in response to Chapters 48 and 49 of the 2023 Virginia Acts of Assembly
Final agency action date	June 22, 2023
Date this document prepared	May 17, 2023

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.

This final exempt regulatory action is necessary to implement Chapters 48 and 49 of the 2023 Acts of Assembly. Chapters 48 and 49 of the 2023 Acts of Assembly provide that an agreement in lieu of a plan may be used for certain farm buildings and structures. Chapters 48 and 49 of the 2023 Acts of Assembly also make statutory changes necessary to conform state law to federal law regarding the types of projects

that must file a registration statement. This action will amend the Erosion and Sediment Control Regulations (9VAC25-840 et seq.), Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870 et seq.), and General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880 et seq.) to include these new statutory requirements.

These regulatory amendments are exempt from the state administrative procedures for adoption of regulations because they are necessary to conform to Virginia statutory law (§ 2.2-4006(A)(4)(a) of the Code of Virginia).

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."

HB1848 and SB1376 were passed during the 2023 Session of the General Assembly. These bills provide that an agreement in lieu of a plan may be used for certain farm buildings and structures and also conform state law to federal law regarding the types of projects that must file a registration statement. The Governor signed these bills into law on March 17, 2023 (HB1848 – Chapter 48 of the 2023 Acts of Assembly and SB1376 – Chapter 49 of the 2023 Acts of Assembly) and these changes will become effective July 1, 2023. This regulatory action is required to conform the existing regulation to changes in Code.

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 22, 2023, the State Water Control Board approved final amendments to the Erosion and Sediment Control Regulations (9VAC25-840 et seq.), Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870 et seq.), and General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880 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.