



Exempt Action Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-850
Regulation title	Erosion and Sediment Control and Stormwater Management Certification Regulations
Action title	Transfer of the Erosion and Sediment Control and Stormwater Management Certification Regulations from the Virginia Soil and Water Conservation Board to the State Water Control Board
Final agency action date	August 26-27, 2013
Document preparation date	August 23, 2013

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 14 (2010) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

As of a result of actions by the 2013 General Assembly (HB2048 & SB 1279) certain water quality programs previously administered by the Department of Conservation and Recreation will now be administered by the Department of Environmental Quality. The Department of Environmental Quality and the State Water Control Board will have oversight of water quality planning and laws dealing with stormwater management, erosion and sediment control and the Chesapeake Bay Preservation Areas.

In this regulatory action Code references for the Erosion and Sediment Control and Stormwater Management Certification Regulations have been changed from Title 10.1 to 62.1 and section references have been changed from 4VAC50-50 to 9VAC25-850 to reflect the change in administration of the program from the Department of Conservation and Recreation and the Soil

and Water Conservation Board to the Department of Environmental Quality and the State Water Control Board.

Statement of final agency action

Please 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.

The State Water Control Board adopted the regulations at its August 26-27, 2013 Board Meeting.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Code references for the Erosion and Sediment Control and Stormwater Management Certification Regulations have been changed from Title 10.1 to 62.1 and section references have been changed from 4VAC50-50 to 9VAC25-850 to reflect the change in administration of the program from the Department of Conservation and Recreation and the Soil and Water Conservation Board to the Department of Environmental Quality and the State Water Control Board.

Section numbers follow those found in 4VAC50-50 where possible to facilitate the transfer of administration of the regulations. References to the Department of Conservation and Recreation and the Soil and Water Conservation Board have been revised to the Department of Environmental Quality and the State Water Control Board.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
4VAC50-50	9VAC25-850	Chapter Number	Chapter number changed from "Chapter 50" to "Chapter 850". Chapter title added: " <u>Erosion and Sediment Control and Stormwater Management Certification Regulations</u> ". Changes made to account for transfer of program.
4VAC50-50-10	9VAC25-850-10	Definitions.	Insert definition to clarify current usage and practice: " <u>Responsible land disturber</u> " or " <u>RLD</u> " means an individual holding a certificate issued by the department who is responsible for carrying out the land-disturbing activity in accordance with the approved ESC plan. The RLD may be the owner, applicant, permittee, designer,

			<u>superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the ESC plan or permit as a prerequisite for engaging in land disturbance."</u>
4VAC50-50-40	9VAC25-850-40	Title of Section: Certificates of competence.	Revise title to clarify requirements: " Certificates of competence. "
	9VAC25-850-40 B	Certificates - RLD	Add a new B to clarify requirements related to RLD: " <u>B. A certificate issued by the board for the responsible land disturber to RLD for ESC. The person responsible for carrying out the land-disturbing activity.</u> "
4VAC50-50-40 B	9VAC25-850-40 C	Certificates – plan reviewer	Revise subsection number to account for addition of new subsection.
4VAC50-50-40 C	9VAC25-850-40 D	Certificates -	Revise subsection number to account for addition of new subsection.
4VAC50-50-50 A	9VAC25-850-50 A	Eligibility requirements.	Revise to include section reference to clarify requirements: "A. Certification may be obtained by satisfactorily completing and submitting an application <u>in accordance with 9VAC25-850-80 to the department for review and approval</u> and."
4VAC50-50-50 A 2	9VAC25-850-50 A 2	Eligibility requirements.	Revise to clarify requirements: "2. By enrolling in and completing, <u>within 12 months, a board-approved training program...</u> "
4VAC50-50-50 A 2 c	9VAC25-850-50 A 2 c	Eligibility requirements.	Revise to correct terminology: "c. The training program for program administrators for ESC will consist of attending the <u>seminar course "Basic Erosion and Sediment Control in Virginia."</u> "
	9VAC25-850-50 A 3	Eligibility requirements.	Add new section to clarify eligibility requirements related to RLDs: " <u>3. By enrolling in and completing the training program and obtaining a passing score on the certification examination administered by the department for responsible land disturbers for ESC.</u> "
4VAC50-50-50 C 1	9VAC25-850-50 C 1	Recertification eligibility requirements.	Revise to clarify recertification requirements: " <u>1. Obtaining a passing score on the certification-recertification examination.</u> "
4VAC50-50-50 C 3	9VAC25-850-50 C 3	Recertification eligibility requirements.	Revised to reflect addition of new subsection B in 9VAC25-850-40: " <u>3. Being a professional registered...satisfy the provisions of this subsection for classifications in subdivisions A 1 through 4 and subsection B of 4VAC50-50-40-9VAC25-850-40...</u> "
4VAC50-50-50 C 4	9VAC25-850-50 C 4	Recertification eligibility requirements.	Revise to reflect addition of a new subsection B in 9VAC25-850-40 and a new subdivision in C in 9VAC25-850-50: " <u>4. Being a professional registered...for classifications in subdivisions A 5 through 8 and subsection B of 4VAC50-50-40-9VAC25-850-40; or</u> "

	9VAC25-850-50 C 5	Recertification eligibility requirements.	Revise to add additional method of recertification to conform to common practice: " <u>5. Completing continuing professional education hours in accordance with department guidance.</u> "
4VAC50-50-60 A	9VAC25-850-60	Fees.	Revise to correct terminology: "A. Application, Certification, recertification, and dual certificate issuance fees..."
4VAC50-50-70 C	9VAC25-850-70 C	Examination.	Revise to conform to common practice: "C. An individual who is unable to take an examination at the time scheduled shall notify the department within 48 hours prior to the date of the examination <u>unless a later time is established by the department</u> ; such an individual..."
4VAC50-50-70 D	9VAC25-850-70 D	Examination.	Revise to conform to common practice: "D. An applicant who is unsuccessful in passing an examination...Application for examination must be received at least 60 days prior to the scheduled examination <u>unless a later date is established by the department</u> ..."
4VAC50-50-70 F	9VAC25-850-70 F	Examination.	Revise to reflect current practice: "F. All applicants will be notified in writing within 60 days of the results of the examination."
4VAC50-50-80 A	9VAC25-850-80 A	Application.	Text revised to read: "A. Any person seeking certification <u>or recertification</u> by a combination of experience and examination or by the combination of completion of the training program and examination shall submit a completed application <u>in a manner prescribed by the department</u> with the appropriate fee(s) attached ..." Text revised to reflect current practice.
4VAC50-50-80 A 1	9VAC25-850-80 A 1	Application.	Revise to conform to common practice: "1. The applicant's name, address, daytime phone number, <u>email address</u> and name and address of business <u>or organization</u> as well as the date the application was filled out."
4VAC50-50-80 A 2	9VAC25-850-80 A 2	Application.	Revise to clarify requirements: "2. The classification of certification <u>the applicant is applying for</u> as set forth in 4VAC50-50-40 <u>9VAC25-850-40</u> of this chapter, and <u>if designation whether the applicant is applying for initial certification or recertification.</u> "
4VAC50-50-80 A 4	9VAC25-850-80 A 4	Application – verification of work experience.	Text revised to read: "4. A verification of all work experience signed and dated by applicant's supervisor, <u>if required.</u> " Text revised to clarify requirements.
4VAC50-50-80 A 5	9VAC25-850-80-A 5	Application – statement required - incomplete application	Text revised to clarify requirements and to conform to common practice: "5. A signed <u>and notarized affidavit confirming that all</u>

			<p>statements <u>statement that the information provided in the application are believed to be is true and accurate.</u>"</p> <p>"Incomplete applications will be returned to the applicant. All applications must be received in by the appropriate department office or by mail post <u>marked</u> at least 60 days prior to the scheduled examination date, <u>unless another date is established by the department,</u> in order to be able to sit for the examination." Text revised to clarify requirements and to reflect current practice.</p>
4VAC50-50-80 A 5	9VAC25-850-80 A 5	Application – other acceptable forms of documentation.	<p>New text added: "The department may <u>establish other acceptable forms of documentation for the components of the application which provide similar assurances as those set forth in this subsection.</u>" Text added to provide for current practices and procedures.</p>
4VAC50-50-80 B	9VAC25-850-80 B	Application.	<p>Revise to clarify requirements and to conform to common practice: "B. All <u>complete</u> applications of candidates will be reviewed by the department...All applicants will be notified of the results of the review within 30 days of receipt of the application...No applicant will be approved for certification unless they meet all the requirements of this chapter."</p>
4VAC50-50-90	9VAC25-850-90	Discipline of certified personnel.	<p>Revise to correct terminology to conform to common practice: "The board may suspend, revoke or refuse to grant or renew the certification of any person if the board, in an informational <u>informal</u> fact finding under § 2.2-4019 of the Code of Virginia..."</p>
	9VAC25-850-100		<p>New section for "Delegation of authority" added to conform to common practice: "<u>The director, or his designee, may perform any act of the board provided under this chapter, except as limited by §62.1-44.14 of the Code of Virginia.</u>"</p>

Enter any other statement here

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory 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.

It is not anticipated that this regulatory action will have any impacts on the family and family stability.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

"ESC" - Erosion and Sediment Control
"RLD" – Responsible land disturber
"SWM" - Stormwater management
"VESCP" - Virginia Erosion and Sediment Control Program
"VSMP" - Virginia Stormwater Management Program