



Exempt Action Final Regulation Agency Background Document

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| Agency name | Virginia Soil and Water Conservation Board |
| Virginia Administrative Code (VAC) citation | 40VAC50-70 |
| Regulation title | Resource Management Plans |
| Action title | Establishment of new Resource Management Plans Regulations (4VAC50-70-10 et seq.) that represent a balanced process by which farmers may voluntarily implement a high level of BMPs that are protective of water quality and that may be applied towards necessary nutrient and sediment reductions associated with the Chesapeake Bay Watershed Implementation Plan and other TMDLs. |
| Final agency action date | March 27, 2013 |
| Document preparation date | April 16, 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, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

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.

In accordance with Chapter 781 of the 2011 Virginia Acts of Assembly (HB1830) the Virginia Soil and Water Conservation Board authorized the establishment of new regulations that clarify and specify the criteria that must be included in a resource management plan (RMP) and the processes by which a Certificate of RMP Implementation is issued and maintained. The intent of the regulatory action is to encourage farm owners and operators to voluntarily implement a high level of BMPs on their farmlands in order to be protective of water quality and for them to then benefit from the following legal provision stating that “notwithstanding any other provision of law, agricultural landowners or operators who fully implement and maintain the applicable components of their resource management plan, in accordance with the criteria for such plans set out in § 10.1-104.8 and any regulations adopted thereunder, shall be deemed to be in full compliance with (i) any load allocation contained in a total

maximum daily load (TMDL) established under § 303(d) of the federal Clean Water Act addressing benthic, bacteria, nutrient, or sediment impairments; (ii) any requirements of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan; and (iii) applicable state water quality requirements for nutrients and sediment”. Accordingly, when a resource management plan has been found by the review authority to be adequate and fully implemented, the Department issues a Certificate of RMP Implementation that is valid for a period of nine years. Each management unit that has been issued a Certificate of RMP Implementation is subject to periodic onsite inspections to ensure the continued implementation of, maintenance of, and compliance with the RMP components necessary to meet the minimum standards.

The key substantive elements of this final regulatory action include:

- Establishment of minimum standards of a resource management plan;
- Processes for the development, updating, and approval of a resource management plans by Resource Management Plan Reviewers;
- Processes to ensure the implementation of a resource management plan and for issuance of a Certificate of Resource Management Plan Implementation;
- Processes associated with conducting inspections by the RMP Reviewer and ensuring RMP compliance after Certificate issuance by the Department of Conservation and Recreation including issuance of deficiency notices and development and implementation of corrective action agreements;
- Procedures for the review of duties performed by local Soil and Water Conservation Districts; and
- Establishment of qualifications and certification processes for Resource Management Plan Developers and the issuance or revocation of a Resource Management Plan Developer Certificate by the Department of Conservation and Recreation.

In the final regulations, non-substantive refinements were made to ensure consistency with the law, to provide additional clarification as to regulatory intent, and to make grammatical corrections. Assessment of the regulations demonstrated the substantial and adequate progress the RMP minimum standards will make towards addressing Chesapeake Bay Watershed Implementation Plan nitrogen, phosphorus, and sediment reductions when implemented at specified levels and therefore that the regulations are protective of water quality and sufficient to achieve the Chesapeake Bay TMDL loads for agriculture. The regulations represent a strong and balanced voluntary tool for the Commonwealth to utilize to seek significant nutrient and sediment reductions while still being economically feasible and technically achievable for the farmer.

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.

Based on legislative direction (Chapter 781 of the 2011 Virginia Acts of Assembly), on March 10, 2011, the Virginia Soil and Water Conservation Board authorized the Department to develop the Resource Management Plans regulations and as part of the regulation development process, the Board further directed the establishment of a stakeholder group to make recommendations to the Director and the Board on the contents of the proposed regulations.

In accordance with the Board's direction, a nineteen member RAP composed of stakeholder organizations within the agricultural and environmental community, representatives from the Soil and Water Conservation Districts and the Association, as well as those with technical expertise in agricultural planning was assembled. The RAP and the Department were provided technical support from Natural Resources Conservation Service, Farm Service Agency, Virginia Tech, Virginia Department of Agriculture and Consumer Services, Virginia Department of Forestry, and the Virginia Department of Environmental Quality. Between June 29, 2011, and February 14, 2012; the RAP held five meetings, and the RAP's three subcommittees met a total of six times. Additionally, two of the subcommittees held a joint meeting.

Proposed regulations were approved by the Board at the March 29, 2012 meeting. At the meeting, the Board further authorized that the proposed regulations be released for the required 60-day public comment period. That comment period ran from July 16, 2012 through September 14, 2012. The Department, on behalf of the Board, held three public hearings on the regulations during the comment period.

We received 92 comments (68 from a conservation organization action alert) during the comment period and had 8 people officially speak at the public hearings (with an additional 10 unofficial questions asked). A copy of the public comment summary and response form may be found on the Agency's policy webpage for this regulatory action at http://www.dcr.virginia.gov/laws_and_regulations/lr7.shtml. Following a close review of the comments received, the Department advanced a final set of regulations to the Virginia Soil and Water Conservation Board for consideration.

The Virginia Soil and Water Conservation Board at its March 27, 2013 meeting approved and authorized the filing of this final exempt regulation (in accordance with § 10.1-104.9), which amends the Resource Management Plans Regulations (4 VAC50-70). As part of the authorization motion, the Board set a delayed effective date of seven-months from the date of publication for these final regulations to enable the Department to actively work during this time period on necessary implementation actions in preparation for the effective date. The Board further instructed the Agency to provide a semi-annual report to the Board, in coordination with other water quality reporting responsibilities, that entails progress made on Program implementation including nutrient and sediment reduction results.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

It is not anticipated that this regulation will have a direct impact on the institution of the family or family stability. However, improvement of water quality does have positive health and safety benefits that have an indirect impact on families.