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Fast-Track Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9VAC25-20
Regulation title(s)	Fees for Permits and Certificates
Action title	Fast track amendment- removal of fees for MS4 and construction activities
Date this document prepared	October 8, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please 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.

A periodic review was recently conducted for this regulation and the result of the review was to amend the regulation to remove fees that are no longer needed. This amendment removes fees for Municipal Separate Storm Sewer System (MS4) and Construction Activity permitting fees from this regulation. These fees in 9VAC25-20 are a carryover from when the stormwater program was administered by DEQ prior to the program's transfer to the Department of Conservation and Recreation (DCR) (in January 2005). Permit fees for MS4 and construction activities are assessed under the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870) and are no longer needed in 9VAC25-20.

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.

DCR- Department of Conservation and Recreation
DEQ- Department of Environmental Quality
MS4- Municipal Separate Storm Sewer System
VSMP- Stormwater Management Program Regulation

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.

At its meeting on December 13, 2019, the State Water Control Board authorized the department to:

1. Promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The board's authorization also constituted its amendment of the Fees for Permits and Certificates (9VAC25-20 et seq.) regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.

2. Set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the department does not find it necessary to make any changes to the proposal.

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "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." As required by Virginia Code § 2.2-4012.1, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

A periodic review was recently conducted for this regulation and the result of the review was to amend the regulation to remove fees that are no longer needed. This amendment removes fees for MS4 and construction activity permitting fees from this regulation. Permit fees for MS4 and construction activities are assessed under the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870) and are no longer needed in 9VAC25-20.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

Section 62.1-44.15:6 of the Code of Virginia directs the State Water Control Board to adopt regulations to assess fees to issue, reissue, amend or modify any permit or certificate.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

A periodic review was recently conducted for this regulation and the result of the review was to amend the regulation to remove fees that are no longer needed. This amendment removes fees for MS4 and construction activity permitting fees from this regulation. Permit fees for MS4 and construction activities are assessed under the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870) and are no longer needed in 9VAC25-20. Removal of the MS4 and construction activity fees will minimize confusion concerning the applicable permit fees.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

This amendment removes fees for MS4 and construction activity permitting fees from this regulation. Permit fees for MS4 and construction activities are assessed under the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870).

Issues

Please identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

Removing fees for MS4 and construction activity permitting fees from this regulation will benefit the public and the agency. Removing these fees will minimize confusion concerning the applicable permit fees. There are no disadvantages to the public or the Commonwealth.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

This is a state only regulation and there is no equivalent federal regulation.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected:

No other state agencies are particularly affected.

Localities Particularly Affected:

No localities are particularly affected.

Other Entities Particularly Affected:

No other entities are particularly affected.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources 	<p>This amendment removes fees for MS4 and construction activity permitting fees from this regulation. Permit fees for MS4 and construction activities are assessed under the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870). This change will not impact agency costs or revenues.</p>
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Impact on State Agencies

<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>This amendment removes fees for MS4 and construction activity permitting fees from this regulation. Permit fees for MS4 and construction activities are assessed under the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870). This change will not impact agency costs or revenues.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>This amendment will reduce confusion concerning the permit fees for MS4 and construction activities.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>This amendment removes fees for MS4 and construction activity permitting fees from this regulation. Permit fees for MS4 and construction activities are assessed under the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870). This change will not impact a locality's costs or revenues.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>This amendment will reduce confusion concerning the permit fees for MS4 and construction activities.</p>

Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>This amendment removes fees for MS4 and construction activity permitting fees from this regulation. Permit fees for MS4 and construction activities are assessed under the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870). This change will not impact individuals, businesses, or other entities.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. 	<p>This change will not impact individuals, businesses, or other entities.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements. 	<p>This change will not impact individuals, businesses, or other entities.</p>

Impact on Other Entities

Benefits the regulatory change is designed to produce.	This amendment will reduce confusion concerning the permit fees for MS4 and construction activities.
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Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

A periodic review was recently conducted for this regulation and the result of the review was to amend the regulation to remove fees that are no longer needed. This amendment removes fees for MS4 and construction activity permitting fees from this regulation. Permit fees for MS4 and construction activities are assessed under the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870) and are no longer needed in 9VAC25-20.

The agency considered retaining the regulation "as is" during the periodic review process and rejected that alternative. Removal of the MS4 and construction activity fees will minimize confusion concerning the applicable permit fees.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

This amendment removes fees for MS4 and construction activity permitting fees from this regulation since the applicable fees are assessed under the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870). Removal of the MS4 and construction activity fees from this regulation will minimize confusion concerning the applicable permit fees. The regulated community, including small businesses, will benefit from the removal of the confusing language.

Public Participation

Please include a statement that in addition to any other comments on the regulation, the agency is seeking comments on the costs and benefits of the proposal and the potential impacts on the regulated community.

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal and the potential impacts on the regulated community. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reported, recordkeeping and other administrative costs, 2) probable

effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Melissa Porterfield, Office of Regulatory Affairs, P.O. BOX 1105, Richmond, VA 23218 Phone: 804-698-4238, FAX: 804-698-4019, email: Melissa.porterfield@deq.virginia.gov Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
110 A		Fee schedules for individual VPDES and VPA new permit issuance, and individual VWP, SWW and GWW new permit issuance and existing permit reissuance.	Removing application/reissuance fees for VPDES Municipal Major Stormwater/MS4 and VPDES Municipal Minor Stormwater/MS4.
120 1.		Fee schedules for major modification of individual permits or certificates requested by the permit or certificate holder.	Removing permit modification fees for VPDES Municipal Major Stormwater/MS4 and VPDES Municipal Minor Stormwater/MS4.
130 4 a and b		Fees for filing registration statements or applications for general permits issued by the board	Removing fees related to general permits for stormwater small construction activity permits.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed 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.

The proposed regulatory action will not impact the institution of the family and family stability.