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## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation(s)</b>	9VAC25-210 (Primary) 9VAC25-670 9VAC25-690
<b>Regulation title(s)</b>	Virginia Water Protection Permit Program Regulation (Primary)  Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities  Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities
<b>Action title</b>	Amendments Conforming to 2018 Legislation
<b>Final agency action date</b>	September 20, 2018
<b>Date this document prepared</b>	August 14, 2018

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) or an agency's basic statute, the agency is not required, however, 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 (2018) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

During the 2018 General Assembly, changes were made to the State Water Control Law (Chapter 3.1 of Title 62.1 of the Code of Virginia) regarding the Virginia Water Protection (VWP) program. Many of these changes were for the construction of any natural gas transmission pipeline greater than 36 inches inside diameter (certain natural gas pipelines) pursuant to a certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)). This final exempt regulatory action will amend the State Water Control Board's Chapters 210, 670 and 690 in order to incorporate the changes to state law made by Chapters 636 and 114 of the 2018 Acts of Assembly. The amendment is exempt from

the Administrative Process Act (APA) as it is necessary to conform to the changes in Virginia statutory law (§2.2-4006.A.4.a).

The conforming changes made include: (i) adding the requirement that issuance of both a VWP Permit and an additional water quality certification for upland conditions together constitute the §401 certification for construction of certain natural gas pipelines; (ii) adding requirements for an individual VWP Permit for construction of certain natural gas pipelines; (iii) adding a permit exclusion for impacts to a stormwater management facility on dry land; and, (iv) adding a limitation to the Board's authority for issuance of VWP general permits.

### 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 September 21, 2018, the State Water Control Board adopted this final exempt action incorporating the conforming changes to Virginia statutory law. The Board affirmed that it will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision.

### Family impact

*Please 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.*

This regulatory amendment has no direct impact on the institution of the family and family stability.

### 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.*

Current section number	Current requirement	Proposed change and rationale
9VAC25-210-10	Definitions	Added to the definition for a VWP permit that, for construction of certain natural gas pipelines, the Commonwealth's §401 certification is comprised of both the VWP individual permit and the upland certification (see Subsection D of §62.1-44.15:20 of the State Water Control Law).
9VAC25-210-50	Prohibitions and requirements for VWP permits.	Added the requirement for an individual VWP permit for construction of certain natural gas pipelines as a new Subsection C (see Subsection J of §62.1-44.15:21 of the State Water Control Law).
9VAC25-210-60	Exclusions	Added an exclusion from VWP permitting for impacts to stormwater management facilities on dry land (see Subsection I of §62.1-44.15:20 of the State Water Control Law).
9VAC25-210-130	VWP General Permits	Added the new limitation to the Board's authority to issue general permits for construction of certain

Current section number	Current requirement	Proposed change and rationale
		natural gas pipelines (see Subdivision D.2 of §62.1-44.15:21 of the State Water Control Law).
9VAC25-670-30	Authorization to Impact Surface Waters	Clarified that the §401 coverage requirements of Subsection E are not applicable if coverage under the general permit is not allowed (see Subdivision D.2 and Subsection J of §62.1-44.15:21 of the State Water Control Law).
9VAC25-670-40	Exceptions to coverage.	Added an exception to coverage under the VWP general permit as Subdivision F.8. This new subdivision incorporates the limitation on the Board's authority to issue general permits for construction of certain natural gas transmission pipelines (see Subdivision D.2 of §62.1-44.15:21 of the State Water Control Law).
9VAC25-690-30	Authorization to Impact Surface Waters	Clarified that the §401 coverage requirements of Subsection E are not applicable if coverage under the general permit is not allowed (see Subdivision D.2 and Subsection J of §62.1-44.15:21 of the State Water Control Law).
9VAC25-690-40	Exceptions to Coverage	Added an exception to coverage under the VWP general permit as Subdivision G.16. This new subdivision incorporates the limitation on the Board's authority to issue general permits for construction of certain natural gas transmission pipelines (see Subdivision D.2 of §62.1-44.15:21 of the State Water Control Law).

**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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.*

This regulatory amendment is necessary in order to conform the VWP state regulations to changes in Virginia statutory law by the 2018 General Assembly. If these changes are not made, the regulations will not adhere to the State Water Control Law. Please note the changes in this regulatory action, for the most part, only effect the construction of certain natural gas pipelines that are over 36 inches in diameter.