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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>	9VAC25-870
<b>Regulation title(s)</b>	Virginia Stormwater Management Program (VSMP) Regulation
<b>Action title</b>	<b><i>Amendment to the Virginia Stormwater Management Regulation (9VAC25-870) to meet changes made during the 2018 General Assembly Session.</i></b>
<b>Final agency action date</b>	September 20, 2018
<b>Date this document prepared</b>	July 20, 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 17 (2014) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

The intent of this final regulatory action is to amend language in the regulation (9VAC25-870 Virginia Stormwater Management Program (VSMP) Regulation) to reflect the changes made to the Code of Virginia by the 2018 General Assembly through Chapters 154, 155, and 630 of the 2018 Acts of Assembly as follows:

Chapter 154 (House Bill 1307) authorizes any rural Tidewater locality, as defined in the Stormwater Management Act, to adopt a tiered approach based on the percentage of impervious cover in the watershed to manage water quantity for land-disturbing activities that disturb an area of 2,500 square feet or more but less than one acre to comply with the water quantity technical criteria in § 62.1-44.15:27 of the Stormwater Management Act and attendant regulations.

Chapter 155 (House Bill 1308 authorizes for land-disturbing activities that disturb 2,500 square feet or more but less than one acre of land that a rural Tidewater locality may 1) require a licensed professional retained by the applicant to submit a set of plans and supporting calculations that bear a certification and are signed and sealed by the licensed professional; and 2) accept such plans in satisfaction of the local plan review requirements.

Chapter 630 (Senate Bill 741) requires a Virginia Stormwater Management Program Authority (VSMP authority) to recommend that the Department of Environmental Quality terminate coverage under a General Permit for Discharges of Stormwater from Construction Activities within 60 days of receiving a complete notice of termination from the operator of the construction activity. The bill 1) provides that such permit coverage shall be deemed terminated 90 days after the receipt by the VSMP authority of a complete notice of termination, and 2) requires any VSMP authority receiving incomplete notice to inform the operator within a reasonable time and provide a detailed list of the missing elements.

This action is exempt from Article 2 of the *Administrative Process Act*.

### 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.*

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VSMP – Virginia Stormwater Management Program

### 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.*

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The State Water Control Board adopted the amendments at its meeting on September 20, 2018. In accordance with § 2.2-4006 B the Board will receive, consider and respond to petitions by any person at any time with respect to reconsideration of this regulation.

### 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.*

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No impact on the institution of the family and family stability is anticipated as a result of this regulatory action.

**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	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC25-870-10			<p><u>"Rural Tidewater locality" means any locality that is (i) subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and (ii) eligible to join the Rural Coastal Virginia Community Enhancement Authority established by Chapter 76 (§ 15.2-7600 et seq.) of Title 15.2.</u></p> <p><u>"Water quantity technical criteria" means standards that establish minimum design criteria for measures to control localized flooding and stream channel erosion.</u></p>
9VAC25-870-51 B 7			<p><u>7. Channel protection and flood protection shall be achieved in accordance with 9VAC25-870-66 or as permitted by subsection B of 9VAC25-870-52.</u></p>
--	9VAC25-870-52		<p><u>A. Acceptance of signed and sealed plans in lieu of local plan review. In lieu of a local plan review or retaining a local certified plan reviewer, a rural Tidewater locality may accept plans and supporting calculations for erosion and sediment control and stormwater management for any land disturbing activity equal to or greater than 2,500 square feet but less than one acre if the following criteria are met:</u></p> <p><u>1. The plans are prepared and submitted by a professional licensed to engage in practice in the Commonwealth under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 and shall hold a certificate of competence in the appropriate subject area, as provided in § 62.1 - 44.15:30; and</u></p> <p><u>2. The plan and supporting calculations are appropriately signed and sealed by the professional with a certification that states: "This plan is designed in accordance with applicable state law and regulations."</u></p> <p><u>B. Tiered approach to water quantity technical criteria compliance.</u></p> <p><u>1. A rural Tidewater locality may adopt the following tiered approach to water quantity management based on the percent impervious cover of the watershed in accordance with this subsection for land disturbing activities that disturb an area of 2,500 square feet or more but less than one acre:</u></p> <p><u>a. Less than five (5) percent impervious cover: apply the Virginia Erosion and Sediment Control Regulation Minimum Standard 19 in effect prior</u></p>

		<p><u>to July 1, 2014 adopted by the Board pursuant to Article 2.4 (62.1-44.15:51 et seq.), for the protection of downstream properties and waterways from sediment deposition, erosion, and damage due to increases in volume, velocity, and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour duration.</u></p> <p><u>b. Five (5) percent or more impervious cover but less than 7.5 percent: detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm, which practices shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.</u></p> <p><u>c. Seven and one-half (7.5) percent impervious cover or more: apply the water quantity technical criteria in accordance with 9VAC25-870-66.</u></p> <p><u>2. The establishment and conduct of the tiered approach by the locality pursuant to this section shall be subject to review by the Department.</u></p> <p><u>3. Prior to the adoption and implementation of the tiered approach to water quantity management, the local governing body shall:</u></p> <p><u>a. Develop a watershed map that includes the following:</u></p> <p><u>(1) The boundaries of the locality and each watershed located partially or wholly within the locality based on the most recent version of Virginia's 6th order National Watershed Boundary Dataset;</u></p> <p><u>(2) The percentage of impervious cover within each watershed. Data provided by the Virginia Geographic Information Network (VGIN) shall be sufficient for the initial determination of impervious cover percentage at the time of the initial adoption of the map; and</u></p> <p><u>(3) The locations at which the governing body expects or proposes that development should occur and may indicate the projected future percentage of impervious cover based on proposed development. The governing body may designate certain areas within a watershed in which it proposes that denser-than-average development shall occur and may designate environmentally sensitive areas in which the water quantity technical criteria in 9VAC25-870-66 shall apply.</u></p> <p><u>b. After the watershed map has been developed, the governing body may then approve and adopt the map by a majority vote of its membership and publish it as the official watershed map of the locality. No official watershed map shall be adopted by the governing body or have any effect until it is approved by an ordinance duly passed by the governing body of the locality after a public hearing, preceded by public notice as required by § 15.2-2204. Within 30 days after adoption of the official watershed map, the governing body shall file the watershed map in the office of the clerk of the circuit court.</u></p>
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<p>9VAC25-870-66 A</p>			<p>Channel protection and flood protection shall be addressed in accordance with the minimum standards set out in this section, which are established pursuant to the requirements of § 62.1-44.15:28 of the Code of Virginia, <u>or as permitted in accordance with § 62.1-44.15:27.2.</u> Nothing in this section shall prohibit a locality's VSMP authority from establishing a more stringent standard in accordance with § 62.1-44.15:33 of the Code of Virginia especially where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters. Compliance with the minimum standards set out in this section shall be deemed to satisfy the requirements of subdivision 19 of 9VAC25-840-40 (Minimum standards; Virginia Erosion and Sediment Control Regulations).</p>

9VAC25-970-103 A 3 b			b. Plan review requirements in 9VAC25-870-108 with the exception of subsection D of 9VAC25-870-108 <u>or as allowed in subsection A of 9VAC25-870-52;</u>
9VAC25-870-148 C			<p>C. <u>Notice of termination of general permit coverage.</u></p> <p>1. <u>A VSMP authority shall recommend that the Department terminate coverage under a General Permit for Discharges of Stormwater from Construction Activities (Construction General Permit) within 60 days of receiving a complete notice of termination from the operator of the construction activity.</u></p> <p>2. <u>Coverage under a Construction General Permit shall be deemed to be terminated 90 days after the receipt by the VSMP authority of a complete notice of termination from the operator of the construction activity.</u></p> <p>3. <u>If a VSMP authority receives a notice of termination of a Construction General Permit that it determines to be incomplete, the VSMP authority shall, within a reasonable time, inform the operator of the construction activity of such incompleteness and provide the operator with a detailed list itemizing the elements of information that are missing from the notice.</u></p>
Documents Incorporated by Reference (9VAC25-870)			<u>Virginia Erosion and Sediment Control Regulation Minimum Standard 19 in effect prior to July 1, 2014</u>

These revisions reflect the changes made to the Code of Virginia by the 2018 General Assembly through House Bill 1301 – Virginia Acts of Assembly Chapter 154, House Bill 1308 – Virginia Acts of Assembly Chapter 155 and Senate Bill 741 – Virginia Acts of Assembly Chapter 630.

### 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.*

No alternative regulatory methods were available to accommodate this statutory change.