

TENTATIVE AGENDA
STATE WATER CONTROL BOARD MEETING

THURSDAY MARCH 27, 2025

IN PERSON ONLY - Bank of America Building 3rd floor conference room,
1111 E. Main Street, Richmond, VA 23219

Convene – 10:00 A.M

Agenda Item	Presenter	Tab
Minutes (December 4, 2024)	Porterfield	A pg 5
Final Regulations Sewage Collection and Treatment Regulations (9VAC25-790)- Amendment to include a reporting requirement for all septic systems taken off-line and connected to sewerage systems	Galli	B pg 18
Water Quality Standards (9VAC-25-260) - Rulemaking to adopt site specific selenium aquatic life criteria for four streams which are tributaries to Knox Creek in Buchanan County	Robertson	C pg 41
9VAC25-210 Virginia Water Protection Permit Regulation, 9VAC25-610 Ground Water Withdrawal Regulations - Amendments Establishing Criteria for Water Auditing Plans and Leak Detection and Repair Plans and Requiring Applications to Include Plans (required by Chapter 100 of the 2021 Special Session I Acts of Assembly)	Seavey	D pg 79
Fast Track Virginia Erosion and Stormwater Management Regulation (9VAC- 25-875) - Technical corrections	Rochet	E pg 146
Proposed Regulations Virginia Erosion and Stormwater Management Regulation (9VAC- 25-875) - change the statewide permit fee schedule in accordance with Chapter 2 of the 2024 Special Session I Acts of Assembly	Rochet	F pg 199
Other Business Report to the Board Regarding Controversial Permits- <ul style="list-style-type: none"> • Synagro Central LLC – Westmoreland County -VPA00835 • Synagro Central LLC – Essex County - VPA00831 • Surface Water Withdrawal Permit issuance, Caroline County VWP No. 20-0514 	Thomas	

Agenda Item	Presenter	Tab
Mountain Valley Pipeline - Update Future Meeting date- to be determined Public Forum (<i>time not to exceed 45 minutes- no public comment on agenda items or pending regulatory actions during public forum</i>)	Davenport Porterfield	

ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions on the latest status of the agenda should be directed to Melissa S. Porterfield at (804) 698-4238.

PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions made by the Department of Environmental Quality (Department). These procedures establish the times for the public to provide appropriate comment to the Board for regulatory action and the Department for case decisions for consideration.

For **REGULATORY ACTIONS** (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For **CASE DECISIONS** (e.g., issuance and amendment of permits and enforcement orders), the Board adopts public participation procedures in the individual regulations which establish the permit programs. (Note: as of July 1, 2022, the Department takes final action on all case decisions.) As a general rule, public comment is accepted on a draft permit for a period of 30 days. In some cases a public hearing is held at the conclusion of the public comment period on a draft permit. In other cases there may be an additional comment period during which a public hearing is held, usually 45 days.

In light of these established procedures, the Board accepts public comment on regulatory actions as well as general comments, at Board meetings in accordance with the following:

REGULATORY ACTIONS: Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes

to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Also, public comment will be accepted for certain final exempt actions where there has been no public comment period. Persons are allowed up to 3 minutes to address the Board on the emergency regulation and final exempt actions under consideration.

POOLING MINUTES ON REGULATORY ACTIONS: Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

NEW INFORMATION ON A REGULATORY ACTION will not be accepted at the meeting. The Board expects comments and information on a regulatory action to be submitted during the established public comment periods. However, the Board recognizes that in rare instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. Should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda or pending regulatory actions. Those persons wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less. Note, there is no pooling of minutes during the public forum.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Melissa S. Porterfield, Policy Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4238, e-mail: Melissa.porterfield@deq.virginia.gov

Additional Meeting Information:

- No food or beverages allowed in meeting space.
- Attendees may not erect any signage inside or outside the meeting room or building.
- Attendees are not entitled to be disorderly or disrupt the meeting from proceeding in an orderly, efficient, and effective fashion. Disruptive behavior may result in a recess or removal from the meeting.
- Possession or use of any device that may disrupt the conduct of business is prohibited, including but not limited to: voice-amplification equipment; bullhorns; blow horns;

sirens, or other noise-producing devices; as well as signs on sticks, poles or stakes; or helium-filled balloons.

- All attendees are asked to be respectful of all speakers.
- Rules will be enforced fairly and impartially not only to ensure the efficient and effective conduct of business, but also to ensure no interference with the business of the complex, its employees and guests.
- Attendees wishing to record the proceedings are welcome to do so; however, you may not interfere with the business of the meeting, nor impede the view or participation of other meeting attendees and staff.
- No smoking is allowed unless in a designated outside space. This includes tobacco & e-cigarettes.
- No alcohol, fireworks, pyrotechnics, weapons, or any substances/items controlled by law are allowed.
- No firearms are allowed in the State's contracted spaces except for firearms carried by law-enforcement officers or authorized security personnel.
- All violators may be subject to removal from the meeting facility.
- Anyone removed from the facility may not reenter.
- Anyone who fails to comply with removal may be charged with trespass.

TAB A



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

www.deq.virginia.gov

Stefanie K. Taillon
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director

MEMORANDUM

To: Members of the State Water Control Board

From : Melissa S. Porterfield

A handwritten signature in blue ink, appearing to read "M. Porterfield", written over the printed name.

Date: March 3, 2025

Subject: Minutes

Attached are the minutes from your meeting on December 4, 2024. Staff will seek your approval of the minutes at your next meeting.

If you have any questions, please contact me at (804) 698-4238 or melissa.porterfield@deq.virginia.gov.



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STATE WATER CONTROL BOARD MEETING

General Assembly Building, House South Subcommittee Room, Second Floor
201 North 9th Street, Richmond, VA 23219

WEDNESDAY DECEMBER 4, 2024

Board Members Present:

Lou Ann Jessee-Wallace, Chair
Scott Cameron, Vice-chair
Tommy Branin
Robert Dunn
Jerry Kilgore
Steve Yob

Board Members Absent:

Michelle Johnson

Department of Environmental Quality:

Michael Rolband, Director
Melissa Porterfield
Jill Hrynciw

Office of the Attorney General:

Ross Phillips, Assistant Attorney General/Chief

1. The attached minutes summarize activities that took place at this Board Meeting.
2. The meeting convened at 10:04 a.m. and adjourned at 11:04 a.m.



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD
AT ITS MEETING ON DECEMBER 4, 2024**

Minute No. 1- Approval of Minutes

The Board approved the minutes of the meeting held September 16, 2024, by a vote of (6-0).

A handwritten signature in blue ink, appearing to read "M. Porterfield", written over a horizontal blue line.

Melissa S. Porterfield



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EXCERPT FROM THE PROCEEDINGS OF THE STATE
WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 4, 2024

MINUTE NO. 2 – Virginia Pollutant Discharge Elimination System General Permit Regulation for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day (9VAC25-110)

Prior to the meeting the Board was provided materials including a briefing memo which included a list of the technical advisory committee membership, the regulation showing proposed amendments, and the town hall agency background document. Peter Sherman from the Office of VPDES Permits presented a summary of the significant proposed changes to the regulation.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously (6-0, Branin, Cameron, Dunn, Kilgore, Wallace, and Yob) to approve the staff recommendation to authorize a public comment period and public hearing for amendment and reissuance of the VPDES General Permit Regulation for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day (9VAC25-110), and to authorize the staff to serve as hearing officer for the public hearing.

A handwritten signature in blue ink, appearing to read "Scott Morris".

**Scott Morris,
Director, Water Division**



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EXCERPT FROM THE PROCEEDINGS OF THE STATE
WATER CONTROL BOARD AT ITS MEETING ON December 4, 2024

MINUTE NO. 3 – Reissuance of Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities 9VAC25-115

Prior to the meeting the Board was provided materials including a briefing memo which included a list of the technical advisory committee membership, the regulation showing proposed amendments, and the town hall agency background document. Azra Bilalagic from the Office of VPDES Permits, Central Office, presented a summary of the significant proposed changes to the regulation.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously (6-0, Branin, Cameron, Dunn, Kilgore, Wallace, and Yob) to approve the staff recommendation to authorize a public comment period and public hearing for amendment and reissuance of the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities (9VAC25-115), and to authorize the staff to serve as hearing officer for the public hearing.

A handwritten signature in blue ink, appearing to read "Scott Morris".

Scott Morris
Director, Water Division



Commonwealth of Virginia

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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER
CONTROL BOARD AT ITS MEETING ON DECEMBER 4, 2024**

**MINUTE NO. 4 – Petition for Rulemaking – New Regulatory Rulemaking on Ocean-class
Passenger Cruise Ships**

Joseph Bryan, VPDES Permits Supervisor, Office of VPDES Permits, presented a Petition for a New Regulatory Rulemaking on Ocean-class Passenger Cruise Ships

Prior to the meeting the Board was provided materials including a briefing memo which contained a copy of the petition and a summary of comments received during the petition comment period. The Board was presented an overview of the petition, a summary of comments received, and a discussion of the applicability of federal and state laws and regulations.

Board Decision:

Based on the briefing material and the staff presentation, the Board voted unanimously (6-0, Branin, Cameron, Dunn, Kilgore, Wallace, and Yob) to not initiate a rulemaking in response to the petition.

A handwritten signature in blue ink, appearing to read "Scott Morris".

Scott Morris
Director, Water Division



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EXCERPT FROM THE PROCEEDINGS OF THE STATE
WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 4, 2024

MINUTE NO. 5 – FY 2025 VCWRLF Loan Authorizations

Ms. Kelly Ward, Deputy Director of the Department's Clean Water Financing and Assistance Program (the Program) made a presentation to the Board based on a memorandum dated October 31, 2024. The memorandum identified the loan amounts, terms, and interest rates for 17 projects being recommended by staff for FY 2025 Virginia Clean Water Revolving Loan Fund (the Fund) assistance.

Ms. Ward began her presentation by summarizing the FY 2025 application process for 17 projects targeted for a total of \$180,608,890 in assistance from the Fund. She explained that staff had completed its user charge impact analyses for the targeted recipients in order to establish the interest rates in accordance with Board guidelines. She stated that a public meeting on the proposed funding list was not held but the list was posted to Town Hall and no comments were received.

Ms. Ward explained that all the interest rate analyses have been finalized in accordance with the Board approved guidelines and the resulting recommendations were included in the memorandum to the Board. As approved by the Board in previous years, staff recommended revisions to the program rates and term options offered to borrowers whose project type and impact to user rates resulted in a program rate based on the Board's Guidelines. Based on consultation with the Virginia Resources Authority (VRA), she stated that the staff was recommending that the program rate calculation vary depending on the term of the loan for wastewater projects.

Staff Recommendation

Authorize the execution of loan agreements for the projects, loan amounts, interest rates and terms listed below, and that 20-year term program rates are set at 1.5% (150 basis points) below market, 25-year term program rates are 1.25% (125 basis points) below market, and 30-year term program rates are 1.00% (100 basis points) below market, based on VRA's evaluation of the market conditions that exist about a month prior to each loan closing. The interest rate for Southwest Virginia Pilot Program construction projects would be 0%, the hardship interest rate will be 0.5%, and the minimum interest rate would be 1% for all other loans. Loan closings would be subject to receipt of a favorable financial capability analysis report and supporting recommendation from VRA for each loan recipient.

FY 2025 Proposed Interest Rates and Loan Term Authorizations		
<i>Applicant</i>	<i>Loan Amount</i>	<i>Rates and Loan</i>
BVU Authority	\$5,000,000	PR up to 30 years
City of Lynchburg	\$54,100,000	0.5% up to 25 years
Russell County Public Service	\$5,691,177	PR up to 25 years
City of Chesapeake	\$17,928,123	PR up to 30 years
City of Danville	\$15,300,000	PR up to 25 years
Town of Pennington Gap	\$1,854,200	0% up to 30 years
Town of Honaker	\$2,729,900	0% up to 30 years
Lee County Public Service Authority	\$739,200	0.5% up to 30 years
Town of Narrows	\$1,540,400	PR up to 30 years
Town of Abingdon	\$3,125,000	PR up to 25 years
Maury Service Authority	\$4,830,000	PR up to 25 years
Prince William County Service	\$50,000,000	PR up to 25 years
Town of Blacksburg	\$12,000,000	PR up to 30 years
Town of Gate City - Sanitation	\$720,300	0% up to 30 years
Tazewell County Public Service	\$505,400	0.5% up to 20 years
Town of Blacksburg	\$1,500,000	PR up to 30 years
Washington County Service Authority	\$3,045,190	PR up to 25 years
TOTAL \$180,608,890		
PR = Program Rate *minimum 1%		

Conflict of Interest Act Disclosure

Board member Lou Wallace submitted to DEQ staff a signed transactional disclosure statement pursuant to the Virginia State and Local Government Conflict of Interests Act before participating in/voting on this agenda item. She indicated she has a personal interest affected by the transactions being considered because of her employment on the Russell County Board of Supervisors.

Russell County, like other Virginia localities, is served by a Public Service Authority being considered for a loan from DEQ’s Clean Water Revolving Loan Fund. Pursuant to Va. Code § 2.2-3112(b)(1), I am a member of a business, profession, or occupation, or group of three or more persons which are affected by this transaction.

She indicated she was able to participate in this agenda item fairly, objectively, and in the public interest.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously (6-0, Branin, Cameron, Dunn, Kilgore, Wallace, and Yob) to approve the staff recommendation.

**Scott Morris,
Director, Water Division**



Commonwealth of Virginia

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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT
ITS MEETING ON DECEMBER 4, 2024**

Minute No. 6- Report to the Board Regarding Controversial Permits - AdvanSix Resins and Chemicals LLC - Hopewell Virginia; Virginia Pollutant Discharge Elimination System Permit - VA0005291 and Surface Water Withdrawal Permit issuance, Caroline County VWP No. 20-0514

In accordance with § 10.1-1184.1.B of the Code of Virginia, Dr. Scott Morris provided the Controversial Permit Report to the Board. The report included that the VA0005291 permit had been issued on December 1, 2024 and that action for VWP No. 20-0514 had been suspended until additional information was received from the applicant. The Board was provided the opportunity to respond to the Department's presentation and provide commentary regarding the permits.

A handwritten signature in blue ink, appearing to read "Scott Morris".

Scott Morris
Director, Water Division



Commonwealth of Virginia

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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD
AT ITS MEETING ON DECEMBER 4, 2024**

Minute No. 7: Mountain Valley Pipeline – Update

Ms. Davenport presented an update on the status of the project. She reported that ongoing activity for this quarter involves regrading/restoring the right-of-way, installation of permanent stormwater controls and demobilization of equipment storage yards and temporary work areas. She also provided an overview of the compliance activities and stipulated penalties for the period of September 16, 2024 through December 1, 2024.

A handwritten signature in blue ink that reads "Melanie D. Davenport".

Melanie D. Davenport



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT
ITS MEETING ON DECEMBER 4, 2024**

Minute No. 8- Future Meeting Date

No future meeting dates for the Board were confirmed at this meeting.

A handwritten signature in blue ink, appearing to read "M. Porterfield".

Melissa S. Porterfield



Commonwealth of Virginia

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Director

**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT
ITS MEETING ON SEPTEMBER 16, 2024**

Minute No. 9- Public Forum

Jessica Simms, Appalachian Voices, spoke to Board during the public forum concerning the Southgate extension pipeline project and revisions that are planned for that project.

A handwritten signature in blue ink, appearing to read "M. Porterfield".

Melissa S. Porterfield

TAB B



Commonwealth of Virginia


VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Stefanie K. Taillon
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director

MEMORANDUM

TO: State Water Control Board Members
FROM: Bryant Thomas, Acting Director, Water Division 
DATE: February 25, 2025
SUBJECT: Final Stage - Amendment to Sewage Collection and Treatment Regulations (9VAC25-790)

At the March 27, 2025, meeting of the State Water Control Board (Board), the Board will consider the approval of a final amendment to the Sewage Collection and Treatment Regulations (9VAC25-790). The amendment was developed in response to the Commonwealth of Virginia Chesapeake Bay Phase III Watershed Implementation Plan (WIP III), which was completed in August 2019, to achieve nutrient and sediment reduction needed to restore the Chesapeake Bay and its tributaries.

Background

WIP III Initiative 53, *Require reporting of sewer connections by wastewater utilities*, requires the amendment of the existing Sewage Collection and Treatment Regulations (9VAC25-790-10 et seq.) to include a reporting requirement for all septic systems (or other on-site sewage disposal systems) taken off-line and connected to sewage collection systems. The requirement will ensure a more accurate count of nutrient reductions resulting from septic connected to sewer.

A Notice of Intended Regulatory Action (NOIRA) for the amendment was issued on September 11, 2023, and was intended to end on October 11, 2023. The public comment period was extended to December 6, 2023, due to issues related to a Department of Environmental Quality (DEQ) staff member's email address not accepting incoming emails for a portion of the comment period that ended on October 11, 2023. Even with the extended public comment period, no public comments were received. The DEQ Director appointed a Regulatory Advisory Panel (RAP), comprised of 7 individual members who represented 7 stakeholder groups (Attachment A). The RAP met a total of two times before concluding business on April 12, 2024.

Proposed Amendment

The proposed amendment adds a new regulatory section (section 985) to collect information on the number of onsite sewage systems taken offline and connected to sewerage systems that convey sewage to a sewage treatment works. This requirement will ensure a more accurate count of nutrient reductions resulting from septic systems connected to sewer. This will assist in tracking the Commonwealth's water quality goals, including Chesapeake Bay water restoration goals. This requirement is directly mandated by the Commonwealth's Chesapeake Bay TMDL Phase III WIP. Initiative 53 provides that "the Commonwealth will initiate a regulatory action to amend the existing Sewage Collection and Treatment Regulations (9VAC25-790-10 et seq.) to include a reporting requirement for all septic systems (or other on-site sewage disposal systems) taken off-line permanently and connected to sewerage systems that convey sewage to their facility."

Public Comment

The proposed amendment was made available for public comment on October 21, 2024 through December 20, 2024. One comment was received. Comments and responses are summarized in the Town Hall Agency Background Document (Attachment B).

Changes Since the Proposed Stage

The following changes have been made to the amendment since proposed:

- A deadline for first reporting requirement (February 1) was added to improve clarity of when the reporting requirement would go into effect. The year 2027 has been specified as the starting date for the requirement.
- The term "permanently" was added. To provide more clarity for the reporting requirement the term "permanently" was added to clarify that the reporting requirement is applicable to systems taken offline permanently.

Attorney General Certification

The Office of the Attorney General will be sent the regulation for certification of authority to adopt the amendments.

Staff Recommendation

Staff recommend that the State Water Control Board adopt the amendment to the Sewage Collection and Treatment Regulation (9VAC25-790) as a final regulation.

Presenter Contact Information

Name: Laura Galli, Office of VPDES Permits

Phone: (804) 573-5674

Email: laura.galli@deq.virginia.gov

Attachments

Attachment A: Regulatory Advisory Panel Membership

Attachment B: Agency Background Document – TH-03 Form

Attachment C: Final Amendment to the Sewage Collection and Treatment Regulation (9VAC25-790)

Attachment D: Office of Regulatory Management Economic Review Form

Regulatory Advisory Panel for the amendment to the Sewage Collection and Treatment Regulations (9VAC25-790):

<p>Ann Zimmerman Loudoun Water 42400 Clearwater Glen Circle Leesburg, VA 20175 (571) 291-7841 amzimmerman@loudounwater.org</p> <p>Alternate: Jennifer Kaberline (571) 291-7736 jakaberline@loudounwater.org</p>	<p>Kevin Parker Hampton Roads Sanitation District (HRSD) 1460 Air Rail Avenue Virginia Beach, Va 23455 (757) 460-4244 kparker@hrsd.com</p>
<p>Pamela Pruett Environmental Systems Consulting P.O. Box 574 Warrenton, VA 20188 (540) 272-3892 PamelaMPruett@outlook.com</p>	<p>Adrian Joye Fairfax County Health Department 10777 Main Street Fairfax, VA 22030 (703) 246-8614 Adrian.joye@fairfaxcounty.gov</p>
<p>Timothy Castillo Amherst County Service Authority 113 Phelps Road/ P.O. Box 100 Madison Heights, VA 24572 (434) 845-1605 tcastillo@acsava.com</p>	<p>Steven P. Herzog Hanover County Department of Public Utilities PO Box 470 Hanover, Virginia 23069 804-365-6022 spherzog@hanovercounty.gov</p>
<p>Jeffrey Stiff Dinwiddie County Water Authority P. O. Box 100 Sutherland, VA 23885 804-861-1012 jstiff@dcwa.org</p>	
<p>DEQ Staff: Erica Duncan – CO VPDES Joseph Bryan – CO VPDES Laura Galli – CO VPDEES</p>	<p>DEQ Staff Technical Liaisons:</p>



townhall.virginia.gov

Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-790
VAC Chapter title(s)	Sewage Collection and Treatment Regulations
Action title	Amend Sewage Collection and Treatment Regulations to include a reporting requirement for all septic systems taken offline and connected to sewerage systems
Date this document prepared	February 11, 2025

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

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.

The Sewage Collection and Treatment Regulations (SCAT) (9VAC25-790) regulate sewerage systems and treatment works.

The intent of this regulatory actions is to determine how many septic systems (or other onsite sewage disposal systems) in the Chesapeake Bay watershed are taken off-line and connected to a sewage treatment works that serves the locality. The data will be used to understand and quantify reductions in nutrient loads and pollution that impact water quality in the Chesapeake Bay.

In July 2018, the Environmental Protection Agency (EPA) issued State-Basin Planning targets for nitrogen and phosphorus in Virginia’s five river basins draining to the Chesapeake Bay. The Chesapeake Bay TMDL Phase III Watershed Implementation Plan (WIP) represents the Commonwealth’s plan to achieve nutrient and sediment reductions needed to restore the Chesapeake Bay and its tidal tributaries.

Watershed Implementation Plans are roadmaps for how the seven jurisdictions (Delaware, the District of Columbia, Maryland, New York, Pennsylvania, Virginia, and West Virginia) in the Chesapeake Bay Program (CBP) will attain the Chesapeake Bay TMDL. The Bay TMDL is an informal planning tool used to establish CBP goals. WIPs were agreed to be developed and implemented in three phases, with the EPA agreeing to provide an assessment of the WIP. The EPA does not provide an approval or disapproval of a WIP.

Amending the SCAT Regulations will ensure a more accurate count of nutrient reductions that result from directing sewage from individual septic systems and other onsite sewage disposal systems to a centralized sewage treatment works. Sewage treatment works have been upgraded to improve nutrient removal capability and are subject to discharge limitations through the Department of Environmental Quality’s (Department) Virginia Pollutant Discharge Elimination System (VPDES) permit program. Information about the number of septic systems that are no longer used to treat and dispose of sewage will assist with tracking the Commonwealth’s progress towards water quality goals, including Chesapeake Bay watershed restoration goals, thus helping to certify that Virginia is meeting its reduction goals.

The requirement to amend the SCAT regulations is directly mandated by the Commonwealth’s Chesapeake Bay TMDL Phase III WIP. Initiative 53 provides that “the Commonwealth will initiate a regulatory action to amend the existing Sewage Collection and Treatment Regulations (9VAC25-790-10 et seq.) to include a reporting requirement for all septic systems (or other onsite sewage disposal systems) taken offline and connected to sewage collection systems.”

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

- Board – State Water Control Board
- Agency or Department – Department of Environmental Quality
- CBP – Chesapeake Bay Program
- EPA – Environmental Protection Agency
- Initiative 53 – The Commonwealth’s Chesapeake Bay TMDL Phase III WIP
- NOIRA – Notice of Intended Regulatory Action
- SCAT – Sewage Collection and Treatment Regulations, 9VAC25-790
- TMDL – Total Maximum Daily Load
- VDH – Virginia Department of Health
- VPDES – Virginia Pollutant Discharge Elimination System
- WIP – Watershed Implementation Plan

Statement of Final Agency Action

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.

On March 27, 2025, the State Water Control Board adopted 9VAC25-790 Sewage Collection and Treatment Regulations as a final regulation.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to previously reported information.

The Commonwealth's Chesapeake Bay TMDL Phase III WIP (Initiative 53) requires reporting of sewer connections by wastewater utilities. Initiative 53 provides that "[t]he Commonwealth will initiate a regulatory action to amend the existing Sewage Collection and Treatment Regulations (9VAC25-790-10 et seq.) to include a reporting requirement for all septic systems (or other onsite sewage disposal systems) taken off-line and connected to sewage collection systems. This requirement will ensure a more accurate count of nutrient reductions resulting from septic systems connected to sewer."

Legal Basis

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

The State Water Control Board adopted the Sewage Collection and Treatment Regulations under the authority provided by § 62.1-44.15 of the Code of Virginia. Additionally, § 62.1-44.19 of the Code of Virginia requires that "before an owner may erect, construct, open, expand, or operate a sewerage system or sewage treatment works which will have a potential discharge or actual discharge to state waters, such owner shall file with the Board an application for a certificate in scope and detail satisfactory to the Board."

Purpose

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 is intended to solve.

This regulatory action is essential to protecting the water quality in the Commonwealth of Virginia, which is essential to the health, safety, and welfare of Virginia's citizens and is needed in order to establish appropriate and necessary reporting requirements for all septic systems (or other onsite sewage disposal systems) located in the Chesapeake Bay Watershed that are taken offline and connected to sewage collection systems. Additionally, this action is essential in supporting the Commonwealth's Chesapeake Bay TMDL Phase III WIP. The addition of this reporting requirement will ensure a more accurate count of nutrient reductions resulting from septic systems connected to sewer, which will assist with tracking the Commonwealth's progress towards water quality goals, including Chesapeake Bay watershed restoration goals.

Substance

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.

The substance of this action is to amend the Sewage Collection and Treatment Regulations (9VAC25-790) to include a requirement for permitted sewage treatment works located within the Chesapeake Bay Watershed to report all septic systems (or other onsite sewage disposal systems) taken offline permanently and connected to sewerage systems. This requirement will ensure a more accurate count of nutrient reductions resulting from septic systems connected to sewer, which will assist with tracking the Commonwealth’s progress towards water quality goals, including Chesapeake Bay watershed restoration goals.

Issues

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.

There are no changes to previously reported information.

The Sewage Collection and Treatment Regulations (9VAC25-790) do not currently contain any reporting requirements regarding onsite sewage systems taken off-line and connected to public sewerage systems.

The primary advantage of the proposed regulatory action is the implementation of a reporting requirement for all septic systems (or other onsite sewage disposal systems) located within the Chesapeake Bay watershed taken offline and connected to sewerage collection systems. Including this requirement would provide the Department with more accurate information to track water quality goals. The regulation includes language to limit the requirement to the best of the permittee’s knowledge, thus the implementation of this requirement can largely be accomplished using existing resources and will impose a minimal financial burden. This will aid in protecting state water, while limiting both the time and resources required to gather the required data, as well as preventing the regulation from creating compliance issues or being punitive to permittees. This is an advantage for the public, the regulated community, and the Commonwealth. Potential disadvantages would be limited to an increase on staff resources.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to previously reported information.

The seven jurisdictions of the CBP partnership agreed to develop and implement WIPs in three phases to provide a framework for the goals and milestones necessary towards Chesapeake Bay restoration goals. This reporting requirement is directly mandated by the phase III WIP and is thus essential to complying with the CBP partnership.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to previously reported information.

Other State Agencies Particularly Affected

There are no other state agencies particularly affected by this regulatory action

Localities Particularly Affected

All counties, cities, and incorporated towns located within the Chesapeake Bay Watershed would be affected by this regulatory change, but none are expected to be particularly affected. If the proposed regulatory action is enacted the burden to track the data would be on the localities, and the burden to report the data to the department would be on the sewage treatment works.

Other Entities Particularly Affected

All permittees that are other entities would be affected by this regulatory change, but none are expected to be particularly affected. There are approximately 316 privately and publicly owned treatment works located within the Chesapeake Bay Watershed. If the proposed regulatory action is enacted these permittees would have to comply with the requirement to report the number of onsite sewage systems taken offline and connected to sewerage systems that convey sewage to their facility. It is expected that much of the impact could be absorbed by existing resources.

For purposes of "Locality Particularly Affected" under the Board's statutes

There is no locality particularly affected under the Board's Statutes.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency's response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

A public comment period was held from October 21, 2024, through December 20, 2024. Below is a summary of the comments received

Commenter	Comment	Agency response
Bruce A. Julian	I fully support the proposed regulation in order to track the progress that citizens, the private	Thank you for your comments on the proposed Amendment to the Sewage Collection and Treatment Regulations, 9VAC25-790-985

<p>sector and municipalities are making to understand and quantify reductions in nutrient loads and pollution that impact water quality in the Chesapeake Bay.</p> <p>It is very important to ensure a more accurate count of nutrient reductions resulting from septic systems connected to sewer and newly installed onsite wastewater treatment systems, not only to sewage treatment plants requiring NPDES permits.</p> <p>Presently, there is significant under-counting of nutrient reductions taking place. Therefore, the regulation should also be expanded to also include data/permits from the Virginia Department of Health and private septic system installers/contractors.</p> <p>Categories of septic systems taken offline/serviced:</p> <ul style="list-style-type: none"> • Connected to public WWTP's under NPDES permits • Connected to public WWTP's not governed by NPDES permits • Connected to private WWTP's under NPDES permits, including multi-family treatment systems and joint pumping stations • Connected to private WWTP's not governed by NPDES permits, including multi-family treatment systems • Gallons of septic pumpage hauled to approved treatment facilities <p>Further, is it vital that in addition to simply tallying the "number" of sewage systems taken offline, DEQ and VDH should know the exact locations/which watersheds/sub watersheds the improvements are occurring to</p>	<p>Onsite sewage systems connected to sewerage systems.</p> <p>DEQ appreciates your support for the proposed amendment, which will include a requirement for permitted sewage treatment works located within the Chesapeake Bay Watershed to report all septic systems (or other onsite sewage disposal systems) taken offline and connected to sewerage systems. The goal of this new regulatory requirement is to ensure a more accurate count of nutrient reductions resulting from septic systems connected to sewer, which will assist with tracking Commonwealth's progress towards water quality goals, including the Chesapeake Bay Watershed restoration goals.</p> <p>In response to your comments, please note that while the Virginia Department of Health has its own reporting requirements for onsite septic systems, such requirements are not under DEQ's purview or authority. In addition, please note that the amendment allows affected permittees and localities to collect and report additional information (such as the location of the onsite sewage systems connecting to sewerage system).</p> <p>This proposed amendment will aid in protecting state waters while limiting the time and resources needed to gather the data and preventing the regulation from creating compliance issues or being punitive to permittees.</p>
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	<p>measure/project/model water quality improvements.</p> <p>Thank you for fully considering my comments and recommendations. Should DEQ staff want to record the real progress being made in Lancaster County in the Carter Creek/Rappahannock River watershed, I would welcome the opportunity to host a field tour.</p>	
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Detail of Changes Made Since the Previous Stage

List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
NA	9VAC25-790-985	<p><u>On or before February 1, annually, every permitted sewage treatment works within the Chesapeake Bay Watershed shall report to the department, to the best of the permitted sewage treatment works' knowledge, the number of onsite sewage systems taken offline and connected to sewerage systems that convey sewage to the permitted sewage treatment works' facility during the previous calendar year.</u></p>	<p><u>On or before February 1, [2027 and] annually [thereafter] , every permitted sewage treatment works within the Chesapeake Bay Watershed shall report to the department, to the best of the permitted sewage treatment works' knowledge, the number of onsite sewage systems taken offline [permanently] and connected to sewerage systems that convey sewage to the permitted sewage treatment works' facility during the previous calendar year.</u></p>	<p>The change adds an initial reporting date. This improves clarity of when the reporting requirement would go into effect. The year 2027 has been specified as the starting date for the requirement.</p> <p>The term “permanently” was added to clarify that the reporting requirement is applicable to systems taken offline permanently.</p>

Detail of All Changes Proposed in this Regulatory Action

List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. ** Put an asterisk next to any substantive changes.*

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
	9VAC25-790-985	None	<p>Add section 985 “On or before February 1, [2027 and] annually [thereafter] , every permitted sewage treatment works within the Chesapeake Bay Watershed shall report to the department, to the best of the permitted sewage treatment works' knowledge, the number of onsite sewage systems taken offline [permanently] and connected to sewerage systems that convey sewage to the permitted sewage treatment works' facility during the previous calendar year</p> <p>This requirement will ensure a more accurate count of nutrient reductions resulting from septic systems connected to sewer. This will assist in tracking the Commonwealth’s water quality goals, including Chesapeake Bay water restoration goals. This requirement is directly mandated by the Commonwealth's Chesapeake Bay TMDL Phase III WIP. Initiative 53 provides that “the Commonwealth will initiate a regulatory action to amend the existing Sewage Collection and Treatment Regulations (9VAC25-790-10 et seq.) to include a reporting requirement for all septic systems (or other onsite sewage disposal systems) taken offline permanently and connected to sewerage systems that convey sewage to their facility.”</p>

			<p>To improve clarity of when the reporting requirement would go into effect the year 2027 has been specified as the starting date for the requirement.</p> <p>To provide more clarity for the reporting requirement the term “permanently” was added to clarify that the reporting requirement is applicable to systems taken offline permanently.</p>
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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.

As mandated by Initiative 53 of the Commonwealth’s TMDL Phase III WIP, the proposed regulation requires permitted sewage treatment works within the Chesapeake Bay Watershed to report the number of onsite sewage systems taken offline and connected to sewerage systems that convey sewage to their facility. State law does not provide an exemption for small business for this requirement. In developing the proposed regulation consideration was given to minimizing requirements for all permitted sewage treatment works, including small businesses. The Department anticipates that implementation of the requirement to report the number of onsite sewage systems taken offline permanently and connected to sewerage systems that convey sewage to their facility will have a minimal economic impact on individual small businesses.

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.

It is not expected that this regulation will have a direct impact on families.

1 **Project 7661 - Final**

2 **State Water Control Board**

3 **Amend Sewage Collection and Treatment Regulations to include a reporting requirement**
4 **for all septic systems taken off-line and connected to sewage collection systems - see**
5 **action summary concerning NOIRA comment period extension**

6 **9VAC25-790-985. Onsite sewage systems connected to sewerage systems.**

7 On or before February 1, [2027 and] annually [thereafter] , every permitted sewage
8 treatment works within the Chesapeake Bay Watershed shall report to the department, to the
9 best of the permitted sewage treatment works' knowledge, the number of onsite sewage
10 systems taken offline [permanently] and connected to sewerage systems that convey sewage
11 to the permitted sewage treatment works' facility during the previous calendar year.

Office of Regulatory Management
Economic Review Form

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-790
VAC Chapter title(s)	Sewage Collection and Treatment Regulations (9VAC25-790)
Action title	Amend Sewage Collection and Treatment Regulations to include a reporting requirement for all septic systems taken off-line and connected to sewerage systems
Date this document prepared	May 7, 2024
Regulatory Stage (including Issuance of Guidance Documents)	Final - There have been no changes made to the economic analysis since the previous stage of this action

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

<p>(1) Direct & Indirect Costs & Benefits (Monetized)</p>	<p>Background: The Sewage Collection and Treatment Regulations (9VAC25-790, SCAT Regulations) regulate sewerage systems and treatment works. The intent of this regulatory action is to determine how many septic systems (or other on-site sewage disposal systems) in the Chesapeake Bay watershed are taken off-line and the house, residence, or business is connected to a sewage treatment works that serves the locality. The data will be used to understand and quantify reductions in nutrient loads and pollution that impact water quality in the Chesapeake Bay.</p> <p>In July 2018, The Environmental Protection Agency (EPA) issued State-Basin Planning targets for nitrogen and phosphorus in Virginia’s five river basins draining to the Chesapeake Bay. The Chesapeake Bay TMDL Phase III Watershed Implementation Plan (WIP) represents the Commonwealth’s plan to achieve nutrient and sediment reductions needed to restore the Chesapeake Bay and its tidal tributaries.</p> <p>Watershed Implementation Plans are roadmaps for how the seven jurisdictions (Delaware, the District of Columbia, Maryland, New York, Pennsylvania, Virginia, and West Virginia) in the Chesapeake Bay Program (CBP) will attain the Chesapeake Bay TMDL. The Bay TMDL is an informal planning tool used to establish CBP goals. WIPs were agreed to be developed and implemented in three phases, with EPA agreeing to provide an assessment of the WIP. EPA does not provide an approval or disapproval of a WIP.</p> <p>Amending the SCAT Regulations will ensure a more accurate count of nutrient reductions that result from directing sewage from individual septic systems and other on-site sewage disposal systems to a centralized sewage treatment works. Sewage treatment works have been upgraded to improve nutrient removal capability and are subject to discharge limitations through the Department of Environmental Quality’s (Department) Virginia Pollutant Discharge Elimination System (VPDES) permit program. Information about the number of septic systems that are no longer used to treat and dispose of sewage will assist with tracking the Commonwealth’s progress towards water quality goals, including Chesapeake Bay watershed restoration goals, thus helping to certify that Virginia is meeting its reduction goals.</p> <p>The requirement to amend the SCAT Regulations is directly mandated by the Commonwealth’s Chesapeake Bay TMDL Phase III WIP.</p>
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	<p>Initiative 53 provides that “the Commonwealth will initiate a regulatory action to amend the existing Sewage Collection and Treatment Regulations (9VAC25-790-10 et seq.) to include a reporting requirement for all septic systems (or other on-site sewage disposal systems) taken off-line and connected to sewage collection systems.”</p> <p>Direct Costs: Unknown. However, it is expected to be minimal. Some permittees may already track and report this information to the Department and/or the Virginia Department of Health (VDH) (which regulates septic and onsite sewage systems). Other permittees may have staff who will gather and report the number of on-site sewage systems taken off-line and connected to sewerage systems that convey to their facility. Based upon input from members of the Regulatory Advisory Panel (RAP), implementing the requirement in the amendment will take a minimal amount of time (a few hours to one day in most cases) for staff to compile the data, rather than imposing a cost and associated financial burden on their operations. Members of the RAP expect the cost and burden to be minimal.</p> <p>Indirect Costs: Members of the RAP stated they would be able to absorb the minimal cost (staff time) of collecting and reporting the data required by this change. Consequently, this change would not result in any additional costs that would be passed on to ratepayers and there are not any indirect costs associated with the change.</p> <p>Direct Benefits: This proposal meets the mandate of the Commonwealth’s Chesapeake Bay TMDL Phase III WIP (Initiative 53.) The purpose for this mandate is to ensure a more accurate count of nutrient reductions resulting from septic systems connected to sewer, which will assist with tracking Commonwealth’s progress towards water quality goals, including Chesapeake Bay watershed restoration goals.</p> <p>Indirect Benefit: This proposal may indirectly benefit the Commonwealth by capturing more information on the overall reduction of nutrients to state waters. For owners of sewage treatment works and other local government officials, they will benefit from having better data about sewage disposal on individual properties and knowing which properties no longer use septic systems.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See above regarding direct costs. No indirect costs are expected due to the limited extent of the reporting requirement.	(b) See above regarding direct and indirect benefits.

(3) Net Monetized Benefit	Not Applicable
(4) Other Costs & Benefits (Non-Monetized)	
(5) Information Sources	DEQ procedures, staff, and RAP members

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	This information is not currently reported to the Department. Thus, there currently no costs or benefits.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable	(b) Not applicable
(3) Net Monetized Benefit	Not applicable	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	N/A	

Table 1c: Costs and Benefits under Alternative Approach(es)

(1) Direct & Indirect Costs & Benefits (Monetized)	The Commonwealth’s Chesapeake Bay TMDL Phase III WIP (Initiative 53) requires that “[t]he Commonwealth will initiate a regulatory action to amend the existing Sewage Collection and Treatment Regulations (9VAC25-790-10 et seq.) to include a reporting requirement for all septic systems (or other on-site sewage disposal systems) taken off-line and connected to sewage collection systems.” Thus, no non-regulatory options were determined to be available.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable	(b) Not applicable

(3) Net Monetized Benefit	Not Applicable
(4) Other Costs & Benefits (Non-Monetized)	Not Applicable
(5) Information Sources	Commonwealth TMDL Phase III (Initiative 53)

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	Available general cost and benefit data for local governments operating a sewage treatment facility is provided in Table 1a.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See above regarding direct costs. No indirect costs are expected due to the limited extent of the reporting requirement.	(b) See above regarding direct and indirect benefits
(3) Other Costs & Benefits (Non-Monetized)	N/A	
(4) Assistance	N/A	
(5) Information Sources	DEQ procedures, staff, and RAP members	

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	Families are not subject to the SCAT Regulations. They would not be responsible for the reporting requirement. No direct costs or indirect costs or benefit impacts on families are expected.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None	(b) This proposal may indirectly benefit the Commonwealth by capturing more information on the overall reduction of nutrients to state waters.
(3) Other Costs & Benefits (Non-Monetized)	N/A	
(4) Information Sources	DEQ procedures, staff, and RAP members	

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	Presently there are approximately 316 publicly and privately owned public treatment works in the Chesapeake Bay watershed. Information on permit applications submitted to the Department does not indicate if the owner and operation is a “small business.” However, a small business would experience the same costs and benefits as identified in table 1a.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) see table 1a.	(b) see table 1a.
(3) Other Costs & Benefits (Non-Monetized)	See table 1a.	
(4) Alternatives	N/A	
(5) Information Sources	DEQ procedures, staff, and RAP members	

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Total Net Change in Requirements
9VAC25-790-985	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	1 ^A	0	+1
	(D/R):	0	0	0	0
				Grand Total of Changes in Requirements:	(M/A):0 (D/A):0 (M/R): +1 (D/R):0

^A This proposed amendment to the SCAT Regulations is necessary to implement the Commonwealth’s Chesapeake Bay TMDL Phase III WIP (Initiative 53). It will be added as a new section, 9VAC25-790-985, in Part IV, Reports and Forms.

Key:

Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:

(M/A): Mandatory requirements mandated by federal and/or state statute affecting the agency itself.

(D/A): Discretionary requirements affecting agency itself.

(M/R): Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies.

(D/R): Discretionary requirements affecting external parties, including other agencies.

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved*	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
9VAC25-790-985	0	0	0	0

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved*	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden
9VAC25-790-985	As mandated by Initiative 53 of the Commonwealth's Chesapeake Bay TMDL Phase III WIP, the proposed regulation requires every permitted sewage treatment works within the Chesapeake Bay watershed to report to the Department the number of onsite sewage systems taken offline and connected to sewerage systems that convey sewage to their facility.	The addition of this reporting requirement was discussed with stakeholders who served on a Regulatory Advisory Panel to understand and minimize the impact of this requirement. For members of the RAP, compiling and reporting the required data is expected to take a few hours to no more than a day, thus creating a minimal burden that can be absorbed with existing resources. RAP members did cite benefits (see table 1a) of having better information about septic systems that have been replaced by connecting the house or small business to a sewage treatment works.

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	Original Word Count	New Word Count	Net Change in Word Count
NA			

TAB C



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

www.deq.virginia.gov

Stefanie K. Taillon
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director

MEMORANDUM

TO: State Water Control Board Members

FROM: Elizabeth Mckercher
Director, Water Planning Division

A handwritten signature in black ink that reads 'Elizabeth Mckercher'.

DATE: February 11, 2025

SUBJECT: Final Adoption of Amendments to the Water Quality Standards Regulation (9VAC25-260) - Site-Specific Selenium Criteria

Purpose

Staff intends to ask the State Water Control Board (Board) to adopt final amendments to the Virginia Water Quality Standards (WQS) regulation (9VAC25-260) to include a site-specific freshwater aquatic life selenium criterion for several tributaries to Knox Creek in Buchanan County. The amendments would apply the 2021 U.S. Environmental Protection Agency (EPA) recommended selenium water quality criterion for protection of aquatic life to four (4) specific streams, and their tributaries, in Buchanan County. The Board approved the staff recommendation to proceed with publication of a Notice Of Public Comment (NOPC) on the proposed amendments at the June 25, 2024 Board meeting. Staff intends to ask the Board to adopt these amendments.

Background

This matter is before the Board due to a petition submitted by Clintwood JOD, LLC via a letter dated April 25, 2023, that requested promulgation of site-specific selenium (Se) aquatic life criteria for four streams which are tributaries to Knox Creek in Buchanan County, Virginia. Knox Creek is a sub-watershed of the Tug Fork in the Tennessee/Big Sandy River basin. Tug Fork flows north from Virginia into Kentucky and, subsequently, West Virginia. The specific streams included in the petition were:

1. Race Fork and tributaries (7.3 square mile drainage area or watershed)
2. Pounding Mill Creek and tributaries (1.4 square mile watershed)
3. Right Fork of Lester Fork and tributaries (5.8 square mile watershed)
4. Abners Fork and tributaries (1.7 square mile watershed)

Selenium is a naturally occurring element present in sedimentary rocks, shales, coal and phosphate deposits and soils. Selenium is a nutritionally essential element for animals in small amounts, but toxic at higher concentrations. Selenium bioaccumulates in the aquatic food chain and chronic exposure in fish and aquatic invertebrates can cause reproductive impairments (e.g., larval deformity or mortality) as well as adverse juvenile growth and mortality. Selenium is also toxic to animals that consume aquatic organisms containing excessive levels of selenium.

The petitioner requested the Board to amend the WQS regulation to include the U.S. Environmental Protection Agency (EPA) recommended selenium water quality criterion for protection of aquatic life for the streams noted above in the Knox Creek watershed. EPA's recommended criterion was published on July 13, 2016, and was updated in 2021.

A comparison of EPA's recommended 2016/2021 selenium criterion and Virginia's current selenium criterion is provided in Attachment 1. The EPA recommended selenium criterion is composed of four parts:

1. Two fish tissue elements:
 - a. selenium concentrations in egg-ovary, and
 - b. whole-body and/or muscle
2. Two water column elements:
 - a. 4-day average, and
 - b. intermittent exposure.

The criterion elements are hierarchical, and fish tissue element concentrations take precedence over water column concentrations when selenium inputs are in a steady-state condition.

In addition to the request to promulgate updated site-specific selenium criteria, the petitioner asked that DEQ support utilizing EPA's criterion with any implementation guidance modeled after the West Virginia implementation guidance to provide consistency with the remainder of the downstream watershed. However, while implementation procedures are important, they are outside the scope of the rulemaking focused on developing amended regulatory language.

At its August 23, 2023 meeting, the Board authorized staff to proceed with a rulemaking to incorporate site-specific selenium criteria as a special standard in Virginia's Water Quality Standards regulation (9VAC25-260) consistent with the petitioner's request for the streams identified in the Knox Creek drainage in Buchanan County. A Notice of Intended Regulatory Action (NOIRA) was published February 26, 2024. The NOIRA is available at: <https://townhall.virginia.gov/L/viewaction.cfm?actionid=6387>. An ad hoc Regulatory Advisory Panel (RAP) consisting of eight (8) members was formed, and one meeting was held on April 24, 2024. The RAP members and the organization represented by each member are presented as Attachment 2 of this memo. The meeting minutes from this meeting may be accessed online at: https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\103\39731\Minutes_DEQ_39731_v2.pdf

Proposed Amendments

The following discussion summarizes the key section of the regulation proposed for amendment and provides background on the basis for the proposed updates. Additional details on the background, legal authority, purpose, impacts, issues, and public comments and agency responses associated with the proposed regulation are contained in the Agency Background

Document which is included as Attachment 3. The proposed regulatory language to amend the WQS regulation is presented in Attachment 4.

Part VII of the WQS regulation contains Special Standards and Requirements. Part IX of the WQS regulation contains River Basin Section Tables, which provide details on river basins, subbasins, sections within each river basin or subbasin, and identification of any applicable special standards. The proposed regulatory amendments would be reflected in these sections of the regulation as described below.

9VAC25-260-310. Special standards and requirements

This section contains a description of all site-specific criteria and the waters to which they apply. The special standards are identified and listed in order by alphabetic characters. The proposed special standard would replace the existing freshwater aquatic life selenium criteria with the 2016 EPA-recommended criteria for the following waters: Race Fork and tributaries, Pounding Mill Creek and tributaries, Right Fork of Lester Fork and tributaries, and Abners Fork and tributaries. The proposed site-specific selenium criteria would be included as special standard “jj” in 9VAC25-260-310.

9VAC25-260-490 Tennessee and Big Sandy River Basins (Big Sandy River Subbasin).

The notation “jj” would be placed in the special standards column of 9VAC25-260-490 Section 3. This portion of the WQS regulation identifies 10 primary river basins in Virginia and describes the sections within each river basin and the water quality criteria which apply to the sections. This portion of the regulation specifies the classification of each river basin section, which may include, but is not limited to, identification of public water supply areas, trout water descriptions, and swamp waters along with any special standards which apply to all or a portion of a section. If a section contains a special standard, 9VAC25-26-310 is referenced for a description of the special standard and the applicable area of the special standard. The proposed, amended language to add special standard “jj” to both sections of the WQS regulation is presented in Attachment 4.

Public Comment and DEQ Response

At its June 25, 2024, meeting the Board authorized staff to publish a Notice Of Public Comment (NOPC). A public comment period was held between October 7 and December 6, 2024. A public hearing was held in the Town of Grundy, Virginia on November 14, 2024, at the Buchanan County Public Library. There were six attendees at the hearing, three of whom provided comment. Two comments were received via email. A detailed summary of comments and agency responses is provided as Attachment A of the Townhall background document, which is included as Attachment 3 of this memo.

Changes Since the Proposed Stage

EPA provided comment that Virginia’s proposal is not fully consistent with EPA’s recommendations, but only in that it does not reflect corrections made to EPA’s recommended selenium criterion in 2021. EPA identified that the following text was missing from the second sentence in Footnote 4 in the criterion table included in **9VAC25-260-310. Special standards and requirements**: "When selenium inputs are increasing." The corrected footnote 4 has been updated to reflect EPA’s corrected selenium criterion language and now states: "4. Water column

values are based on dissolved total selenium in water and are derived from fish tissue values via bioaccumulation modeling. When selenium inputs are increasing, water column values are the applicable criterion element in the absence of steady-state condition fish tissue data.” Footnotes 2 and 3 also reflect that Footnote 4 was corrected. EPA’s comments are acknowledged, and the proposed language for the corresponding Footnotes 2, 3, and 4 has been modified to reflect that of EPA’s 2021 updates to their selenium criteria document. It is not anticipated that the modifications would be considered substantive.

Attorney General Certification

Since changes were made to the proposed text in response to public comment, these amendments are being forwarded to the Office of the Attorney General for agency statutory authority. The amendments will be proposed for adoption "contingent upon Attorney General Office statutory authority" if not received by the Board meeting.

Staff Recommendation

Staff recommends the Board adopt all final amendments to the Water Quality Standards at 9VAC25-260-310 and 9VAC25-260-490 as presented in Attachment 4.

Presenter Contact Information

Name: Tish Robertson, Office of Ecology

Phone: (804) 659-1295

Email: tish.robertson@deq.virginia.gov

Attachments

Attachments to this memo to aid in review of these proposed regulatory amendments are as follows:

Attachment 1 – Comparison of EPA’s 2016 Selenium Criterion and Virginia’s Current Criteria

Attachment 2 – Listing of the Ad Hoc Advisory Committee Members, April 2024

Attachment 3 – Final Regulation Agency Background Document, February 2025

Attachment 4 – 9VAC25-260-310 and 490 Virginia Water Quality Standards, Final Amendments, February 2025

Attachment 5 – ORM Economic Review Form

ATTACHMENT 1

**EPA 2016 Selenium Aquatic Life Criteria
vs.
Virginia's Current Selenium Criteria**

	Chronic					Short-term
Criterion Version	Egg-Ovary (mg/kg dw)	Whole Body (mg/kg dw)	Muscles (mg/kg dw)	Water Lentic (ug/L)	Water Lotic (ug/L)	Water (ug/L)
2016 Selenium Criterion	15.1 No exceedance	8.5 No exceedance	11.3 No exceedance	1.5 (30-day avg)	3.1 (30-day avg)	Intermittent exposure equation (durations shorter than 30 days)
Current VA Selenium Criterion	N/A	N/A	N/A	5 (4-day avg)	5 (4-day avg)	20 (1-hr avg)

ATTACHMENT 2

Regulatory Advisory Panel Meeting – April 24, 2024

Members and Alternates Present:

- Matt Hepler, *Appalachian Voices*
- Braven Beaty, *The Nature Conservancy (TNC)*
- Shelley Surles, *Metallurgical Coal Producers Association (MCPA)*
- Tim Browning, *Artemis Consulting Services, LLC (representing Clintwood JOD, LLC)*
- Serena Ciparis/JoAnn Banda, *US Fish & Wildlife Service (USF&WS)*
- Jared Worley, *VA Department of Energy (VA Energy)*
- Jeff Williams, *Department of Wildlife Resources (DWR)*
- Dr. C. Andrew Dolloff, *Self*

DEQ Staff Present:

From Central Office: Bryant Thomas (Facilitator), Dr. Tish Robertson, David Whitehurst

From Southwest Regional Office: Jeffrey Hurst, David Nishida, Martha Chapman

ATTACHMENT 3

Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-260
VAC Chapter title(s)	Water Quality Standards
Action title	Rulemaking to adopt site specific selenium aquatic life criteria for four streams which are tributaries to Knox Creek in Buchanan County.
Date this document prepared	February 6, 2025

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

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.

In response to a petition to amend the Water Quality Standards regulation (WQS), the State Water Control Board proposes to amend the WQS (9VAC25-260) to incorporate site-specific selenium criteria for the protection of freshwater aquatic life in four streams which are tributaries to Knox Creek in Buchanan County, Virginia. The specific streams which are the focus of this rulemaking are:

- 1) Race Fork and tributaries
- 2) Pounding Mill Creek and tributaries
- 3) Right Fork of Lester Fork and tributaries
- 4) Abners Fork and tributaries

The intent of this rulemaking is to establish site-specific selenium aquatic life criteria which protect designated and beneficial uses of state waters by adopting regulations that are technically correct and reasonable. These site-specific criteria will replace the existing aquatic life selenium water quality criteria in the specified watersheds and will be implemented in water quality programs which protect and maintain the WQS, including the Virginia Pollutant Discharge Elimination System (VPDES) permit program and the Clean Water Act 305(b) water quality assessment report and 303(d) listing of impaired waters.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

Board	State Water Control Board
CJOD	Clintwood JOD, LLC
DEQ	Department of Environmental Quality, also referred to as the Department
EPA	U.S. Environmental Protection Agency
NOIRA	Notice of Intended Regulatory Action
NOPC	Notice of Public Comment
RAP	Regulatory Advisory Panel
TMDL	Total Maximum Daily Load
VA Energy	Virginia Department of Energy
VPDES	Virginia Pollutant Discharge Elimination System
WQS	Water Quality Standards, 9VAC25-260 et al.

Statement of Final Agency Action

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.

On **March 27, 2025**, the State Water Control Board adopted the Water Quality Standards (9VAC25-260) as final regulations.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

DEQ received correspondence dated April 25, 2023, from Clintwood JOD, LLC (CJOD) petitioning the Board to promulgate site-specific aquatic life criterion for selenium. Specifically, CJOD formally requested that the Board amend the existing surface water quality criteria for selenium to allow a special standard (9VAC25-260-310) incorporating EPA’s *Recommended Aquatic Life Ambient Water Quality Criterion for Selenium in Freshwater*, as published in the Federal Register on July 13, 2016 (Vol. 81, No. 134) and revised in August 2021. At its meeting on August 23, 2023, the Board directed DEQ to proceed with initiating a rulemaking to incorporate site specific selenium criteria as a special standard in the WQS regulation (9VAC25-260) consistent with the petition request for the specific tributaries to Knox Creek in Buchanan County. A Notice of Intended Regulatory Action (NOIRA) was published in the Virginia Register on February 26, 2024. The comment period ended March 27, 2024. A regulatory advisory panel (RAP) was formed and one meeting was held with the RAP on April 24, 2024.

At its meeting on July 25, 2024, the Board directed DEQ to proceed to public comment and hearing to incorporate EPA’s 2016 freshwater selenium criteria as site-specific criteria in Virginia’s Water Quality Standards regulation (9VAC25-260) consistent with the petition request for the 4 tributaries in the Knox Creek drainage in Buchanan County.

A Notice of Public Comment (NOPC) was published in the Virginia Register on October 7, 2024. The comment period ended December 6, 2024. A public hearing was held November 14, 2024 at the Buchanan County Public Library.

Legal Basis

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

The promulgating entity is the State Water Control Board (Board).

The Clean Water Act authorizes restoration and maintenance of the chemical, physical, and biological integrity of the Nation's waters.

The Federal regulations at 40 CFR 131 authorize requirements and procedures for developing, reviewing, revising, and approving water quality standards by the States as authorized by section 303(c) of the Clean Water Act. 40 CFR 131 specifically requires the states to adopt criteria to protect designated uses.

The purpose of the State Water Control Law (Code of Virginia) is established in § 62.1-44.2 of the Code of Virginia and includes protection and restoration of the quality of state waters, safeguarding clean waters from pollution, prevention and reduction of pollution and promotion of water conservation. The State Water Control Law at § 62.1-44.15(3a) of the Code of Virginia also requires the Board to establish standards of quality consistent with its purpose and to modify, amend or cancel any such standards or policies.

The correlation between the proposed regulatory action and the legal authority identified above is that the amendments being considered are modifications of criteria that will protect designated uses. The WQS regulation identifies the uses to be made of surface waters, referred to as designated uses, and establishes water quality criteria to protect the designated uses. The amendments to the WQS under consideration will provide an alternative, site-specific criterion for freshwater selenium ensuring the aquatic life designated use is protected with regard to this parameter.

The authority to adopt standards as provided by the provisions in the previously referenced citations is mandated, although the specific standards to be adopted or modified are subject to some discretion by EPA and the state.

Purpose

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 is intended to solve.

The purpose of this rulemaking is to establish site-specific selenium aquatic life criteria which protect designated and beneficial uses of state waters by adopting regulations that are technically correct and reasonable. The rulemaking is in response to the petition received to amend the WQS regulation to incorporate EPA’s 2016 recommended selenium criteria for the specific waterbodies listed in Buchanan County. The proposed criteria are for the protection of aquatic life and are indirectly related to the health, safety, and welfare of citizens. Proper water quality standards protect water quality and living resources of

Virginia's waters for the designated uses of aquatic life, wildlife, recreation, public water supply, shellfish consumption, and fish consumption.

Substance

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 rulemaking is to amend the WQS regulation to include a site-specific freshwater aquatic life selenium criterion in Section 9VAC25-260-310 for several tributaries to Knox Creek in Buchanan County. Those tributaries are:

- 1) Race Fork and tributaries
- 2) Pounding Mill Creek and tributaries
- 3) Right Fork of Lester Fork and tributaries
- 4) Abners Fork and tributaries

The site-specific criteria for consideration under this rulemaking reflect EPA's recommended selenium water quality criterion for protection of aquatic life for the streams noted above in the Knox Creek watershed. EPA's recommended criterion was first published on July 13, 2016.

EPA's recommended freshwater criterion is a chronic criterion expressed in terms of both fish tissue concentration (egg/ovary, whole body, and muscle) and two different water concentrations. The criterion elements are hierarchical with fish tissue values taking precedence should sufficient fish tissue data be available. This is EPA's first aquatic life criterion utilizing fish tissue as a direct expression of the recommended criterion. Accordingly, implementation of these criteria is substantially different from established Clean Water Act water quality programs, including the VPDES program and the water quality assessment program.

The proposed amendments to the WQS regulation would amend the special standards section of the WQS regulation (9VAC25-260-310) to include site site-specific selenium criterion. Additionally, a notation will be placed in Section 3 of the Big Sandy River basin table (9VAC25-260-490) to indicate the general geographic applicability of the special standard.

Issues

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.

The primary advantage of this action to the public is that the proposed selenium criteria are based on updated scientific information to protect aquatic life. The disadvantage is that criteria that become more stringent may result in increased costs to the regulated community. However, the goal is to set realistic, protective goals in water quality management and to maintain the most scientifically defensible criteria in the Water Quality Standards regulation.

The advantage to the agency or the Commonwealth that will result from the adoption of these amendments may be additional flexibility for developing accurate and scientifically defensible permit limits, assessments, and clean-up plans (Total Maximum Daily Loads or TMDLs) which ensure protection

of the WQS. These are discussed under the “Purpose” section where the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve are discussed.

The regulated community may find that the amendments pertinent to their operations may require additional capital or operating costs for control in their discharge, particularly where the numerical criteria are more stringent (see Economic Impact). However, it is not known whether the proposed, site-specific criteria will be more, or less, stringent than the current selenium aquatic life criteria contained in the WQS regulation.

The regulatory changes produce indirect benefits through protection of water quality and living resources in the subject watersheds for the designated uses of aquatic life and wildlife while providing additional options for permittees in these watersheds to demonstrate compliance with water quality requirements contained in VPDES permits.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to previously reported information.

Other State Agencies Particularly Affected

It is anticipated VA Energy will be particularly affected by these regulations as related to discharge permits. VA Energy is the agency charged with implementing the VPDES program for coal mining operations in Virginia. Accordingly, VA Energy would have primary responsibility for implementing the amended criteria. VA Energy has been actively involved in this rulemaking and is aware of the proposed criteria and the need to establish implementation procedures for incorporating the proposed criteria into its VPDES program.

Localities Particularly Affected

In general, WQS are developed and implemented for the protection of all designated uses statewide. However, due to the site-specific nature of this amendment, the below localities may bear a disproportionate material impact not experienced by other localities due to the location of these localities relative to the site-specific nature of the proposed amended criteria.

County: Buchanan County

Other Entities Particularly Affected

Due to the limited geographic application of the proposed criteria, staff anticipates this to impact at least one surface coal mining facility. That facility is owned by the petitioner that sought this regulatory change.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

See Attachment A for a summary of public comments received from the NOPC comment period.

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

The table below identifies the changes made to what was published in the proposed regulation during the Notice of Public Comment.

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
9VAC25-260-310	N/A	Adds Special Standard “jj” which is a site-specific freshwater selenium criterion for the protection of aquatic life. The criterion is taken from EPA’s nationally recommended <i>Aquatic Life Ambient Water Quality Criterion for Selenium-Freshwater</i> (EPA 822-R-16-006). This Special Standard replaces the statewide selenium criteria for Race Fork, Pounding Mill Creek, Right Fork of Lester Fork, Abner’s Fork, and their respective tributaries.	Footnote 4 of the criteria was modified to reflect minor changes EPA made to the nationally recommended selenium criteria (<i>Aquatic Life Ambient Water Quality Criterion for Selenium-Freshwater</i> ; EPA 822-R-21-006, August 2021). “4. <i>Water column values are based on dissolved total selenium in water and are derived from fish tissue values via bioaccumulation</i>	This is in response to EPA comment indicating the proposed language does not reflect updates made in 2021 to the recommendation. The change is not considered to substantively change the intent or application of the recommended criterion. The language EPA added to Footnote 4 is indicated by underlined text below: <u>When selenium inputs are increasing, water column values are the applicable criterion element in the absence of steady-state condition fish tissue data.</u> ” The underlined language is added to the proposed amendment in Footnote 4.

			<p><i>modeling. <u>When selenium inputs are increasing, water column values are the applicable criterion element in the absence of steady-state condition fish tissue data.</u></i> Footnotes 2 and 3 are modified to add "..., <u>except as noted in footnote 4 below.</u>" To reference the change to Footnote 4.</p>	<p>Language has also been added to Footnote 4 to state that compliance may be assessed using methods consistent with EPA's 2021 selenium criterion recommendation. Footnotes 2 and 3 are modified to reference the added language to Footnote 4. The change is made to conform with EPA's most recent iteration of the nationally recommended selenium criterion. Impacts resulting from the modification are not anticipated.</p>
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Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

EPA's recommended freshwater aquatic life criterion is a chronic criterion expressed in terms of both fish tissue concentration (egg/ovary, whole body, and muscle) and two different water concentrations. The criterion elements are hierarchical with fish tissue values taking precedence should sufficient fish tissue data be available. This is EPA's first aquatic life criterion utilizing fish tissue as a direct expression of the recommended criterion. The current aquatic life criteria for selenium are expressed as acute and chronic water column concentrations. Accordingly, implementation of these criteria is substantially different from established Clean Water Act water quality programs, including the VPDES program and the water quality assessment program. The intent of the amendments is to provide greater flexibility in ensuring protection of the water quality standards and designated uses of the subject waterbodies through the VPDES regulatory program.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
9VAC25-260-310		Currently no Special Standard "jj".	Adds Special Standard "jj" which is a site-specific freshwater selenium criterion for the protection of aquatic life. This Special Standard replaces the statewide selenium criteria with the criterion recommended by the EPA document EPA 822-R-21-006, August

			<p>2021 for Race Fork, Pounding Mill Creek, Right Fork of Lester Fork, Abner's Fork, and their respective tributaries. Virginia's current water quality criteria for selenium are based on nationally recommended criteria published by EPA in 1987. EPA's current recommended criterion reflects the latest scientific knowledge and provide a more updated method of evaluating selenium impacts to surface waters and aquatic life and provides the basis for permit determinations. The likely impact is the protection of water quality and living resources of Virginia's waters. Footnote 4 of the criteria was modified to reflect minor changes EPA made to the nationally recommended selenium criteria (<i>Aquatic Life Ambient Water Quality Criterion for Selenium-Freshwater</i>; EPA 822-R-21-006, August 2021). "4. <i>Water column values are based on dissolved total selenium in water and are derived from fish tissue values via bioaccumulation modeling. <u>When selenium inputs are increasing, water column values are the applicable criterion element in the absence of steady-state condition fish tissue data.</u></i>" Footnotes 2 and 3 are modified to add "..., <u>except as noted in footnote 4 below.</u>" To reference the change to Footnote 4.</p>
9VAC25-260-490		Currently no notation for "jj".	Adds the notation "jj" to the Special Standards column for section 3 of the Big Sandy River basin table to indicate the waterbody segments containing those waters to which the criterion applies.

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.

The WQS regulation does not establish compliance or reporting requirements. The proposed changes in the WQS regulation would be implemented through established programs, including the VPDES permitting program, the water quality monitoring and assessment programs, and the TMDL program. The

VPDES permitting authority for coal mining operations is VA Energy. The water quality programs responsible for ensuring protection of the WQS have the flexibility to implement the proposed amendments to provide for flexibility in demonstrating regulatory compliance as there are multiple end-points to the proposed criteria. It is DEQ's understanding that support for the proposed amendments by the petitioner and VA Energy is because they provide greater flexibility in ensuring protection of the water quality standards and designated uses of the subject waterbodies through the VPDES regulatory program.

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.

It is not anticipated that this regulation will have a direct impact on the institution of the family and family stability.

ATTACHMENT A

Summary of Comments from the Site-Specific Selenium Criteria Notice of Public Comment

Comment period October 7, 2024 – December 6, 2024

Commenter: Appalachian Voices, Southern Appalachian Mountain Stewards, and The Sierra Club
Virginia Chapter

Comment Summary:

The commenters state their respective groups are very familiar with the impacts from selenium pollution from mines and other sources and they have been the primary drivers of enforcement of selenium pollution limits from mines across the region. The commenters reaffirm their arguments and opposition to this rulemaking as previously stated during the petition comment period (June 5 – June 26, 2023). The commenters offer the following additional feedback regarding the use of fish tissue for measuring selenium in coal mine discharge in the Knox Creek watershed:

1. Coal mine effluent should be considered noncompliant with state water quality standards whenever an exceedance of selenium limits is detected in either ovarian tissue, or whole-body tissue, or water column measurements taken from the outfall being evaluated. They would not oppose a requirement that mine operators submit fish tissue analysis in addition to water column analysis for selenium, but the proposal that fish tissue take precedence over water column would make the regulation less protective of water quality than the current rule, and less protective of a scenario where an exceedance of any one of the three parameters qualifies as a violation. They strongly oppose any language that would allow mining companies to choose which one among these three different selenium parameters they would prefer to apply to a given mine or outfall.
2. The commenters urge DEQ to go above and beyond the methodologies found in EPA-822-R-16-006, Appendix K (Translation of a Fish Tissue Criterion Element to a Site-Specific Water Column Value) by requiring that all fish tissue collection occur within the immediate receiving streams of the point sources being evaluated, and not to allow mining companies to instead substitute fish tissue collected in far downstream waters.

The commenters state the concentration of selenium found in fish tissue in downstream portions of Knox Creek cannot be illustrative of the impacts to aquatic life in the individual tributaries to which the criteria would apply. Substituting downstream fish tissue for fish tissue in the waterways that directly receive mining runoff would designate those smaller waterways as sacrifice zones where ecologically damaging levels of selenium are simply tolerated by the state. If these waterways are found to be without fish, water column measurements taken directly from point source outfalls should determine compliance with water quality standards.

Agency Response:

EPA recommends that fish tissue data, if deemed sufficient, take precedence over water column data for permit compliance and assessment purposes for the following reasons: 1) fish tissue is considered a reliable integrator of long-term water column concentrations of selenium and 2) the toxicity information used to develop the criterion is reflected only in the fish tissue elements, with the water column elements being derived from these values via modeling. Footnote 4 of Table 4.1 of the criterion document was updated in 2021 and now reads, “*Water column values are based on dissolved total selenium in water and are derived from fish tissue values via bioaccumulation modeling. When selenium inputs are increasing, water column values are the applicable criterion element in the absence of steady-state condition fish tissue data.*” The underlined text is language added in 2021 to emphasize the requirement that fish tissue concentrations must be in a steady-state condition relative to selenium concentrations in the water column.

Commenter: US Environmental Protection Agency (EPA)

Comment Summary:

EPA states that Virginia's proposal is not fully consistent with EPA's recommendations, but only in that it does not reflect corrections made to EPA's recommended selenium criterion in 2021. EPA corrected footnote 4 for Table 4.1 of the revised 2021 criteria document that summarizes EPA's recommended freshwater selenium ambient chronic water quality criterion for protection of aquatic life. Corrected footnote 4 now states: "4. Water column values are based on dissolved total selenium in water and are derived from fish tissue values via bioaccumulation modeling. *When selenium inputs are increasing*, water column values are the applicable criterion element in the absence of steady-state condition fish tissue data." Footnotes 2 and 3 also reflect that footnote 4 was corrected. EPA recommends that DEQ should consider revising the proposed site-specific selenium criterion to reflect EPA's current recommendation.

Agency Response:

EPA's comments are acknowledged, and agency staff intend to modify the proposed language for Footnotes 2, 3, and 4 to reflect EPA's 2021 updates to its selenium criteria document. These edits do not change the nature or extent of the criteria from the proposed regulation and are not considered substantive.

Commenter: Virginia Department of Energy (VA Energy)

Comment Summary:

Jared Worley provided comment at the November 14 public hearing on behalf of the VA Energy Mine Land Repurposing (MLR) program and stated VA Energy's support for the proposed amendments. MLR is tasked with establishing permit conditions with the intent of protecting receiving waters while also facilitating mining operations. He stated that it is VA Energy's goal to establish National Pollutant Discharge Elimination System (NPDES) permit implementation that is both protective of the environment and reasonably and feasibly implemented as well as consistent with neighboring state counterparts located downstream from the subject watersheds for this rulemaking. Establishment of the proposed criterion would provide the agency greater flexibility in permit writing.

Agency Response:

Agency staff acknowledge the comments.

Commenter: Krystal Nelson – Biologist, Clintwood JOD, LLC

Comment Summary:

Ms. Nelson provided comment at the November 14 public hearing. She stated that she has worked as a field, laboratory, and consulting biologist in the coal industry for 13 years and she now serves as the in-house biologist for Clintwood JOD, LLC. She stated her support for the adoption of EPA's 2016 selenium criteria recommendation as it is scientifically sound and has been successfully adopted and implemented in surrounding states. She recommended that Virginia review the Kentucky Department for Environmental Protection's 2019 Methods for the Collection of Selenium Residue in Fish Tissue Used to Determine KPDES Permit Compliance. She has confidence that Virginia will be able to use the surrounding states' implementation to develop plans that are perfect for the Commonwealth. It is her opinion that the fish tissue element of the criterion is a more telling and valuable metric than simply monitoring water column values in a facility's effluent.

Agency Response:

Agency staff acknowledge the comments. VA Energy is the state agency responsible for implementing the criterion into the permitting processes and are aware of the petitioner's request that Virginia model implementation after the methodologies utilized by neighboring states.

Commenter: Mark Coleman, Environmental Manager, Clintwood JOD, LLC

Mr. Coleman provided comment at the November 14 public hearing on behalf of the petitioner, Clintwood JOD, LLC. He stated that he is the environmental manager for Clintwood JOD and that they pride themselves regarding environmental stewardship. Prior to working for Clintwood JOD, he worked for the state of Kentucky as an environmental scientist and modeling specialist. The proposed site-specific selenium criterion is consistent with EPA-issued recommended criterion issued in 2016. The criterion is protective of downstream waters in West Virginia and Kentucky through which downstream portions of Knox Creek flows. Both states have already adopted criteria modeled after EPA's recommendations. Clintwood JOD urges DEQ to proceed with the next steps in the rulemaking without delay.

Agency Response:

Agency staff acknowledge the comments.

ATTACHMENT 4

State Water Control Board

Rulemaking to adopt site specific selenium aquatic life criteria for four streams which are tributaries to Knox Creek in Buchanan County

9VAC25-260-310. Special standards and requirements.

1 The special standards are shown in small letters to correspond to lettering in the basin tables.
2 The special standards are as follows:

3 a. Shellfish waters. In all open ocean or estuarine waters capable of propagating shellfish
4 or in specific areas where public or leased private shellfish beds are present, including
5 those waters on which condemnation classifications are established by the Virginia
6 Department of Health, the following criteria for fecal coliform bacteria will apply:

7 The geometric mean fecal coliform value for a sampling station shall not exceed an MPN
8 (most probable number) or MF (membrane filtration using mTEC culture media) of 14 per
9 100 milliliters (ml) of sample and the estimated 90th percentile shall not exceed an MPN
10 of 43 per 100 ml for a 5-tube decimal dilution test or an MPN of 49 per 100 ml for a ~~3-tube~~
11 three-tube decimal dilution test or MF test of 31 CFU (colony forming units) per 100 ml.

12 The shellfish area is not to be so contaminated by radionuclides, pesticides, herbicides,
13 or fecal material that the consumption of shellfish might be hazardous.

14 b. Policy for the Potomac Embayments. At its meeting on September 12, 1996, the board
15 adopted a policy (9VAC25-415. Policy for the Potomac Embayments) to control point
16 source discharges of conventional pollutants into the Virginia embayment waters of the
17 Potomac River, and their tributaries, from the fall line at Chain Bridge in Arlington County
18 to the Route 301 bridge in King George County. The policy sets effluent limits for BOD₅,
19 total suspended solids, phosphorus, and ammonia, to protect the water quality of these
20 high profile waterbodies.

21 c. Canceled.

22 d. Canceled.

23 e. Canceled.

24 f. Canceled.

25 g. Occoquan watershed policy. At its meeting on July 26, 1971 (Minute 10), the board
26 adopted a comprehensive pollution abatement and water quality management policy for
27 the Occoquan watershed. The policy set stringent treatment and discharge requirements
28 in order to improve and protect water quality, particularly since the waters are an important
29 water supply for Northern Virginia. Following a public hearing on November 20, 1980, the
30 board, at its December 10-12, 1980, meeting, adopted as of February 1, 1981, revisions
31 to this policy (Minute 20). These revisions became effective March 4, 1981. Additional
32 amendments were made following a public hearing on August 22, 1990, and adopted by
33 the board at its September 24, 1990, meeting (Minute 24) and became effective on
34 December 5, 1990. Copies are available upon request from the Department of
35 Environmental Quality.

36 h. Canceled.

37 i. Canceled.

38 j. Canceled.

39 k. Canceled.

40 l. Canceled.

41 m. The following effluent limitations apply to wastewater treatment facilities treating an
 42 organic nutrient source in the entire Chickahominy watershed above Walker's Dam (this
 43 excludes discharges consisting solely of stormwater):

CONSTITUENT	CONCENTRATION
1. Biochemical oxygen demand 5-day	6 mg/l monthly average, with not more than 5% of individual samples to exceed 8 mg/l.
2. Settleable solids	Not to exceed 0.1 ml/l monthly average.
3. Suspended solids	5.0 mg/l monthly average, with not more than 5% of individual samples to exceed 7.5 mg/l.
4. Ammonia nitrogen	Not to exceed 2.0 mg/l monthly average as N.
5. Total phosphorus	Not to exceed 0.10 mg/l monthly average for all discharges with the exception of Tyson Foods, Inc., which shall meet 0.30 mg/l monthly average and 0.50 mg/l daily maximum.
6. Other physical and chemical constituents	Other physical or chemical constituents not specifically mentioned will be covered by additional specifications as conditions detrimental to the stream arise. The specific mention of items 1 through 5 does not necessarily mean that the addition of other physical or chemical constituents will be condoned.

44 n. No sewage discharges, regardless of degree of treatment, should be allowed into the
 45 James River between Boshier and Williams Island Dams.

46 o. The concentration and total amount of impurities in Tuckahoe Creek and its tributaries
 47 of sewage origin shall be limited to those amounts from sewage, industrial wastes, and
 48 other wastes that are now present in the stream from natural sources and from existing
 49 discharges in the watershed.

50 p. Canceled.

51 q. Canceled.

52 r. Canceled.

53 s. Canceled.

54 t. Canceled.

55 u. Maximum temperature for the New River Basin from the Virginia-West Virginia state
 56 line upstream to the Giles-Montgomery County line:

57 The maximum temperature shall be 27°C (81°F) unless caused by natural conditions; the
 58 maximum rise above natural temperatures shall not exceed 2.8°C (5°F).

59 This maximum temperature limit of 81°F was established in the 1970 water quality
 60 standards amendments so that Virginia temperature criteria for the New River would be
 61 consistent with those of West Virginia, since the stream flows into that state.

62 v. The maximum temperature of the New River and its tributaries (except trout waters)
 63 from the Montgomery-Giles County line upstream to the Virginia-North Carolina state line
 64 shall be 29°C (84°F).

65 w. Canceled.

66 x. Clinch River from the confluence of Dumps Creek at river mile 268 at Carbo downstream
 67 to river mile 255.4. The special water quality criteria for copper (measured as total
 68 recoverable) in this section of the Clinch River are 12.4 µg/l for protection from chronic
 69 effects and 19.5 µg/l for protection from acute effects. These site-specific criteria are
 70 needed to provide protection to several endangered species of freshwater mussels.

71 y. Canceled.

72 z. A site specific dissolved copper aquatic life criterion of 16.3 µg/l for protection from acute
 73 effects and 10.5 µg/l for protection from chronic effects applies in the following area:

74 Little Creek to the Route 60 (Shore Drive) bridge including Little Channel, Desert Cove,
 75 Fishermans Cove, and Little Creek Cove.

76 Hampton Roads Harbor including the waters within the boundary lines formed by I-664
 77 (Monitor-Merrimac Memorial Bridge Tunnel) and I-64 (Hampton Roads Bridge Tunnel),
 78 Willoughby Bay, and the Elizabeth River and its tidal tributaries.

79 This criterion reflects the acute and chronic copper aquatic life criterion for saltwater in
 80 9VAC25-260-140 B X a water effect ratio. The water effect ratio was derived in accordance
 81 with 9VAC25-260-140 F.

82 aa. The following site-specific dissolved oxygen criteria apply to the tidal Mattaponi and
 83 Pamunkey Rivers and their tidal tributaries because of seasonal lower dissolved oxygen
 84 concentration due to the natural oxygen depleting processes present in the extensive
 85 surrounding tidal wetlands. These criteria apply June 1 through September 30 to
 86 Chesapeake Bay segments MPNTF, MPNOH, PMKTF, PMKOH and are implemented in
 87 accordance with subsection D of 9VAC25-260-185. These criteria supersede the open
 88 water criteria listed in subsection A of 9VAC25-260-185.

Designated use	Criteria Concentration/Duration	Temporal Application
Open water	30 day mean ≥ 4.0 mg/l	June 1 - September 30
	Instantaneous minimum ≥ 3.2 mg/l at temperatures <29°C	
	Instantaneous minimum ≥ 4.3 mg/l at temperatures ≥ 29°C	

89 A site-specific pH criterion of 5.0-8.0 applies to the tidal freshwater Mattaponi Chesapeake
 90 Bay segment MPNTF to reflect natural conditions.

91 bb. The following site-specific seasonal mean criteria should not be exceeded in the
 92 specified tidal James River segment more than twice in six years. Should consecutive
 93 exceedances of the same seasonal mean criterion occur in a waterbody segment after the
 94 effective date, January 9, 2020, of these chlorophyll a criteria, the department will examine
 95 additional lines of evidence, including the occurrence of harmful algae blooms,
 96 physicochemical monitoring and phytoplankton datasets, and fish kill reports in the
 97 evaluation of the appropriate assessment category for the waterbody segment. The
 98 department will develop guidance for inclusion in the Water Quality Assessment Guidance
 99 Manual to address evaluating the appropriate assessment category when consecutive
 100 exceedances of the same seasonal mean criterion occur. The department will determine
 101 if additional monitoring for harmful algal blooms is warranted.

Designated Use	Chlorophyll a µ/l	Chesapeake Bay Program Segment	Temporal Application
Open water	8	JMSTF2	March 1 - May 31

	10	JMSTF1	(spring)
	13	JMSOH	
	7	JMSMH	
	8	JMSPH	
	21	JMSTF2	July 1 - September 30 (summer)
	24	JMSTF1	
	11	JMSOH	
	7	JMSMH	
	7	JMSPH	

102 The following site-specific chlorophyll a concentrations at the specified duration should not
103 be exceeded more than 10% of the time over six summer seasons in the specified area
104 of the tidal James River. These criteria protect against aquatic life effects due to harmful
105 algal blooms. Such effects have not been documented in the upper portion of JMSTF2 or
106 in JMSOH.

Chlorophyll a µg/l	Chesapeake Bay Program Segment	Spatial Application	Duration
--	JMSTF2	Upstream boundary of JMSTF2 to river mile 95	--
52	JMSTF2	River mile 95 to downstream boundary of JMSTF2	1-month median
52	JMSTF1	Upstream boundary of JMSTF1 to river mile 67	1-month median
34	JMSTF1	River mile 67 to downstream boundary of JMSTF1	1-month median
--	JMSOH	Entire segment	--
59	JMSMH	Entire segment	1-day median
20	JMSPH	Entire segment	1-day median

107 (1) The site-specific numerical chlorophyll a criteria apply to the tidal James River
108 segments (excludes tributaries) JMSTF2, JMSTF1, JMSOH, JMSMH, and JMSPH, the
109 boundaries of which are described in EPA 903-R-05-004.

110 (2) For segments JMSOH, JMSMH, and JMSPH, the median of same-day samples
111 collected one meter or less in a segment should be calculated to represent the chlorophyll
112 a expression of a segment over that day, and the median of same-month chlorophyll a
113 values should be calculated to represent the chlorophyll a expression of a segment over
114 that month. The seasonal geometric mean shall be calculated from the monthly chlorophyll
115 a values for a segment.

116 (3) For segment JMSTF2, chlorophyll a data collected in the "upper zone" (from the
117 upstream boundary at the fall line to approximately river mile 95 (N37° 23' 15.27" / W77°
118 18' 45.05" to N37° 23' 19.31" / W77° 18' 54.03")) should be pooled, in the manner
119 described in subdivision bb (2) of this section, separately from chlorophyll a data collected

120 in the "lower zone" (from river mile 95 to the downstream boundary of JMSTF2). The
 121 seasonal geometric mean for each of these zones should be calculated from their
 122 respective monthly chlorophyll a values. To calculate the seasonal segment-wide
 123 geometric mean, an area-weighted average of the zonal geometric means should be
 124 calculated using the following equation:

125
$$\text{Upper Zone Geometric Mean} \times 0.41 + \text{Lower Zone Geometric Mean} \times 0.59$$

126 (4) For segment JMSTF1, chlorophyll a data collected in the "upper zone" (from the
 127 upstream boundary of JMSTF1 to approximately river mile 67 (N37° 17' 46.21" / W77° 7'
 128 9.55" to N37° 18' 58.94" / W77° 6' 57.14")) should be pooled, in the manner described in
 129 subdivision bb (2) of this section, separately from chlorophyll a data collected in the "lower
 130 zone" (between river mile 67 to the downstream boundary of JMSTF1). The seasonal
 131 geometric mean for each of these zones should be calculated from their respective
 132 monthly chlorophyll a values. To calculate the seasonal segment-wide geometric mean,
 133 an area-weighted average of the zonal geometric means should be calculated using the
 134 following equation:

135
$$\text{Upper Zone Geometric Mean} \times 0.49 + \text{Lower Zone Geometric Mean} \times 0.51$$

136 cc. For Mountain Lake in Giles County, chlorophyll a shall not exceed 6 µg/L at a depth of
 137 six meters and orthophosphate-P shall not exceed 8 µg/L at a depth of one meter or less.

138 dd. For Lake Drummond, located within the boundaries of Chesapeake and Suffolk in the
 139 Great Dismal Swamp, chlorophyll a shall not exceed 35 µg/L and total phosphorus shall
 140 not exceed 40 µg/L at a depth of one meter or less.

141 ee. Maximum temperature for these seasonally stockable trout waters is 26°C and applies
 142 May 1 through October 31.

143 ff. Maximum temperature for these seasonally stockable trout waters is 28°C and applies
 144 May 1 through October 31.

145 gg. Little Calfpasture River from the Goshen Dam to 0.76 miles above its confluence with
 146 the Calfpasture River has a stream condition index (A Stream Condition Index for Virginia
 147 Non-Coastal Streams, September 2003, Tetra Tech, Inc.) of at least 20.5 to protect the
 148 subcategory of aquatic life that exists in this river section as a result of the hydrologic
 149 modification. From 0.76 miles to 0.02 miles above its confluence with the Calfpasture
 150 River, aquatic life conditions are expected to gradually recover and meet the general
 151 aquatic life uses at 0.02 miles above its confluence with the Calfpasture River.

152 hh. Maximum temperature for these seasonally stockable trout waters is 31°C and applies
 153 May 1 through October 31.

154 ii. In the wadeable portions of the mainstem sections of the Shenandoah River, North Fork
 155 Shenandoah River, and South Fork Shenandoah River listed in the table in this
 156 subdivision, a determination of persistent nuisance filamentous algae impeding the
 157 recreation use should be made when exceedances of either of the specified benthic
 158 chlorophyll-a concentration thresholds occur in more than one recreation season (May 1
 159 to October 31) in three years. "Wadeable" constitutes a stream that can be crossed and
 160 sampled safely during a given sampling event occurring within the recreation season.

Segment	Two-Month Median (mg/m ²)	Seasonal Median (mg/m ²)
Shenandoah River from its confluence of the North Fork and South Fork Shenandoah Rivers downstream to the Virginia-West Virginia state line	150	100

North Fork Shenandoah River from its confluence with Fort Run downstream to its confluence with the South Fork Shenandoah River	150	100
South Fork Shenandoah River from its confluence with the North and South Rivers downstream to its confluence with the North Fork Shenandoah River	150	100

161 jj. The selenium chronic criteria for the protection of freshwater aquatic life apply in the
162 following waters:

163 Knox Creek watershed in Buchanan County

164 (1) Race Fork and tributaries.

165 (2) Pounding Mill Creek and tributaries.

166 (3) Right Fork of Lester Fork and tributaries.

167 (4) Abners Fork and tributaries.

<u>Media Type</u>	<u>Fish Tissue¹</u>		<u>Water Column⁴</u>	
	<u>Egg-ovary²</u>	<u>Fish Whole-body or Muscle³</u>	<u>Monthly Average Exposure</u>	<u>Intermittent Exposure⁵</u>
<u>Magnitude</u>	<u>15.1 mg/kg dw</u>	<u>8.5 mg/kg dw whole-body or 11.3 mg/kg dw muscle (skinless, boneless filet)</u>	<u>1.5 µg/L in lentic aquatic systems 3.1 µg/L in lotic aquatic systems</u>	<u>$WQC_{int} = \frac{WQC_{30-day} \cdot C_{bkqmd}(1 - f_{int})}{f_{int}}$</u>
<u>Duration</u>	<u>Instantaneous measurement⁶</u>	<u>Instantaneous measurement⁶</u>	<u>30 days</u>	<u>Number of days/month with an elevated concentration</u>
<u>Frequency</u>	<u>Not to be exceeded</u>	<u>Not to be exceeded</u>	<u>Not more than once in three years on average</u>	<u>Not more than once in three years on average</u>

mg/kg dw = milligrams per kilogram dry weight

1. Fish tissue elements are expressed as steady state.

2. Egg-ovary supersedes any whole-body, muscle, or water column element when fish egg-ovary concentrations are measured [, except as noted in footnote 4 below].

3. Fish whole-body or muscle tissue supersedes water column element when both fish tissue and water concentrations are measured [, except as noted in footnote 4 below].

4. Water column values are based on dissolved total selenium in water and are derived from fish tissue values via bioaccumulation modeling. Water [When selenium inputs are increasing, water] column values are the applicable criterion element in the absence of steady-state condition fish tissue data. In fishless waters, [selenium concentrations in fish from the nearest downstream waters may be used to assess] compliance [may be assessed using methods [provided in][consistent with] Aquatic Life Ambient Water Quality Criterion for Selenium – Freshwater, [EPA-822-R-16-006, Appendix K: Translation of a Selenium Fish Tissue Criterion Element to a Site-Specific Water Column Value (June 2016)][EPA-822-R-21-006].

5. Where $WQC_{30\text{-day}}$ is the water column monthly element for either lentic (still) or lotic (flowing) waters; C_{bkgnd} is the average background selenium concentration; and f_{int} is the fraction of any 30-day period during which elevated selenium concentrations occur, with f_{int} assigned a value ≥ 0.033 (corresponding to one day).

6. Fish tissue data provide instantaneous point measurements that reflect integrative accumulation of selenium over time and space in fish populations at a given site.

168

9VAC25-260-490. Tennessee and Big Sandy River Basins (Big Sandy River Subbasin).

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	IV		All tributaries of Tug Fork in Virginia.
2	IV		All tributaries of Jacobs Fork and Dry Fork in Virginia.
2a	IV	PWS	Crockett Cove, a tributary to Jacobs Fork, from Bishop's raw water intake to its headwaters.
3	IV	ii	Levisa Fork and its tributaries and Knox Creek and its tributaries, unless otherwise designated in this chapter, from the Virginia-Kentucky state line upstream to their headwaters.
	V		Stockable Trout Waters in Section 3
	vi		Dismal Creek from its mouth to its headwaters.
4	IV		Russell Fork and its tributaries, unless otherwise designated in this chapter, from the Virginia-Kentucky state line upstream to their headwaters.
	V		Stockable Trout Waters in Section 4
	***		Caney Creek from Long Branch Creek upstream 5.5 miles.
	vi		Frying Pan Creek from 1.3 miles above its confluence with Russell Fork 8.6 miles upstream (in vicinity of Bucu).
	vi		North Fork Pound River from the town limits of Pound upstream to the water supply dam.
	***		Russell Fork from the confluence of Pound River to the Virginia-Kentucky state line.
	VI		Natural Trout Waters in Section 4
	iii		Pound River from its confluence with Russell Fork upstream to the John W. Flannagan Dam.
4a	IV	PWS	Pound River and its tributaries from the John W. Flannagan Dam, including the Cranes Nest River and its tributaries to points <u>5 five</u> miles above the John W. Flannagan Water Authority's raw water intake.
4b	IV	PWS	North Fork Pound River and its tributaries from North Fork Pound River Dam and the Town of Pound's raw water intake upstream to their headwaters, unless otherwise designated in this chapter.

4c			(Deleted)
4d	IV		Phillips Creek from its mouth to its headwaters and the North Fork Pound River from Wise County's swimming area around the mouth of Phillips Creek to a point 1/2 mile upstream.
4e	IV	PWS	Russell Fork River and its tributaries from the Kentucky state line 2.2 miles upstream (Elkhorn City, Kentucky raw water intake including Grassy Creek from its confluence with Russell Fork northeast to the Kentucky state line, Hunts Creek from its confluence with Grassy Creek to 4 <u>one</u> mile upstream, Laurel Branch to its headwaters, including Laurel Lake (Breaks Interstate Park raw water intake).
	V		Stockable Trout Waters in Section 4e
	***	PWS	Russell Fork from the Kentucky state line 2.2 miles upstream.

ATTACHMENT 5

Office of Regulatory Management
Economic Review Form

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-260
VAC Chapter title(s)	Water Quality Standards
Action title	Rulemaking to adopt site specific selenium aquatic life criteria for four streams which are tributaries to Knox Creek in Buchanan County.
Date this document prepared	February 6, 2025
Regulatory Stage (including Issuance of Guidance Documents)	Final- No changes have been made to the ORM form since the Proposed stage

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Introduction

DEQ received correspondence dated April 25, 2023, from Clintwood JOD, LLC (CJOD), a coal mining company operating in Virginia, petitioning the State Water Control Board to promulgate site-specific aquatic life criterion for selenium. Specifically, CJOD formally requested that the Board amend the existing surface water quality criteria for selenium to allow a special standard (9VAC25-260-310) incorporating EPA’s 2016 Recommended Aquatic Life Ambient Water Quality Criterion for Selenium in Freshwater. In response to the petition, the State Water Control Board directed staff to initiate a rulemaking to amend the WQS (9VAC25-260) to incorporate a site-specific selenium criterion for the protection of freshwater aquatic life that

only applies in four streams which are tributaries to Knox Creek in Buchanan County, Virginia. The selenium criterion has fish tissue and water column concentration values. The selenium concentration values are hierarchical so that fish values take precedence over water column values. This site-specific criteria for these four streams would align with EPA's 2016 recommended selenium criteria and would replace the existing selenium criteria currently applicable statewide and in the subject watersheds. This rulemaking is in the Final stage. There have been no changes to this Economic Review Form since the proposed stage.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

<p>(1) Direct & Indirect Costs & Benefits (Monetized)</p>	<p>Direct Costs: There are no anticipated direct costs resulting from the proposed change.</p> <p>Indirect Costs: Facilities with VPDES permits in the Knox creek watershed subject to this site specific selenium criteria may incur a cost to collect fish tissue data to demonstrate compliance with the criteria. As the current statewide criteria only allows for water column data, this provides permittees with an additional option to measure selenium levels. Fish tissue samples are expected to cost approximately \$4,000 per watershed sample according to a firm representing the petitioner.</p> <p>Direct Benefits: There are no direct economic benefits of the proposed change.</p> <p>Indirect Benefits: Indirect benefits are recognized through protection of water quality and living resources of Virginia's waters for the designated uses of aquatic life and wildlife while providing additional options for permittees in the subject watersheds to demonstrate compliance with water quality requirements contained in VPDES permits. Fish tissue data gathered will give the department additional information on the presence of selenium in aquatic life in this watershed.</p>	
<p>(2) Present Monetized Values</p>	<p>Direct & Indirect Costs</p>	<p>Direct & Indirect Benefits</p>
	<p>(a) Approx. \$4,000 per watershed sample event</p>	<p>(b) N/A</p>
<p>(3) Net Monetized Benefit</p>	<p>N/A</p>	
<p>(4) Other Costs & Benefits (Non-Monetized)</p>	<p>Water quality criteria that become more stringent may result in increased costs to the regulated community. Site specific conditions will determine whether the proposed criteria will be more, or less, stringent than the current statewide standard. The petition to adopt the criteria was submitted by a Virginia Pollutant Discharge Elimination System (VPDES) permittee to allow them to have additional flexibility to</p>	

	comply with permit requirements ensuring protection of the aquatic life designated use.
(5) Information Sources	Discussions with Regulatory Advisory Panel NOIRA Comments Submitted RE: Site-Specific Selenium Criteria (9VAC25–260). The NOIRA comment period closed on March 27, 2024. NOPC Comments Submitted RE: Site-Specific Selenium Criteria (9VAC25-260). The NOPC comment period ended December 6, 2024. Artemis Consulting Services, LLC P.O. Box 1085 Abingdon, VA 24212

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: There are no direct costs of the status quo.</p> <p>Indirect Costs: There are no indirect costs of the status quo.</p> <p>Direct Benefits: There are no direct economic benefits status quo.</p> <p>Indirect Benefits: There are no indirect benefits of the status quo.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	N/A	

Table 1c: Costs and Benefits under Alternative Approach(es)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs:</p> <p>No alternative to this regulatory change was considered aside from maintaining the status quo and leaving the regulation unchanged. This was not considered because the State Water Control Board directed staff to initiate a rulemaking to amend the WQS to include site-specific selenium criteria that reflect EPA’s most recent recommendations in the subject watersheds.</p>
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	Indirect Costs: N/A	
	Direct Benefits: N/A	
	Indirect Benefits: N/A	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	N/A	

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: There are no direct costs to localities. Indirect Costs: There are no indirect costs to localities. Direct Benefits: There are no direct benefits to localities. Indirect Benefits: There are no indirect economic benefits to localities.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Other Costs & Benefits (Non-Monetized)	Scientifically correct and legally defensible water quality standards to protect the surface waters of Virginia.	

(4) Assistance	N/A
(5) Information Sources	N/A

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: It is not anticipated that the proposed modification will have direct costs on the institution of the family and family stability.</p> <p>Indirect Costs: It is not anticipated that the proposed modification will have an indirect costs on the institution of the family and family stability.</p> <p>Direct Benefits: It is not anticipated that the proposed modification will have direct benefit on the institution of the family and family stability.</p> <p>Indirect Benefits: It is not anticipated that the proposed modification will have an indirect benefit on the institution of the family and family stability.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Other Costs & Benefits (Non-Monetized)	Scientifically correct and legally defensible water quality standards to protect the surface waters of Virginia.	
(4) Information Sources		

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs &	Direct Costs: There are no direct costs of the proposed change.
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Benefits (Monetized)	<p>Indirect Costs: There may be indirect costs of the proposed change in the form of data collection for fish tissue selenium concentrations in support of criteria implementation.</p> <p>Direct Benefits: There are no direct economic benefits.</p> <p>Indirect Benefits: There may be indirect benefits in providing VPDES permittees additional options to demonstrate compliance with permit requirements established to protect water quality and designated uses.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Approx. \$4,000 per watershed sample event	(b)
(3) Other Costs & Benefits (Non-Monetized)	Scientifically correct and legally defensible water quality standards to protect the surface waters of Virginia.	
(4) Alternatives	N/A	
(5) Information Sources	Artemis Consulting Services, LLC P.O. Box 1085 Abingdon, VA 24212	

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Total Net Change in Requirements
9VAC25-260-310	(M/A):	15	0	0	0
	(D/A):	0	0	0	0
	(M/R):	4	0	0	0
	(D/R):	0	0	0	0
				Grand Total of Changes in Requirements:	(M/A): 0 (D/A): 0 (M/R): 0 (D/R): 0

Key:

Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:

(M/A): Mandatory requirements mandated by federal and/or state statute affecting the agency itself

(D/A): Discretionary requirements affecting agency itself

(M/R): Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies

(D/R): Discretionary requirements affecting external parties, including other agencies

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved*	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
N/A				

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved*	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden
N/A		

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	Original Word Count	New Word Count	Net Change in Word Count

*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the appropriate chart(s).

TAB D



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY


www.deq.virginia.gov

Stefanie K. Taillon
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director

MEMORANDUM

TO: State Water Control Board Members

FROM: Bryant Thomas 
Acting Director, Division of Water

DATE: February 25, 2025

SUBJECT: Amendments establishing criteria for (i) water auditing plans and (ii) leak detection and repair plans and requiring any water withdrawal permit application to include (i) a water auditing plan and (ii) a leak detection and repair plan

Purpose

This regulatory change is explicitly required by the second enactment clause of Chapter 100 of the 2021 Special Session I Acts of Assembly. Section 62.1-44.15:22 A 2 of the Code of Virginia, as amended and reenacted by Chapter 100 of the 2021 Special Session I Acts of Assembly, provides that every application for a Virginia Water Protection Permit for a surface water withdrawal shall include a (i) water auditing plan and (ii) leak detection and repair plan. Both such plans shall comply with requirements established by the Board in regulations. The Board shall approve every water auditing plan and leak detection and repair plan that complies with such regulatory requirements. Once approved by the Board, such water auditing plans, and leak detection and repair plans shall be incorporated by reference as a condition in the Virginia Water Protection Permit. The Board shall not issue a Virginia Water Protection Permit for a surface water withdrawal without an approved water auditing plan and an approved leak detection and repair plan.

Section 62.1-262 of the Code of Virginia, as amended and reenacted by Chapter 100 of the 2021 Special Session I Acts of Assembly, provides that any application for a groundwater withdrawal permit, except as provided in § 62.1-260 or 62.1-261 or subsection H of § 62.1-266, shall include a water conservation and management plan approved by the Board. The water conservation and management plan shall include (i) the use of water-saving plumbing as provided under the Uniform Statewide Building Code; (ii) a water-loss reduction program; (iii) a water-use education program; (iv) a water auditing plan that complies with requirements established by the Board in regulations; (v) a leak detection and repair plan that complies with requirements

established by the Board in regulations; and (vi) mandatory reductions during water shortage emergencies, including, where appropriate, ordinances prohibiting waste of water generally and providing for mandatory water-use restrictions, with penalties, during water-shortage emergencies. The Board shall approve any water conservation plan that complies with clauses (i) through (vi). Once approved by the Board, such water conservation and management plan shall be incorporated by reference as a condition in the groundwater withdrawal permit. The Board shall not issue a groundwater withdrawal permit, except as provided in § 62.1-260 or 62.1-261 or subsection H of § 62.1-266, without an approved water conservation and management plan.

The provisions of Chapter 100 of the 2021 Special Session I Acts of Assembly have an effective date of 30 days after the adoption by the Board of the regulations to implement the provisions of the act.

Background

This regulatory proposal includes amendments to conform the Virginia Water Protection Permit Program regulation (9VAC25-210) to the requirements in Section 62.1-44.15:22 A 2 of the Code of Virginia, and amendments to conform the Groundwater Withdrawal Regulations (9VAC25-610) to the requirements in Section 62.1-262 of the Code of Virginia, as amended and reenacted by Chapter 100 of the 2021 Special Session 1 Acts of Assembly (Senate Bill 1291).

These amendments will provide for the efficient use and conservation of surface water and groundwater resources for future uses and are necessary to protect the health, safety, and welfare of citizens of the Commonwealth. There are significant water losses by permitted water withdrawal users that lack adequate water auditing and leak detection and repair plans. Requiring enforceable water auditing and leak detection and repair plans achieves greater long-term conservation and sustainability of finite water resources.

Proposed Amendments

The regulatory change amends the existing Virginia Water Protection Permit Program Regulations (9VAC25-210) and the Groundwater Withdrawal Regulations (9VAC25-610) to require that any application for a permit to withdraw surface water (9VAC25-210) or groundwater (9VAC25-610) include a (i) water auditing plan and (ii) leak detection plan.

The Department used a Regulatory Advisory Panel (RAP) process to develop amendments to the regulations to incorporate the provisions required by Chapter 100 of the 2021 Special Session I Acts of Assembly. The 12 member RAP met four times during 2022 to advise the Department on the regulatory amendments.

A detailed summary of changes resulting from the proposed amendments are included in the Agency Background Document. A brief summary of the changes is provided below. Where section titles are amended in the proposed amendments, the amended title is provided below.

Summary of Proposed Amendments to the Virginia Water Protection Permit Program Regulation (9VAC25-210)

9VAC25-210-300. Definitions for surface water withdrawals – With the assistance of the RAP, definitions were developed for “water loss” and “water loss audit.”

9VAC25-210-340. Application requirements for surface water withdrawals – The majority of the proposed amendments were added to the existing surface water withdrawal application requirements found in subsection B. Recognizing the differences in how water is “used” and “lost” based on the type of water use, specific criteria for public water supply, commercial and industrial, and agricultural applications were identified. For each use type, the expectations for the water audit, the frequency of implementation, the frequency of reporting data developed from the audit were added. The same conceptual approach, by use type, was used to establish new language describing the expectations for leak detection and repair plans.

Summary of Proposed Amendments to the Groundwater Withdrawal Regulation (9VAC25-610)

9VAC25-610-10. Definitions – With the assistance of the RAP, definitions were developed for “public water supply,” “water loss,” and “water loss audit.”

9VAC25-610-100. Water conservation and management plans – The majority of the proposed amendments were added to the existing water conservation and management plan requirements found in subsection B. Due to the existing regulatory language related to the water conservation and management plans, additional reorganization was necessary to implement a similar framework for the different use types while also retaining and providing context to the existing requirements unaffected by the statutory change. Because the previously existing water loss reduction program language in the Groundwater Withdrawal Regulations, which was not affected by Chapter 100 of the 2021 Special Session I Acts of Assembly, is being retained it may appear that groundwater withdrawals have a higher number of requirements to meet than surface water withdrawals. However, with respect to the required water audit and leak detection and repair plans, which are the subject of this regulatory action, the requirements are still comparable in substance.)

Public Comment and DEQ Response

The public comment period was initiated on May 20, 2024, and ended July 19, 2024. Comments were received from seven individuals. Comments received included the following:

- Require the use of volumetric goals instead of percentage-based goals in water audit programs.
 - Agency Response: Evaluation of audits will be on a case-by-case basis. Percentage based goals are allowed as well as other approaches.
- Require Level 1 validation and training be conducted by a third party.
 - Agency Response: Evaluation of audits will be on a case-by-case basis. Specific validation would limit flexibility with complying with the regulatory requirements and impact users that use a different methodology.
- Make audit reports publicly available.
 - Agency Response: This information will be publicly available.
- Suggested definition changes for “water loss” and “water loss audit” and suggestions to define “another methodology approved by Department” and types of water users

- Agency Response: Aligning definitions to be consistent with the specific methodologies would limit the flexibility allowed by the regulation. The use types referenced in the regulation are commonly understood terms, therefore no additional definitions are needed.
- Recommended addition of Compliance and Enforcement requirements and including reporting requirements in 9VAC25-210-370 and 9VAC25-610-130
 - Agency Response: Pursuant to Sections 62.1-44.15:22 and 62.1-262 of the Code of Virginia, as amended by Chapter 100 of the 2021 Special Session I Acts of Assembly, the water auditing and leak detection and repair plans will be included as attachments to the permit decision rational/fact sheet and will be incorporated into the permit as required conditions of the permit, and once incorporated this would become an enforceable part of the permit.
- Update requirements for Agricultural users to annual audits at a minimum
 - Response: Based on the frequency of use, seasonal reporting may be appropriate for agricultural use. The use of other frequencies will be evaluated on a case-by-case basis.
- Update public water supply audit frequency to every 3 years and extend initial water audit for new facilities
 - Response: Significant negotiations were conducted during the regulatory advisory panel to develop the proposed regulation to agree on the water audit frequencies. Public water supplies usually have the greatest geographical footprint and one of the highest potentials for annual water loss.
- Include an off-ramp when demonstration is provided that water loss is unlikely to occur
 - Response: State Law requires permits issued for the withdrawal of surface water and groundwater to include water audit plans and leak detection plans, and the requirement for water audit plans and leak detection plans has been included in 9VAC25-210-340 and 9VAC25-610-100.
- Add “or methods needed” to requirement for description of process for the identification of equipment needs to quantify water loss in 9VAC25-210-340 B 15 b
 - Response: The Department will evaluate any audit methodology on a case-by-case basis to determine the appropriateness for use. The recommended change is therefore not needed due to the Department’s ability to evaluate alternative methodologies.
- Issue guidance before the regulation is finalized.
 - Response: The third enactment clause of Chapter 100 of the 2021 Special Session I Acts of Assembly provides that the statutory requirements will become effective 30 days after the adoption of implementing regulations. The regulation was intended to provide enough detail to ensure the need for minimal guidance. However, the Department recognizes as audit programs develop and as this program matures, additional guidance may be needed. Guidance documents will be developed as needed in accordance with the Administrative Process Act.
- Suggested revisions to other requirements of the Water Conservation Management Plan provisions that are not related to the water audit or leak detection and repair plan.
 - Agency Response: The NOIRA for this action was limited to regulatory changes necessary to implement Chapter 100 of the 2021 Special Session I Acts of

Assembly. Regulatory changes, such as those proposed in the comment, are beyond the scope of this regulatory action.

Responses to all comments received are summarized in the attached Town Hall Document.

Changes Since the Proposed Stage

No changes have been made to the amendment since the proposed regulation was presented to the Board.

Staff Recommendation

At your Board meeting scheduled for March 27, 2025, the Department will request that the Board adopt the amendments to the Virginia Water Protection Permit Program Regulation (9VAC25-210) and Groundwater Withdrawal Regulations (9VAC25-610) as final regulations.

ATTACHMENTS:

- Virginia Regulatory Town Hall Documents (TH-03) – Amendments establishing criteria for (i) water auditing plans and (ii) leak detection and repair plans and requiring any water withdrawal permit application to include (i) a water auditing plan and (ii) a leak detection and repair plan.
- Final – Water Audit and Leak Detection - RIS PROJECT 6942
- ORM Economic Review Form – Amendments establishing criteria for (i) water auditing plans and (ii) leak detection and repair plans and requiring any water withdrawal permit application to include (i) a water auditing plan and (ii) a leak detection and repair plan.
- Virginia Acts of Assembly – 2021 Special Session I – Chapter 100
- Water Audit Regulatory Advisory Panel (RAP)
 - Membership List
 - Meeting Minutes
 - June 8, 2022
 - June 29, 2022
 - July 21, 2022
 - August 23, 2022



townhall.virginia.gov

Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-210 (Primary) 9VAC25-610 (Secondary)
VAC Chapter title(s)	Virginia Water Protection Permit Program Regulation (Primary) Groundwater Withdrawal Regulations (Secondary)
Action title	Amendments establishing criteria for (i) water auditing plans and (ii) leak detection and repair plans and requiring any water withdrawal permit application to include (i) a water auditing plan and (ii) a leak detection and repair plan.
Date this document prepared	March 7, 2025

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

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.

This regulatory proposal incorporates provisions required by Chapter 100 of the 2021 Special Session I Acts of Assembly. This regulatory action amends the existing Virginia Water Protection Permit Program Regulation (9VAC25-210) and Groundwater Withdrawal Regulations (9VAC25-610) to require that any application for a permit to withdraw surface water (9VAC25-210) or groundwater (9VAC25-610) include a (i) water auditing plan and (ii) leak detection plan.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"AWE" means Alliance for Water Efficiency.

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits "board" means the Department of Environmental Quality.

"CBF" means Chesapeake Bay Foundation.

"DEQ" means the Department of Environmental Quality.

"Groundwater" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir, or other body of surface water wholly or partially within the boundaries of the Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates, or otherwise occurs.

"MH2O" means Mission H2O Virginia.

"Permit" means either: (i) an individual permit issued by the department, or a general permit issued as a regulation adopted by the board under § 62.1-44.15:20 of the Code of Virginia that authorizes a surface water withdrawal, or (ii) a groundwater withdrawal permit issued under the Groundwater Management Act of 1992 permitting the withdrawal of a specified quantity of groundwater under specified conditions in a groundwater management area.

"Surface Water Withdrawal" means a removal or diversion of surface water in Virginia or from the Potomac River for consumptive or non-consumptive use thereby altering the instream flow or hydrologic regime of the surface water. Projects that do not alter the instream flow or that alter the instream flow but whose sole purpose is flood control or stormwater management are not included in this definition.

"VMA" Virginia Manufactures' Association.

"VMDWA" means the Virginia Municipal Drinking Water Association.

"WCMP" means Water Conservation and Management Plan.

Statement of Final Agency Action

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.

On March 27, 2025, the State Water Control Board adopted final amendments to the Virginia Water Protection Permit Program Regulation (9VAC25-210) and the Groundwater Withdrawal Regulations (9VAC25-610).

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to the previously reported information.

Legal Basis

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

This regulatory change is explicitly required by the second enactment clause of Chapter 100 of the 2021 Special Session I Acts of Assembly. Section 62.1-44.15:22 A 2 of the Code of Virginia, as amended and reenacted by Chapter 100 of the 2021 Special Session I Acts of Assembly, provides that every application for a Virginia Water Protection Permit for a surface water withdrawal shall include a (i) water auditing plan and (ii) leak detection and repair plan. Both such plans shall comply with requirements established by the Board in regulations. The Board shall approve every water auditing plan and leak detection and repair plan that complies with such regulatory requirements. Once approved by the Board, such water auditing plans, and leak detection and repair plans shall be incorporated by reference as a condition in the Virginia Water Protection Permit. The Board shall not issue a Virginia Water Protection Permit for a surface water withdrawal without an approved water auditing plan and an approved leak detection and repair plan.

Section 62.1-262 of the Code of Virginia, as amended and reenacted by Chapter 100 of the 2021 Special Session I Acts of Assembly, provides that any application for a groundwater withdrawal permit, except as provided in § 62.1-260 or 62.1-261 or subsection H of § 62.1-266, shall include a water conservation and management plan approved by the Board. The water conservation and management plan shall include (i) the use of water-saving plumbing as provided under the Uniform Statewide Building Code; (ii) a water-loss reduction program; (iii) a water-use education program; (iv) a water auditing plan that complies with requirements established by the Board in regulations; (v) a leak detection and repair plan that complies with requirements established by the Board in regulations; and (vi) mandatory reductions during water shortage emergencies, including, where appropriate, ordinances prohibiting waste of water generally and providing for mandatory water-use restrictions, with penalties, during water-shortage emergencies. The Board shall approve any water conservation plan that complies with clauses (i) through (vi). Once approved by the Board, such water conservation and management plan shall be incorporated by reference as a condition in the groundwater withdrawal permit. The Board shall not issue a groundwater withdrawal permit, except as provided in § 62.1-260 or 62.1-261 or subsection H of § 62.1-266, without an approved water conservation and management plan.

Purpose

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 is intended to solve.

This regulatory change is explicitly required by the second enactment clause of Chapter 100 of the 2021 Special Session I Acts of Assembly. The provisions of Chapter 100 of the 2021 Special Session I Acts of

Assembly have an effective date of 30 days after the adoption by the Board of the regulations to implement the provisions of the act. The development of these amendments will provide for the efficient use and conservation of surface water and groundwater resources for future uses, and are necessary to protect the health, safety, and welfare of citizens. There are significant water losses by permitted water withdrawal users that lack adequate water auditing and leak detection and repair plans. Requiring enforceable water auditing and leak detection and repair plans achieves greater long-term conservation and sustainability of finite water resources.

Substance

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.

Amendments to 9VAC25-210 include requirements for (i) water auditing plans and (ii) leak detection and repair plans, as well as amendments to conform the regulation to the requirements in Section 62.1-44.15:22 A 2 of the Code of Virginia, as amended and reenacted by Chapter 100 of the 2021 Special Session I Acts of Assembly.

Amendments to 9VAC25-610 include requirements for (i) water auditing plans and (ii) leak detection and repair plans, as well as amendments to conform the regulation to the requirements in Section 62.1-262 of the Code of Virginia, as amended and reenacted by Chapter 100 of the 2021 Special Session I Acts of Assembly.

Issues

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.

The Groundwater Withdrawal Regulations (9VAC25-610) currently contain an application requirement to submit a water conservation and management plan that includes a water loss reduction program. The amendments supplement and provide additional transparency regarding the expectations for the existing water conservation and management plan requirements. The Virginia Water Protection Permit Program Regulation (9VAC25-210), which applies to permitted surface water withdrawals, currently contains application requirements to provide information on existing water conservation measures and projected demand with and without conservation measures. The amendments bolster existing requirements with enforceable specifications to implement water audit plans and leak detection and repair plans that strengthen existing water conservation requirements for all permitted users who withdraw groundwater and surface water.

Advantages of the regulatory change for the public, including private citizens or businesses, include water loss audit plan and leak detection and repair plan requirements for groundwater and surface water withdrawals that will provide for the efficient use and conservation of the resource. Water audit plans that capture water loss in a system will be used to inform leak detection and repair plans, thereby promoting efficiency and addressing needs for infrastructure upgrades before catastrophic leaks occur. Requiring individual groundwater withdrawal permits and surface water withdrawal permits to include these plans will help ensure that both sources of water are conserved for future uses, which is necessary to protect the health, safety, and welfare of citizens. Potential disadvantages of the regulatory change for the public, including private citizens or businesses, could include the need to install meters where they do not

currently exist in water systems, the need to hire consultants to conduct water audits, increased time spent on the water withdrawal application process, and time spent reporting water audit results and updating leak detection and repair plans which are informed by the audit results.

Advantages to the agency and Commonwealth include the potential to effectively track the amount of water loss occurring in water withdrawal systems, which will enhance water supply planning efforts. Potential disadvantages could be increased staff time spent reviewing water loss audit plans and leak detection and repair plans. Advantages to the regulated community, including public water supply, commercial and industrial users, and agricultural users, are consistent requirements for all permitted users to address water loss and the need for leak detection and repair. The intent of the water audit process, in addition to addressing water loss, is to inform the leak detection and repair plan which will be updated to address current and future infrastructure repairs. This requirement ensures an on-going cycle of information gathering and plan updating which will achieve greater long-term conservation of the resource.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to previously reported information. There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no changes to previously reported information.

Localities Particularly Affected

There are no changes to previously reported information.

Other Entities Particularly Affected

There are no changes to previously reported information.

For purposes of "Locality Particularly Affected" under the Board's statutes

There are no changes to previously reported information.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage and provide the agency's response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

A total of 35 comments from 7 individual organizations were received during the public comment period. No comments were received in response to impacts to small businesses. Based on review by program staff and Department management no changes were made to the regulations based on comments received.

Commenter	Comment	Agency response
Alliance for Water Efficiency (AWE) – Ron Burke – AWE1	General support for the Proposed Regulations	The Department appreciates the support of the AWE regarding the proposed regulation.
AWE2	Virginia should require periodic Level 1 validation according to the Water Research Foundations' Project #5057 Level 1 Water Loss Validation Guidance manual performed by a third party.	The Department will evaluate any audit methodology on a case-by-case basis to evaluate the appropriateness for use. The suggested change limits flexibility with complying with a regulatory requirement. Specifying the requested method would impact current users that are using a different methodology/method that achieves the same goal of reducing water loss. No change is being made to the regulation in response to this comment.
AWE3	Using percentage-based goals limits the ability to compare water loss over long periods of time and from year to year due to changes in consumption.	The Department will evaluate any audit methodology on a case-by-case basis to evaluate the appropriateness for use. Percentage based goals are also allowed as well as other approaches. No change is being made to the regulation in response to this comment.
AWE4	Ensure audit reports are publicly available similar to data on water quality for the purpose of public awareness, research, and accountability.	Any audit reports submitted to the Department will be available to the public. No change is being made to the regulation in response to this comment.
Cavanaugh - Drew Blackwell, Steve Cavanaugh, PE, Will Jernigan, PE, Tory Wagoner, PE – CAVANAUGH1	General support for the Proposed Regulations	The Department appreciates the support of Cavanaugh regarding the proposed regulation.
Cavanaugh2	“Percentage-Based Goals”: A universal goal poses issues in that goal will be lower than some individual’s technical minimum	The suggested change limits flexibility with complying with a regulatory requirement, specifying the method would impact current users that are using a different methodology/method that achieves the

	<p>achievable loss levels, and in excess of others.</p> <p>Having a percentage-based goal instead of a volumetric will lead to the skewing of true water loss performance indication due to changes in demand and the incentive to game the audit.</p> <p>The American Water Works Association (AWWA Water) loss Control Committee recommends avoiding using percentage-based metrics.</p> <p>Tracking water loss as a percentage does not fully realize the value or cost of water.</p>	<p>same goal of reducing water loss. The Department will evaluate any audit methodology on a case-by-case basis to evaluate the appropriateness for use, including volumetric reductions. No change is being made to the regulation in response to this comment.</p>
Cavanaugh3	<p>9VAC25-210-300/9VAC25-610-10 Definitions</p> <p>The definitions of “water loss’ and “water supplied” should be amended to be consistent with the definitions provided in the AWWA manual for Water Audits and Loss Control Programs</p>	<p>The Department is not requiring the use of a specific water audit/loss program or methodology. Aligning the definition to be consistent with the AWWA would limit the flexibility allowed by the regulation. No change is being made to the regulation in response to this comment.</p>
Cavanaugh4	<p>9VAC25-210-300/9VAC25-610-10</p> <p>The definitions of ‘water audit’ and “water balance’ should be amended to be consistent with the definitions provided in the AWWA manual for Water Audits and Loss Control Programs</p>	<p>See response to Cavanaugh3.</p>
Cavanaugh5	<p>9VAC25-210-340/9VAC25-610-100</p> <p>Recommended that the AWWA water loss audit software be made standard.</p> <p>‘Another methodology’ approved by the department should be defined.</p>	<p>The suggested change limits flexibility with complying with a regulatory requirement. Specifying the requested method would impact current users that are using a different methodology/method that achieves the same goal of reducing water loss. The Department will evaluate any audit methodology on a case-by-case basis to evaluate the appropriateness for use, including volumetric reductions. Providing a prescriptive definition of another methodology limits the ability to comply with the regulatory requirements as new methodologies are constantly being developed that would meet the requirements. No change is being made to the regulation in response to this comment.</p>

<p>Cavanaugh6</p>	<p>9VAC25-610-100</p> <p>Provide a water loss training and technical assistance program to equip utilities on how to use the AWWA water loss audit and interpret the results to prioritize their actions.</p> <p>Implement a Level 1 Validation practice with public water system water audits.</p>	<p>The Department will consider these recommendations as it develops future training plans, taking into consideration publicly available training already offered by AWWA or other water loss audit developers. The Department will evaluate further enhancements as Department budgets and resources allow. No change is being made to the regulation in response to this comment.</p>
<p>Cavanaugh7</p>	<p>9VAC25-610-100 B 1 (b)</p> <p>Suggested revisions: "A water loss reduction program, which defines the applicant's leak detection and repair program. The water loss reduction program plan shall include requirements for an audit of the total amount of groundwater used in the distribution system and operational processes during the first two years of the permit cycle. Implementation of a be submitted as a component of the water conservation and management plan. The leak detection and repair program plan shall be required within one year of the date the permit is issued. The program shall include a schedule for inspection of equipment and piping for leaks; indicate how its implementation will be informed by the results of the annual water loss audit process and shall be updated during each new permit term. The plan shall include: (1) A description of how the water loss audit results are expected to inform prioritization of actions to address water loss."</p>	<p>The use of specific time periods is consistent with other implementation practices for compliance purposes. The time periods are reasonable and practical and do not pose an undue regulatory burden. No change is being made to the regulation in response to this comment.</p>
<p>Chesapeake Bay Foundation (CBF) – Patrick J. Fanning – CBF1</p>	<p>Compelled to offer support of the proposed regulatory changes.</p>	<p>The Department appreciates the support of CBF regarding the proposed regulation.</p>
<p>CBF2</p>	<p>CBF supports requiring that water auditing and leak detection and repair plans be incorporated as enforceable permit requirements.</p>	<p>The Department has made significant progress in reducing its permitting backlog, currently there are two groundwater permits and five surface water permits pending</p>

	<p>Increasing demands on our limited water resources warrants accelerating plan development and implementation.</p> <p>Any final regulations should impose the requirement to implement this requirement to all existing permittees with an appropriate compliance schedule to craft and submit leak detection and repair plans.</p>	<p>issuance. The Department does not have the resources to open every active permit. It is expected that a majority of facilities will voluntarily implement a water audit program during their permit term in preparation for reissuance. This requirement will be incorporated into existing permits at the time of reissuance. No change is being made to the regulation in response to this comment.</p>
CBF3	<p>9VAC25-210-340/370 9VAC25-610-100/130</p> <p>Water Auditing plans and leak detection and repair plans and their enforceable implementation are necessary given high rates of water loss. Substantive reporting requirements would be more appropriately added to section 370 of the Virginia Water Protection regulations and section 130 of the groundwater withdrawal regulations.</p>	<p>The water auditing and leak detection and repair plans will be included as attachments to the permit decision rational/fact sheet and will be incorporated into the permit as a condition as required by state law, and once incorporated they will become an enforceable part of the permit. No change is being made to the regulation in response to this comment.</p>
CBF4	<p>Compliance/Reasonable Progress:</p> <p>DEQ should specify in the regulations or subsequent guidance how it intends to ensure compliance with these plans and how withdrawers can demonstrate reasonable progress towards reducing water loss.</p>	<p>As required by Chapter 100 of the 2021 Special Session I Acts of Assembly, these plans will be incorporated by reference into the permit and enforced similarly to any other permit condition. Compliance with this requirement will be evaluated as a component of the management plan, see 9VAC25-210-340.19.c. No change is being made to the regulation in response to this comment.</p>
CBF5	<p>Enforcement:</p> <p>DEQ should summarize its plan for enforcement in its response to comments.</p>	<p>DEQ's enforcement manual is publicly available, see https://www.deq.virginia.gov/our-programs/enforcement Section 62.1-262 of the Code of Virginia, as amended and reenacted by Chapter 100 of the 2021 Special Session I Acts of Assembly requires the water auditing plans, and leak detection and repair plans to be incorporated by reference as a condition in the Virginia Water Protection Permit and the Groundwater Withdrawal Permit. The regulation will require that the results of the audit be submitted in a report to the Department at a minimum of every three years.</p>

<p>CBF6</p>	<p>Agricultural Withdrawers:</p> <p>Draft Regulations are unclear as they relate to agricultural withdrawals.</p> <p>DEQ should revise the provisions to require annual water loss audits.</p>	<p>Agricultural users do not withdraw on a constant basis and their withdrawals are usually seasonal or supplemental to other water sources such as precipitation and usually do not have complex distribution systems. Based on the frequency of use, seasonal reporting may be appropriate for agricultural use. The use of other frequencies will be evaluated on a case-by-case basis. Agricultural withdrawals are subject to a water audit, see 9VAC25-210-340 and 9VAC25-610-100.</p>
<p>CBF7</p>	<p>“Water Users” Definition:</p> <p>The proposed regulations differentiate between “public water supplies” and “commercial and industrial users” which is an undefined term.</p> <p>In order to decrease confusion, CBF requests adding a definition of each type of water users or retaining the current differentiation.</p>	<p>The use types referenced in the regulation are commonly understood terms, no additional definitions are needed. No change is being made to the regulation in response to this comment</p>
<p>Mission H2O Virginia (MH2O)- Andre Wortzel – Mission H2O1</p>	<p>Supports the wise management of water resources and the concept of ensuring that water is not lost due to leaking pipes and equipment.</p>	<p>The Department appreciates the support of Mission H2O Virginia regarding the purpose of the proposed regulation.</p>
<p>MH2O2</p>	<p>The definition of “Water Loss” may lead to confusion because it is broader than the definition in the AWWA audit methodology. It is unclear that there is any benefit associated with the expanded definition in the proposed amendments.</p>	<p>The definition of "water loss" included in the regulation is broader than the definition in the AWWA audit methodology. The regulation does not specify the AWWA audit methodology is the only methodology acceptable to be used and the broader regulatory definition allows for the use of other methods, which provides the regulated community with more flexibility. The Department will evaluate any audit methodology on a case-by-case basis to evaluate the appropriateness for use. No change is being made to the regulation in response to this comment.</p>
<p>MH2O3</p>	<p>The requirement for initial audits for public water supply withdrawals should be aligned with those for commercial and industrial users.</p>	<p>Significant negotiations were conducted during the regulatory advisory panel to develop the proposed regulation to agree on the annual water audit frequency for public water supply withdrawals and the three-year frequency for water audits for commercial and industrial water users. Public water supplies usually have the greatest geographical footprint and one of the highest potentials for annual water loss.</p>

		For that reason, the regulation was drafted to require public water supplies to conduct audits on an annual frequency. No change is being made to the regulation in response to this comment
MH2O4	Regulations should consider an exemption or off-ramp where a water withdrawer is able to demonstrate that water loss is unlikely to occur.	Even if a system is in close proximity to a water or groundwater source, there is still the potential for leakage or water loss to occur. The frequency of the audit for commercial and industrial water users was reduced to once every three years due to the reduced, but non-zero, potential for leakage. No change is being made to the regulation in response to this comment.
MH2O5	9VAC25-210-340(B)(15)(b) Requires a description of the process for identification of equipment needs to quantify and reduce water loss. Not all methodologies require the installation of equipment. This provision should be revised to read "Where practicable. A process for the identification of equipment or methods needed to quantify and reduce water loss".	The Department will evaluate any audit methodology on a case-by-case basis to evaluate the appropriateness for use. The recommended change is therefore not needed due to the Department's ability to evaluate alternative methodologies.
MH2O6	Guidance: Several issues were raised during the RAP that DEQ indicated would be resolved through guidance. Guidance documents should be provided prior to the regulation being finalized	The third enactment clause of Chapter 100 of the 2021 Special Session I Acts of Assembly provides that the statutory requirements will become effective 30 days after the adoption of implementing regulations. The proposed regulation was intended to provide enough detail to ensure the need for minimal guidance. However, the Department recognizes as audit programs develop and as this program matures, additional guidance may be needed. Guidance documents will be developed as needed in accordance with the Administrative Process Act.
Rappahannock Tribe – G. Anne Richardson – Rappahannock1	Stated support for the proposed changes	The Department appreciates the support of the Rappahannock Tribe regarding the proposed regulation.
Virginia Manufactures Association (VMA) Andrea Wortzel – VMA1	Off-Ramps/Exemptions: VMA would like to see the regulations recognize that there are facilities that do not have an extensive set of pipes and is located in proximity to its	Chapter 100 of the 2021 Special Session I Acts of Assembly requires permits issued for the withdrawal of surface water and groundwater to include water audit and leak detection and repair plans, and the requirement for leak detection plans has been included in 9VAC25-210-340 and 9VAC25-610-100. Even if a system is in

	<p>withdrawal point and the therefore the likelihood of the types of leaks addressed by these requirements occurring is lower and therefore include off-ramps or exemptions for those facilities that are able to demonstrate that there is a low likelihood of leaks occurring.</p>	<p>close proximity to a surface water or groundwater source, there is still the potential for leakage or water loss to occur. The frequency of the audit was reduced to once every three years for commercial and industrial users due to the reduced potential for leakage. No change is being made to the regulation in response to this comment.</p>
VMA2	<p>Guidance:</p> <p>There were several issues that were raised during the RAP discussions. DEQ indicated that there would be guidance issued to address those issues. It would be helpful to be able to review that guidance before the regulation is finalized.</p>	<p>The third enactment clause of Chapter 100 of the 2021 Special Session I Acts of Assembly provides that the statutory requirements will become effective 30 days after the adoption of implementing regulations. The proposed regulation was intended to provide enough detail to ensure the need for minimal guidance. However, the Department recognizes as audit programs develop and as this program matures, additional guidance may be needed. Guidance documents will be developed as needed in accordance with the Administrative Process Act.</p>
Virginia Municipal Drinking Water Association (VMDWA) – Timothy Mitchell – VMDWA1	<p>Support: The proposed revisions include beneficial revisions developed through the RAP process.</p>	<p>The Department appreciates the feedback provided by VMDWA regarding the purpose of the proposed regulation.</p>
VMDWA2	<p>9VAC25-210-300 & 610-10</p> <p>The definition of “water loss” should be amended to be consistent with the definitions provided in the AWWA manual for Water Audits and Loss Control Programs</p> <p>Suggested Revision: “Water loss” means, <u>for public water supplies, the difference between the estimated or measured volume of treated water at all points of entry to the water distribution system and the estimated or measured volume applied to the beneficial use.</u> For other entities, “water loss” means the difference between the estimated or measured volume of water withdrawn and the estimated or</p>	<p>The regulation allows, but does not require use of the AWWA methodology. The Department will evaluate any audit methodology on a case-by-case basis to evaluate the appropriateness for use. The suggested change limits flexibility with complying with a regulatory requirement, specifying the method would impact current users that are using a different methodology/method that achieves the same goal of reducing water loss. No change is being made to the regulation in response to this comment.</p>

	measured volume applied to the beneficial use.	
VMDWA3	<p>9VAC25-210-300 & 9VAC25-610-10</p> <p>VMDWA believes that the frequency of auditing and reporting is excessive.</p>	<p>Significant negotiations were conducted during the regulatory advisory panel process to develop the proposed regulation to agree on the annual water audit frequency for public water supply withdrawals and the three-year frequency for water audits for commercial and industrial water users. Public water supplies usually have the greatest geographical footprint and one of the highest potentials for annual water loss. For that reason, the regulation was drafted to require public water supplies to conduct audits on an annual frequency. No change is being made to the regulation in response to this comment.</p>
VMDWA4	<p>9VAC25-210-340 (B):</p> <p>Change the Water Auditing Plan Rule from an annual audit, with the first due by the end of the first year of the permit, to the end of the second year of the permit and at least every three years thereafter.</p> <p>Report the results of the water loss audits no more than 90 days after the end of each year for which an audit is required.</p> <p>Suggested Revision to 9VAC25-210-340 (B): 14. For surface water withdrawals for public water supply, a water auditing plan for an annual water loss audit in accordance with the American Water Works Association (AWWA) methodology a. A water loss audit using an approved methodology shall be conducted <u>by the end of the second year of the permit and at least every three years thereafter annually. The requirement to conduct an annual water loss audit shall begin upon permit issuance. By the end of the first year of the permit term, the permittee shall submit documentation to the department</u></p>	<p>See response to VMDWA3.</p>

	<p>that the water loss audit has been initiated. This documentation shall include activities completed during the first year of the permit term. b. Reporting. The applicant shall report the results of the annual water loss audits in a report submitted at a minimum of every three years <u>no more than 90 days after the end of each year for which a water loss audit is required by subdivision B 14 a of this subsection.</u></p>	
<p>VMDWA5</p>	<p>9VAC25-610-100 (B):</p> <p>Suggested Revision: 1. For a public water supply the required water conservation and management plan shall include: a. A water auditing plan for an annual water loss audits in accordance with the American Water Works Association (AWWA) methodology for water loss auditing, using the most recent version of the AWWA Water Audit Software, or another methodology approved by the department that estimates water loss: (1) A water loss audit using an approved methodology shall be <u>conducted by the end of the second year of the permit and at least every three years thereafter annually. The requirement to conduct an annual water loss audit shall begin upon permit issuance. By the end of the first year of the permit term, the permittee shall submit documentation to the department that the water loss audit has been initiated. This documentation shall include activities completed during the first year of the permit term.</u> (2) Reporting. The applicant shall report the results of the annual water loss audits in a report submitted <u>no more than 90 days after the end of each year for which a water loss audit is</u></p>	<p>See response to VMDWA3.</p>

	<p><u>required by subdivision B 1 a (1) of this subsection at a minimum every three years.</u> The report shall also include any revisions to the water auditing plan over the short and long term.</p>	
<p>VMDWA6</p>	<p>9VAC25-610-100 (B) (1) (c): General Comment:</p> <p>Other Component of Water Conservation Plans</p> <p>VMDWA's concern is that implementing the provisions of this section as they are currently written would require public water suppliers to regulate the actions of private parties on matters that are outside their legal authority.</p>	<p>The NOIRA was limited to regulatory changes necessary to implement Chapter 100 of the 2021 Special Session I Acts of Assembly. Regulatory changes, such as those proposed in the comment, are beyond the scope of this regulatory action.</p>
<p>VMDWA7</p>	<p>9VAC25-610-100(B)(1)(c); Specific Comment:</p> <p>VMDWA requests that the intent of three provisions of the Water Conservation Plans be clarified.</p> <p>I. Suggested revisions to clarify the intent of these provisions: c. Other components of a water conservation and management plan include: (1) A water use education program <u>designed to educate that contains requirements for the education of water users and training of employees controlling water consuming processes; to assure that water conservation principles are well known by the users of the resource. . . .</u> (2) <u>A program to encourage high-volume users to consider water reuse as an alternative to the public water supply where An evaluation of water reuse options and assurances that water shall be reused in all instances where reuse is practicable. Potential for expansion of the existing reuse</u></p>	<p>The NOIRA was limited to regulatory changes necessary to implement Chapter 100 of the 2021 Special Session I Acts of Assembly. Regulatory changes, such as those proposed in the comment, are beyond the scope of this regulatory action.</p>

	<p>practices or adoption of additional reuse practices shall also be encouraged included.</p> <p>(3) A plan to educate and encourage Where practicable, a requirement for the use of water-saving equipment and processes for all water users including technological, procedural, or programmatic improvements to the facilities and processes to decrease the amount of water withdrawn or to decrease water demand. . . .</p> <p>Water conservation and management plans shall discuss high volume water consumption by users on the system and where known conservation measures have previously been implemented and may shall be applied. Also, where appropriate, the use of water-saving fixtures in new and renovated plumbing as provided in the Uniform Statewide Building Code (13VAC5-63) shall be identified in the plan.</p>	
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Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

No changes are being made to the regulation since the proposed stage was published.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
9VAC25-210-300		Definitions	<p>Addition of the term “water loss”.</p> <p>Addition of the term “water loss audit”. This definition clarifies what the audit is reviewing.</p>
9VAC25-210-340 B	9VAC25-210-340 B (14)	Application requirements for surface water withdrawals.	<p>Addition of a new requirement for surface water withdrawal applications for public water supply that includes a water auditing plan for an annual water loss audit beginning at permit issuance. The use of the AWWA methodology and free software allows for consistent data collection and added value for most users. DEQ anticipates that most public water supplies will use the AWWA free software. Another methodology can be reviewed and approved by DEQ. The requirement specifies the water loss audit must be conducted annually and that reporting of the results is required cumulatively, at a minimum, every three years. The RAP did not support annual reporting of results as a mandate and agreed to the three-year reporting frequency. Annual reporting at the discretion of the permittee is not prohibited.</p>
9VAC25-210-340 B	9VAC25-210-340 B (15)	Application requirements for surface water withdrawals.	<p>Addition of a new requirement for surface water withdrawal applications for public water supply that includes a leak detection and repair plan. The requirement specifies what the plan must include and the reporting requirement. The plan is required to indicate how it will be informed by the water loss audit in prioritizing actions to address water loss; and where practicable, include a process for identifying equipment to quantify and reduce water loss and a schedule for inspection of equipment and distribution systems for actual water loss. Reporting is required to include a description of the plan’s effectiveness in addressing water loss, including any changes to the plan that can be improved over the short and long term.</p>

9VAC25-210-340 B	9VAC25-210-340 B (16)	Application requirements for surface water withdrawals.	Addition of a new requirement for surface water withdrawal applications for commercial and industrial users that includes a water auditing plan for a water loss audit. The applicant must propose a methodology to determine the water loss for the operation and quantity of water used based on the individual facility. The water audit must be conducted, and results reported once every three years. The RAP did not support conducting an annual audit as a mandate and agreed to the three-year audit and reporting frequency given the differences of these user facilities and public water supplies.
9VAC25-210-340 B	9VAC25-210-340 B (17)	Application requirements for surface water	Addition of a new requirement for surface water withdrawal applications for commercial and industrial users that includes a leak detection and repair plan. The content requirements for the plan are the same as for public water supply. The reporting is consistent with the water audit for this water user type.
9VAC25-210-340 B	9VAC25-210-340 B (18)	Application requirements for surface water withdrawals.	Addition of a new requirement for surface water withdrawal applications for agricultural users that includes a water auditing plan for an annual or periodic water loss audit based Agricultural Management Plans or Irrigation Management Plans. The use of these types of existing agricultural best management plans is anticipated to minimize the burden to agricultural producers by basing the methodologies on crop rotations and livestock needs. The water audit must include an estimate of water loss and a description of the methodology used to determine the quantity of the water used throughout the agricultural operation. Reporting of the results is required every three years. The RAP did not support conducting an annual audit as a mandate unless warranted by existing agricultural plans and agreed to the three-year audit and reporting frequency given the differences of these user facilities and public water supplies.
9VAC25-210-340	9VAC25-210-340 B (19)	Application requirements for surface water withdrawals.	Addition of a new requirement for surface water withdrawal applications for agricultural users that includes a

			<p>leak detection and repair plan. The content requirements for the plan are the same as for commercial and industrial users, except the RAP decided to eliminate the expectation to establish a process for the identification of equipment needs to quantify and reduce water loss. The reporting is consistent with the water audit for this water user type.</p>
9VAC25-610-10		Definitions.	<p>Addition of the term “public water supply”.</p> <p>Addition of the term “water loss.”</p> <p>Addition of the term “water loss audit.” This definition clarifies what the audit is reviewing.</p>
9VAC25-610-100	9VAC25-610-100 B (1)	Water conservation and management plans.	<p>610-100 B (1) is an existing requirement for the development of water conservation and management plans (WCMP) for municipal and non-municipal public water supplies. The RAP was in favor of creating consistency between the surface water and groundwater withdrawal permit requirements to the extent practicable. The regulation adds a new requirement for groundwater withdrawal public water supply WCMPs that includes a water auditing plan for an annual water loss audit beginning at permit issuance. The use of the AWWA methodology and free software allows for consistent data collection and added value for most users. DEQ anticipates that most public water supplies will use the AWWA free software. Another methodology can be reviewed and approved by DEQ. The requirement specifies the water loss audit must be conducted annually and that reporting of the results is required cumulatively, at a minimum, every three years. The RAP did not support annual reporting of results as a mandate and agreed to the three-year reporting frequency. Annual reporting at the discretion of the permittee is not prohibited. The regulation adds a new requirement for groundwater withdrawal public water supply WCMPs that includes a leak detection and repair plan. The requirement</p>

			<p>specifies what the plan must include and the reporting requirement. The plan is required to indicate how it will be informed by the water loss audit in prioritizing actions to address water loss; and where practicable, include a process for identifying equipment to quantify and reduce water loss and a schedule for inspection of equipment and distribution systems for actual water loss. Reporting is required to include a description of the plan's effectiveness in addressing water loss, including any changes to the plan that can be improved over the short and long term. Other changes were made to existing language to reorganize and provide context to the new combined language.</p>
<p>9VAC25-610-100</p>	<p>9VAC25-610-100 B (2)</p>	<p>Water conservation and management plans.</p>	<p>610-100 B (2) is an existing requirement for the development of WCMPs for commercial and industrial users. The RAP was in favor of creating consistency between the surface water and groundwater withdrawal permit requirements to the extent practicable. The regulation adds a new requirement for groundwater withdrawal commercial and industrial WCMPs that includes a water auditing plan for an annual water loss audit. The applicant must propose a methodology to determine the water loss for the operation and quantity of water used based on the individual facility. The water audit must be conducted, and results reported once every three years. The RAP did not support conducting an annual audit as a mandate and agreed to the three-year audit and reporting frequency given the differences of these user facilities and public water supplies. The regulation adds a new requirement for groundwater withdrawal commercial and industrial WCMPs that includes a leak detection and repair plan. The content requirements for the plan are the same as for public water supply. The reporting is consistent with the water audit for this water user type. Other changes were made to existing language to reorganize and provide</p>

			context to the new combined language.
9VAC25-610-100	9VAC25-610-100 B (3)	Water conservation and management plans.	<p>610-100 B (3) is an existing requirement for the development of WCMPs for agricultural users. The RAP was in favor of creating consistency between the surface water and groundwater withdrawal permit requirements to the extent practicable. The regulation adds a new requirement for groundwater withdrawal agricultural WCMPs that includes a water auditing plan for an annual or periodic water loss audit based Agricultural Management Plans or Irrigation Management Plans. The use of these types of existing agricultural best management plans is anticipated to minimize the burden to agricultural producers by basing the methodologies on crop rotations and livestock needs. The water audit must include an estimate of water loss and a description of the methodology used to determine the quantity of the water used throughout the agricultural operation. Reporting of the results is required every three years. The RAP did not support conducting an annual audit as a mandate unless warranted by existing agricultural plans and agreed to the three-year audit and reporting frequency given the differences of these user facilities and public water supplies.</p> <p>The regulation adds a new requirement for groundwater withdrawal agricultural WCMPs that includes a leak detection and repair plan. The content requirements for the plan are the same as for agricultural surface water withdrawals. The reporting is consistent with the water audit for this water user type. Other changes were made to existing language to reorganize and provide context to the new combined language.</p>

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.

As mandated by Chapter 100 of the 2021 Special Session I Acts of Assembly, the proposed regulation requires every application for a water withdrawal to include a water auditing plan and a leak detection and repair plan. State law does not provide an exemption for small businesses from the requirement for a water auditing plan and a leak detection and repair plan. In developing the regulation, consideration was given to minimizing requirements on all applicants for water withdrawal permits including small businesses. The agency anticipates that implementation of the requirement to include water audit plans and leak detection and repair plans in applications for water withdrawal permits will have a minimal economic impact on individual small businesses. As of December 2024, out of approximately 375 active Groundwater Withdrawal permits, there are 185 public water supply, 74 agricultural, 45 commercial, 30 industrial, 38 irrigation, 1 nuclear power, and 2 fossil fuel plant permittees. As of December 2024, out of approximately 114 active Virginia Water Protection surface water withdrawal permits, there are 56 public water supply, 2 agricultural, 21 commercial, 9 fossil fuel power, 12 hydropower, 4 irrigation, 1 industrial, 7 mining, and 2 nuclear power plant permittees. The majority of these non-municipal permittees likely are not small businesses as defined in in § 2.2-4007.1 of the Code of Virginia. This analysis has been reported on the ORM Economic Impact Form in Table 1b and Table 4.

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.

It is not anticipated that this regulation will have a direct impact on families.

1 **Project 6942 - Final amendments for March 27, 2025 State Water Control Board meeting**
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3 **Amendments Establishing Criteria for Water Auditing Plans and Leak Detection and**
4 **Repair Plans and Requiring Applications to Include Plans**

5 **9VAC25-210-300. Definitions for surface water withdrawals.**

6 The following words and terms when used in this part shall have the following meanings:

7 "Affected stream reach" means the portion of a surface water body beginning at the location
8 of a withdrawal and ending at a point where effects of the withdrawal are not reasonably expected
9 to adversely affect beneficial uses.

10 "Agricultural surface water withdrawal" means a withdrawal of surface water in Virginia or from
11 the Potomac River for the purpose of agricultural, silvicultural, horticultural, or aquacultural
12 operations. Agricultural surface water withdrawals include withdrawals for turf farm operations,
13 but do not include withdrawals for landscaping activities, or turf installment and maintenance
14 associated with landscaping activities.

15 "Consumptive use" means any use of water withdrawn from a surface water other than a
16 nonconsumptive use.

17 "Drought" means the declaration of a drought stage by the Virginia Drought Coordinator or
18 the Governor of Virginia for a particular area or locality within Virginia. Drought stage declarations
19 include watch, warning, and emergency, depending upon severity, as defined by the Virginia
20 Drought Assessment and Response Plan dated March 28, 2003.

21 "Drought of record" means the time period during which the most severe drought conditions
22 occurred for a particular area or location, as indicated by the available hydrologic and
23 meteorologic data.

24 "Emergency Virginia Water Protection Permit" means a Virginia Water Protection Permit
25 issued pursuant to § 62.1-44.15:22 C of the Code of Virginia authorizing a new or increased
26 surface water withdrawal to address insufficient public drinking water supplies that are caused by
27 a drought and may result in a substantial threat to human health or public safety.

28 "Human consumption" means the use of water to support human survival and health, including
29 drinking, bathing, showering, cooking, dishwashing, and maintaining hygiene.

30 "Instream flow" means the existing volume of water flowing in a stream or water body,
31 including any seasonal variations of water levels and flow.

32 "Intake structure" means any portion of a surface water withdrawal system used to withdraw
33 surface water that is located within the surface water, such as, but not limited to, a pipe, culvert,
34 hose, tube, or screen.

35 "Major river basin" means the Potomac-Shenandoah River Basin, the Rappahannock River
36 Basin, the York River Basin, the James River Basin, the Chowan River Basin, the Roanoke River
37 Basin, the New River Basin, or the Tennessee-Big Sandy River Basin.

38 "Nonconsumptive use" means the use of water withdrawn from a surface water in such a
39 manner that it is returned to the surface water without substantial diminution in quantity at or near
40 the point from which it was taken and would not result in or exacerbate low flow conditions.

41 "Potomac River Low Flow Allocation Agreement" means the agreement among the United
42 States of America, the State of Maryland, the Commonwealth of Virginia, the District of Columbia,
43 the Washington Suburban Sanitation Commission, and the Fairfax County Water Authority dated
44 January 11, 1978, consented to by the United States Congress in § 181 of the Water Resources
45 Development Act of 1976, Public Law 94-587, as modified on April 22, 1986.

46 "Public water supply" means a withdrawal of surface water in Virginia or from the Potomac
47 River for the production of drinking water, distributed to the general public for the purpose of, but
48 not limited to, domestic use.

49 "Public water supply emergency" means a substantial threat to public health or safety due to
50 insufficient public drinking water supplies caused by drought.

51 "Section for Cooperative Water Supply Operations on the Potomac" means a section of the
52 Interstate Commission on the Potomac River Basin designated by the Water Supply Coordination
53 Agreement as responsible for coordination of water resources during times of low flow in the
54 Potomac River.

55 "Surface water withdrawal" means a removal or diversion of surface water in Virginia or from
56 the Potomac River for consumptive or nonconsumptive use thereby altering the instream flow or
57 hydrologic regime of the surface water. Projects that do not alter the instream flow or that alter
58 the instream flow but whose sole purpose is flood control or stormwater management are not
59 included in this definition.

60 "Surface water withdrawal system" means any device or combination of devices used to
61 withdraw surface water such as, but not limited to, a machine, pump, culvert, hose, tube, screen,
62 or fabricated concrete or metal structure.

63 "Variance" means a mechanism that allows temporary waiver of the generally applicable
64 withdrawal limitation requirements or instream flow conditions of a VWP permit during a drought.

65 "Water loss" means the difference between the estimated or measured volume of water
66 withdrawn and the estimated or measured volume applied to the beneficial use.

67 "Water loss audit" means the review of records and data that traces the flow of water from its
68 withdrawal through distribution and application to the beneficial use.

69 "Water Supply Coordination Agreement" means the agreement among the United States of
70 America, the Fairfax County Water Authority, the Washington Suburban Sanitary Commission,
71 the District of Columbia, and the Interstate Commission on the Potomac River Basin, dated July
72 22, 1982, which establishes agreement among the suppliers to operate their respective water
73 supply systems in a coordinated manner and which outlines operating rules and procedures for
74 reducing impacts of severe droughts in the Potomac River Basin.

75 "Water supply plan" means a document developed in compliance with 9VAC25-780.

76 **9VAC25-210-340. Application requirements for surface water withdrawals.**

77 A. Persons proposing to initiate a new or expanded surface water withdrawal not excluded
78 from requirements of this chapter by 9VAC25-210-310, proposing to reapply for a current
79 permitted withdrawal, or a Federal Energy Regulatory Commission (FERC) license or relicense
80 associated with a surface water withdrawal, shall apply for a VWP permit.

81 B. In addition to informational requirements of 9VAC25-210-80 B and if applicable, 9VAC25-
82 210-80 C, applications for surface water withdrawals or a FERC license or relicense associated
83 with a surface water withdrawal shall include:

84 1. As part of identifying the project purpose, a narrative describing the water supply issues
85 that form the basis of the proposed project purpose.

86 2. The drainage area, the average annual flow and the median monthly flows at the
87 withdrawal point, and historical low flows, if available.

88 3. The average daily withdrawal; the maximum daily, monthly, annual, and instantaneous
89 withdrawals; and information on the variability of the demand by season. If the project has
90 multiple intake structures, provide for each individual intake structure and the cumulative
91 volumes for the entire surface water withdrawal system.

- 92 4. The monthly consumptive use volume in million gallons and the average daily return
93 flow in million gallons per day of the proposed project and the location of the return flow,
94 including the latitude and longitude and the drainage area in square miles at the discharge
95 point.
- 96 5. Information on flow dependent beneficial uses along the affected stream reach. For
97 projects that propose a transfer of water resources from a major river basin to another
98 major river basin, this analysis should include both the source and receiving basins.
- 99 a. Evaluation of the flow dependent instream and offstream beneficial uses. Instream
100 beneficial uses include, ~~but are not limited to,~~ the protection of fish and wildlife habitat,
101 maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic
102 values. Offstream beneficial uses include, ~~but are not limited to,~~ domestic (including
103 public water supply), agricultural, electric power generation, and commercial and
104 industrial uses.
- 105 b. The aquatic life, including species and habitat requirements.
- 106 c. How the proposed withdrawal will alter flows.
- 107 6. Information on the proposed use of and need for the surface water and information on
108 how demand for surface water was determined (e.g., per capita use, population growth
109 rates, new uses, changes to service areas, and if applicable, acreage irrigated and
110 evapotranspiration effects). If during the water supply planning process, the need for the
111 withdrawal was established, the applicant may submit the planning process information,
112 provided that the submittal addresses all requirements of 9VAC25-210-360. The
113 department shall deem such a submittal as meeting the requirements of this subsection.
114 For surface water withdrawals for public water supply, see also 9VAC25-780-100 and
115 9VAC25-780-130.
- 116 7. Information describing the intake structure, to include intake screen mesh size and
117 intake velocity.
- 118 8. For withdrawals proposed from an impoundment, the following:
- 119 a. Description of the flow or release control structures, including the minimum rate of
120 flow, in cubic feet per second, size and capacity of the structure, and the mechanism
121 to control the release.
- 122 b. Surface area in acres, maximum depth in feet, normal pool elevation, total storage
123 capacity, and unusable storage volume in acre-feet.
- 124 c. The stage-storage relationship. For example, the volume of water in the
125 impoundment at varying stages of water depth.
- 126 9. Whether the proposed surface water withdrawal is addressed in the water supply plan
127 that covers the area in which the withdrawal is proposed to be located. If the proposed
128 withdrawal is included, provide a discussion as to how the proposed withdrawal is
129 addressed in the water supply plan, specifically in terms of projected demand, analysis of
130 alternatives, and water conservation measures. If all or a portion of the withdrawn water
131 will be transferred to an area not covered by the plan, the discussion shall also include the
132 water supply plan for the area of the receiving watershed.
- 133 10. An alternatives analysis for the proposed surface water withdrawal, including at a
134 minimum, the criteria in 9VAC25-210-360.
- 135 11. For new or expanded surface water withdrawals proposing to withdraw 90 million
136 gallons a month or greater, a summary of the steps taken to seek public input as required
137 by 9VAC25-210-320 and an identification of the issues raised during the course of the
138 public information meeting process.

- 139 12. For new or expanded surface water withdrawals that involve a transfer of water
140 between major river basins that may impact a river basin in another state, a plan describing
141 procedures to notify potentially affected persons, both in and outside of Virginia, of the
142 proposed project.
- 143 13. For surface water withdrawals, other than for public water supply, information to
144 demonstrate that alternate sources of water supply are available to support the operation
145 of the facility during times of reduced instream flow.
- 146 14. For surface water withdrawals for public water supply, a water auditing plan for an
147 annual water loss audit in accordance with the American Water Works Association
148 (AWWA) methodology for water loss auditing using the most recent version of the AWWA
149 Water Audit Software or another methodology approved by the department that estimates
150 water loss.
- 151 a. A water loss audit using an approved methodology shall be conducted annually.
152 The requirement to conduct an annual water loss audit shall begin upon permit
153 issuance. By the end of the first year of the permit term, the permittee shall submit
154 documentation to the department that the water loss audit has been initiated. This
155 documentation shall include activities completed during the first year of the permit
156 term.
- 157 b. The applicant shall report the results of the annual water loss audits in a report
158 submitted at a minimum of every three years.
- 159 15. For surface water withdrawals for public water supply, a leak detection and repair plan
160 shall be submitted. The leak detection and repair plan shall indicate how its
161 implementation will be informed by the results of the annual water loss audit process and
162 shall be updated during each new permit term. The plan shall include:
- 163 a. A description of how the water loss audit results are expected to inform prioritization
164 of actions to address water loss;
- 165 b. Where practicable, a process for the identification of equipment needs to quantify
166 and reduce water loss;
- 167 c. Where practicable, a schedule for inspection of equipment and distribution systems
168 for actual water losses; and
- 169 d. In the report required by subdivision B 14 b of this section, a description of the plan's
170 effectiveness in addressing water loss, including revisions to those elements of the
171 leak detection and repair plan that can be improved over the short and long term.
- 172 16. For surface water withdrawals for commercial and industrial users, a water auditing
173 plan for a water loss audit to be conducted beginning in the first three years of the permit
174 term. The plan shall include a description of the methodology used to determine the water
175 loss for the operation and the quantity of water used throughout the facility.
- 176 a. A water audit using this methodology shall be conducted once every three years.
177 The requirement to conduct a water loss audit shall begin upon permit issuance. The
178 permittee shall submit documentation to include activities completed during the first
179 three years of the permit term.
- 180 b. The applicant shall conduct a water loss audit and report the results of the water
181 loss audits in a report submitted every three years.
- 182 17. For surface water withdrawals for commercial and industrial users, a leak detection
183 and repair plan shall be submitted. The leak detection and repair plan shall indicate how
184 its implementation will be informed by the results of the water loss audit process and shall
185 be updated during each new permit term. The plan shall include:

186 a. A description of how the water audit results are expected to inform prioritization of
 187 actions to address water loss;

188 b. Where practicable, a process for the identification of equipment needs to quantify
 189 and reduce water loss;

190 c. Where practicable, a schedule for inspection of equipment and piping systems for
 191 actual water losses; and

192 d. In the report required by subdivision B 16 b of this section, a description of the leak
 193 detection and repair plan's effectiveness in addressing water loss, including revisions
 194 to those elements of the leak detection and repair plan that can be improved over the
 195 short and long term.

196 18. For surface water withdrawals for agricultural users, a water auditing plan for an annual
 197 water loss audit that shall be conducted annually or periodically based on agricultural
 198 management plans or irrigation management plans, including the anticipated crop rotation
 199 schedule or livestock growth stages. The water auditing plan shall include an estimate of
 200 water loss for the agricultural operation and a description of the methodology used to
 201 determine the quantity of water used throughout the agricultural operation.

202 a. A water audit using this methodology shall be conducted. The requirement to
 203 conduct a water loss audit shall begin upon permit issuance. By the end of the first
 204 year of the permit term, the permittee shall submit documentation to the department
 205 that the water loss audit has been initiated. This documentation shall include activities
 206 completed during the first year of the permit term.

207 b. The applicant shall report the results of the water loss audit in a report submitted at
 208 a minimum every three years.

209 19. For surface water withdrawals for agricultural users, a leak detection and repair plan
 210 shall be submitted. The leak detection and repair plan shall indicate how its
 211 implementation will be informed by the results of the water loss audit process and shall be
 212 updated during each new permit term. The plan shall include:

213 a. A description of how the water audit results are expected to inform prioritization of
 214 actions to address water loss;

215 b. Where practicable, a schedule for inspection of equipment and distribution systems
 216 for actual water losses; and

217 c. In the report required by subdivision B 18 b of this section, a description of the leak
 218 detection and repair plan's effectiveness in addressing water loss, including revisions
 219 to those elements of the leak detection and repair plan that can be improved over the
 220 short and long term.

221 C. Applications for an Emergency Virginia Water Protection Permit.

222 1. Applications for an Emergency Virginia Water Protection Permit to address a public
 223 water supply emergency shall include the information noted in subdivisions 1 a through 1
 224 o of this subsection. The JPA may be used for emergency application purposes, provided
 225 that all of the information in subdivisions 1 a through 1 o of this subsection is included:

226 a. The applicant's legal name, mailing address, telephone number, and if applicable,
 227 fax number and ~~electronic mail~~ email address;

228 b. If different from applicant, name, mailing address, telephone number, and if
 229 applicable, fax number and ~~electronic mail~~ email address of property owner;

230 c. If applicable, authorized agent's name, mailing address, telephone number, and if
 231 applicable, fax number and ~~electronic mail~~ email address;

232 d. Name of water body or water bodies, or receiving waters, as applicable;

- 233 e. Name of the city or county where the project occurs;
- 234 f. Signed and dated signature page (electronic submittals containing the original
235 signature page, such as that contained in a scanned document file are acceptable);
- 236 g. Permit application fee in accordance with 9VAC25-20;
- 237 h. The drainage area, the average annual flow and the median monthly flows at the
238 withdrawal point, and historical low flows, if available;
- 239 i. Information on the aquatic life along the affected stream reach, including species
240 and habitat requirements;
- 241 j. Recent and current water use, including monthly water use in the previous calendar
242 year and weekly water use in the ~~previous~~ six months prior to the application. The
243 application shall identify the sources of such water and also identify any water
244 purchased from other water suppliers;
- 245 k. A description of the severity of the public water supply emergency, including (i) for
246 reservoirs, an estimate of days of remaining supply at current rates of use and
247 replenishment; (ii) for wells, current production; and (iii) for intakes, current streamflow;
- 248 l. A description of mandatory water conservation measures taken or imposed by the
249 applicant and the dates when the measures were implemented; for the purposes of
250 obtaining an Emergency Virginia Water Protection Permit, mandatory water
251 conservation measures shall include, ~~but not be limited to,~~ the prohibition of lawn and
252 landscape watering, vehicle washing, watering of recreation fields, refilling of
253 swimming pools, and washing of paved surfaces;
- 254 m. An estimate of water savings realized by implementing mandatory water
255 conservation measures;
- 256 n. Documentation that the applicant has exhausted all management actions that would
257 minimize the threat to public welfare, safety, and health and will avoid the need to
258 obtain an emergency permit, and that are consistent with existing permit limitations;
259 and
- 260 o. Any other information that demonstrates that the condition is a substantial threat to
261 public health or safety.
- 262 2. Within 14 days after the issuance of an Emergency Virginia Water Protection Permit,
263 the permit holder shall apply for a VWP permit under the other provisions of this chapter.

264 **9VAC25-610-10. Definitions.**

265 Unless a different meaning is required by the context, the following terms as used in this
266 chapter shall have the following meanings:

267 "Act" means the Ground Water Management Act of 1992, Chapter 25 (§ 62.1-254 et seq.) of
268 Title 62.1 of the Code of Virginia.

269 "Adverse impact" means reductions in groundwater levels or changes in groundwater quality
270 that limit the ability of any existing groundwater user lawfully withdrawing or authorized to
271 withdraw groundwater at the time of permit or special exception issuance to continue to withdraw
272 the quantity and quality of groundwater required by the existing use. Existing groundwater users
273 include all those persons who have been granted a groundwater withdrawal permit subject to this
274 chapter and all other persons who are excluded from permit requirements by 9VAC25-610-50.

275 "Agricultural use" means utilizing groundwater for the purpose of agricultural, silvicultural,
276 horticultural, or aquacultural operations. Agricultural use includes withdrawals for turf farm
277 operations, but does not include withdrawals for landscaping activities or turf installment and
278 maintenance associated with landscaping activities.

279 "Applicant" means a person filing an application to initiate or enlarge a groundwater withdrawal
280 in a groundwater management area.

281 "Area of impact" means the areal extent of each aquifer where more than one foot of
282 drawdown is predicted to occur due to a proposed withdrawal.

283 "Beneficial use" includes domestic (including public water supply), agricultural, commercial,
284 and industrial uses.

285 "Board" means the State Water Control Board. When used outside the context of the
286 promulgation of regulations, including regulations to establish general permits, "board" means the
287 Department of Environmental Quality.

288 "Consumptive use" means the withdrawal of groundwater, without recycle of said waters to
289 their source of origin.

290 "Controversial permit" means a water permitting action for which a public hearing has been
291 granted pursuant to 9VAC25-610-270 and 9VAC25-610-275.

292 "Department" means the Department of Environmental Quality.

293 "Director" means the Director of the Department of Environmental Quality.

294 "Draft permit" means a prepared document indicating the department's tentative decision
295 relative to a permit action.

296 "General permit" means a groundwater withdrawal permit authorizing the withdrawal of
297 groundwater in a groundwater management area under specified conditions, including the size of
298 the withdrawal or the aquifer or confining unit from which the withdrawal is to be made.

299 "Geophysical investigation" means any hydrogeologic evaluation to define the hydrogeologic
300 framework of an area or determine the hydrogeologic properties of any aquifer or confining unit
301 to the extent that withdrawals associated with such investigations do not result in unmitigated
302 adverse impacts to existing groundwater users. Geophysical investigations include pump tests
303 and aquifer tests.

304 "Groundwater" means any water, except capillary moisture, beneath the land surface in the
305 zone of saturation or beneath the bed of any stream, lake, reservoir, or other body of surface
306 water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface
307 geologic structure in which such water stands, flows, percolates, or otherwise occurs.

308 "Human consumption" means the use of water to support human survival and health, including
309 drinking, bathing, showering, cooking, dishwashing, and maintaining hygiene.

310 "Instream beneficial uses" means uses including the protection of fish and wildlife resources
311 and habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic
312 values. The preservation of instream flows for purposes of the protection of navigation,
313 maintenance of waste assimilation capacity, the protection of fish and wildlife resources and
314 habitat, recreation, and cultural and aesthetic values is an instream beneficial use of Virginia's
315 waters.

316 "Mitigate" means to take actions necessary to ~~assure~~ ensure that all existing groundwater
317 users at the time of issuance of a permit or special exception who experience adverse impacts
318 continue to have access to the amount and quality of groundwater needed for existing uses.

319 "Permit" means a groundwater withdrawal permit issued under the Ground Water
320 Management Act of 1992 permitting the withdrawal of a specified quantity of groundwater under
321 specified conditions in a groundwater management area.

322 "Permittee" means a person that currently has an effective groundwater withdrawal permit
323 issued under the Ground Water Act of 1992.

324 "Person" means any and all persons, including individuals, firms, partnerships, associations,
325 public or private institutions, municipalities or political subdivisions, governmental agencies, or

326 private or public corporations organized under the laws of this Commonwealth or any other state
327 or country.

328 "Practicable" means available and capable of being done after taking into consideration cost,
329 existing technology, and logistics in light of overall project purposes.

330 "Private well" means, as defined in § 32.1-176.3 of the Code of Virginia, any water well
331 constructed for a person on land that is owned or leased by that person and is usually intended
332 for household, groundwater source heat pump, agricultural use, industrial use, or other nonpublic
333 water well.

334 "Public hearing" means a ~~fact finding~~ fact-finding proceeding held to afford interested persons
335 an opportunity to submit factual data, views, and comments to the department.

336 "Public water supply" means a system that provides water for human consumption through
337 pipes or other constructed conveyances to at least 15 service connections or serves an average
338 of at least 25 people for at least 60 days a year. A public water supply may be publicly or privately
339 owned.

340 "Salt water intrusion" means the encroachment of saline waters in any aquifer that creates
341 adverse impacts to existing groundwater users or is counter to the public interest.

342 "Special exception" means a document issued by the department for withdrawal of
343 groundwater in unusual situations where requiring the user to obtain a groundwater withdrawal
344 permit would be contrary to the purpose of the Ground Water Management Act of 1992. Special
345 exceptions allow the withdrawal of a specified quantity of groundwater under specified conditions
346 in a groundwater management area.

347 "Supplemental drought relief well" means a well permitted to withdraw a specified amount of
348 groundwater to meet human consumption needs during declared drought conditions after
349 mandatory water use restrictions have been implemented.

350 "Surface water" means all state waters that are not groundwater as groundwater is defined in
351 § 62.1-255 of the Code of Virginia.

352 "Surface water and groundwater conjunctive use system" means an integrated water supply
353 system wherein surface water is the primary source and groundwater is a supplemental source
354 that is used to augment the surface water source when the surface water source is not able to
355 produce the amount of water necessary to support the annual water demands of the system.

356 "Surficial aquifer" means the upper surface of a zone of saturation, where the body of
357 groundwater is not confined by an overlying impermeable zone.

358 "Water loss" means the difference between the estimated or measured volume of water
359 withdrawn and the estimated or measured volume applied to the beneficial use.

360 "Water loss audit" means the review of records and data that traces the flow of water from its
361 withdrawal through distribution and application to the beneficial use.

362 "Water well systems provider" means any individual who is certified by the Board for
363 Contractors in accordance with § 54.1-1128 et seq. of the Code of Virginia and who is engaged
364 in drilling, installation, maintenance, or repair of water wells, water well pumps, ground source
365 heat exchangers, and other equipment associated with the construction, removal, or repair of
366 water wells, water well systems, and ground source heat pump exchangers to the point of
367 connection to the ground source heat pump.

368 "Well" means any artificial opening or artificially altered natural opening, however made, by
369 which groundwater is sought or through which groundwater flows under natural pressure or is
370 intended to be withdrawn.

371 "Withdrawal system" means (i) one or more wells or withdrawal points located on the same or
372 contiguous properties under common ownership for which the withdrawal is applied to the same

373 beneficial use or (ii) two or more connected wells or withdrawal points that are under common
 374 ownership but are not necessarily located on contiguous properties.

375 **9VAC25-610-100. Water conservation and management plans.**

376 A. Any application to initiate a new withdrawal or expand an existing withdrawal in any
 377 groundwater management area or the reapplication at the end of a permit cycle for all permits
 378 shall require a water conservation and management plan before the application or reapplication
 379 is considered complete. The department shall review all water conservation and management
 380 plans and ~~assure~~ ensure that such plans contain all elements required in subsection B of this
 381 section. The approved plan shall become an enforceable part of the approved permit.

382 B. A water conservation and management plan is an operational plan to be referenced and
 383 implemented by the permittee. Water conservation and management plans shall be consistent
 384 with local and regional water supply plans in the applicant's geographic area developed as
 385 required by 9VAC25-780. The water conservation and management plan shall be specific to the
 386 type of water use and include the following:

387 1. ~~For municipal and nonmunicipal public water supplies~~ a public water supply, the
 388 required water conservation and management plan shall include:

389 ~~a. Where practicable, the plan should require use of water saving equipment and~~
 390 ~~processes for all water users including technological, procedural, or programmatic~~
 391 ~~improvements to the facilities and processes to decrease the amount of water~~
 392 ~~withdrawn or to decrease water demand. The goal of these requirements is to assure~~
 393 ~~the most efficient use of groundwater. Information on the water saving alternatives~~
 394 ~~examined and the water savings associated with the alternatives shall be provided.~~
 395 ~~Water conservation and management plans shall discuss high volume water~~
 396 ~~consumption by users on the system and where conservation measures have~~
 397 ~~previously been implemented and shall be applied. Also, where appropriate, the use~~
 398 ~~of water saving fixtures in new and renovated plumbing as provided in the Uniform~~
 399 ~~Statewide Building Code (13VAC5-63) shall be identified in the plan; A water auditing~~
 400 ~~plan for an annual water loss audit in accordance with the American Water Works~~
 401 ~~Association (AWWA) methodology for water loss auditing, using the most recent~~
 402 ~~version of the AWWA Water Audit Software or another methodology approved by the~~
 403 ~~department that estimates water loss.~~

404 (1) A water loss audit using an approved methodology shall be conducted annually.
 405 The requirement to conduct an annual water loss audit shall begin upon permit
 406 issuance. By the end of the first year of the permit term, the permittee shall submit
 407 documentation to the department that the water loss audit has been initiated. This
 408 documentation shall include activities completed during the first year of the permit
 409 term.

410 (2) The applicant shall report the results of the annual water loss audits in a report
 411 submitted at a minimum every three years. The report shall also include any revisions
 412 to the water auditing plan over the short and long term.

413 ~~b. A water loss reduction program, which defines the applicant's leak detection and~~
 414 ~~repair program. The water loss reduction program plan shall include requirements for~~
 415 ~~an audit of the total amount of groundwater used in the distribution system and~~
 416 ~~operational processes during the first two years of the permit cycle. Implementation of~~
 417 ~~a be submitted as a component of the water conservation and management plan. The~~
 418 ~~leak detection and repair program plan shall be required within one year of the date~~
 419 ~~the permit is issued. The program shall include a schedule for inspection of equipment~~
 420 ~~and piping for leaks; indicate how its implementation will be informed by the results of~~

421 the annual water loss audit process and shall be updated during each new permit term.

422 The plan shall include:

423 (1) A description of how the water loss audit results are expected to inform prioritization
424 of actions to address water loss;

425 (2) Where practicable, a process for the identification of equipment needs to quantify
426 and reduce water loss;

427 (3) Where practicable, a schedule for inspection of equipment and distribution systems
428 for actual water losses; and

429 (4) In the report required by subdivision 1 a (2) of this subsection, a description of the
430 leak detection and repair plan's effectiveness in addressing water loss, including
431 revisions to those elements of the leak detection and repair plan that can be improved
432 over the short and long term.

433 c. Other components of a water conservation and management plan include:

434 (1) A water use education program that contains requirements for the education of
435 water users and training of employees controlling water consuming processes to
436 ~~assure~~ ensure that water conservation principles are well known by the users of the
437 resource. The program shall include a schedule for information distribution and the
438 type of materials used;

439 d. (2) An evaluation of water reuse options and assurances that water shall be reused
440 in all instances where reuse is practicable. Potential for expansion of the existing reuse
441 practices or adoption of additional reuse practices shall also be included; and

442 e. (3) Where practicable, a requirement for the use of water-saving equipment and
443 processes for all water users, including technological, procedural, or programmatic
444 improvements to the facilities and processes to decrease the amount of water
445 withdrawn or to decrease water demand. Information on the water-saving alternatives
446 examined and the water savings associated with the alternatives shall be provided.
447 Water conservation and management plans shall discuss high volume water
448 consumption by users on the system and where conservation measures have
449 previously been implemented and shall be applied. Where appropriate, the use of
450 water-saving fixtures in new and renovated plumbing, as provided in the Virginia
451 Uniform Statewide Building Code (13VAC5-63), shall also be identified in the plan; and

452 (4) Requirements for mandatory water use reductions during water shortage
453 emergencies declared by the local governing body or water authority consistent with
454 §§ 15.2-923 and 15.2-924 of the Code of Virginia. This shall include, where
455 appropriate, ordinances in municipal systems prohibiting the waste of water generally
456 and requirements providing for mandatory water use restrictions in accordance with
457 drought response and contingency ordinances implemented to comply with 9VAC25-
458 780-120 during water shortage emergencies. The water conservation and
459 management plan shall also contain requirements for mandatory water use restrictions
460 during water shortage emergencies that restricts or prohibits all nonessential uses
461 such as lawn watering, car washing, and similar nonessential residential, industrial,
462 and commercial uses for the duration of the water shortage emergency. Penalties for
463 failure to comply with mandatory water use restrictions shall be included in municipal
464 system plans.

465 2. For nonpublic water supply applicants— a commercial and industrial users user, the
466 required water conservation and management plan shall include:

467 a. Where applicable, the plan should require use of water-saving equipment and
468 processes for all water users including technological, procedural, or programmatic

469 ~~improvements to the facilities and processes to decrease the amount of water~~
470 ~~withdrawn or to decrease water demand. The goal of these requirements is to assure~~
471 ~~the most efficient use of groundwater. Information on the water-saving alternatives~~
472 ~~examined and the water savings associated with the alternatives shall be provided.~~
473 ~~Also, where appropriate, the use of water-saving fixtures in new and renovated~~
474 ~~plumbing as provided in the Uniform Statewide Building Code (13VAC5-63) shall be~~
475 ~~identified in the plan; A water auditing plan for a water loss audit to be conducted~~
476 ~~beginning in the first three years of the permit term. The plan shall include a description~~
477 ~~of the methodology used to estimate the water loss for the operation and the quantity~~
478 ~~of water used throughout the facility.~~

479 (1) A water loss audit using this methodology shall be conducted once every three
480 years. The requirement to conduct a water loss audit shall begin upon permit issuance.
481 Documentation shall include activities completed during the first three years of the
482 permit term.

483 (2) The applicant shall conduct a water loss audit and report the results of the water
484 loss audit in a report submitted every three years.

485 b. ~~A water loss reduction program, which defines the applicant's leak detection and~~
486 ~~repair program. The water loss reduction program plan shall include requirements for~~
487 ~~an audit of the total amount of groundwater used in the distribution system and~~
488 ~~operational processes during the first two years of the permit cycle. Implementation of~~
489 ~~a be submitted as a component of the water conservation and management plan. The~~
490 ~~leak detection and repair program shall be required within one year of the date the~~
491 ~~permit is issued plan shall indicate how its implementation will be informed by the~~
492 ~~results of the water loss audit process and shall be updated during each new permit~~
493 ~~term. The program plan shall include a schedule for inspection of equipment and piping~~
494 ~~for leaks;:~~

495 (1) A description of how the water loss audit results are expected to inform prioritization
496 of actions to address water loss;

497 (2) Where practicable, a process for the identification of equipment needs to quantify
498 and reduce water loss;

499 (3) Where practicable, a schedule for inspection of equipment and piping systems for
500 actual water losses;

501 (4) Where practicable, a requirement for use of water-saving equipment and
502 processes including technological, procedural, or programmatic improvements to the
503 facilities and processes to decrease the amount of water withdrawn or to decrease
504 water demand. The goal of these requirements is to ensure the most efficient use of
505 groundwater. Information on the water-saving alternatives examined and the water
506 savings associated with the alternatives shall be provided. Water conservation and
507 management plans shall discuss high volume water processes in the facility and where
508 conservation measures have previously been implemented and shall be applied.
509 Where appropriate, the use of water-saving fixtures in new and renovated plumbing,
510 as provided in the Virginia Uniform Statewide Building Code, shall also be identified in
511 the plan; and

512 (5) In the report required by subdivision 2 a (2) of this subsection, a description of the
513 plan's effectiveness in addressing water loss, including revisions to those elements of
514 the water conservation and management plan that can be improved over the short and
515 long term.

516 c. Other components of a water conservation and management plan include:

517 (1) A water use education program that contains requirements for the education of
 518 water users and training of employees controlling water consuming processes to
 519 assure ensure that water conservation principles are well known by the users of the
 520 resource. The program shall include a schedule for information distribution and the
 521 type of materials used;

522 ~~d.~~ (2) An evaluation of water reuse options and assurances that water shall be reused
 523 in all instances where reuse is practicable. Potential for expansion of the existing reuse
 524 practices or adoption of additional reuse practices shall also be included; and

525 ~~e.~~ (3) Where practicable, actions to encourage or provide incentives for the use of
 526 water-saving fixtures in new and renovated plumbing, as provided under the Virginia
 527 Uniform Statewide Building Code, shall be identified in the plan; and

528 (4) Requirements for complying with mandatory water use reductions during water
 529 shortage emergencies declared by the local governing body or water authority in
 530 accordance with §§ 15.2-923 and 15.2-924 of the Code of Virginia. This shall include,
 531 where appropriate, ordinances prohibiting the waste of water generally and
 532 requirements providing for mandatory water use restrictions in accordance with
 533 drought response and contingency ordinances implemented to comply with 9VAC25-
 534 780-120 during water shortage emergencies. The water conservation and
 535 management plan shall also contain requirements for mandatory water use restrictions
 536 during water shortage emergencies that restricts or prohibits all nonessential uses
 537 such as lawn watering, car washing, and similar nonessential industrial and
 538 commercial uses for the duration of the water shortage emergency.

539 3. ~~For nonpublic water supply applicants – an agricultural users user, the required water~~
 540 conservation and management plan shall include:

541 ~~a. Requirements for the use of water saving plumbing and processes to decrease the~~
 542 ~~amount of water withdrawn or to decrease water demand. Plans submitted for the use~~
 543 ~~of groundwater for irrigation shall identify the specific type of irrigation system that will~~
 544 ~~be utilized, the efficiency rating of the irrigation system in comparison to less efficient~~
 545 ~~systems, the irrigation schedule used to minimize water demand, and the crop~~
 546 ~~watering requirements. Multiple types of irrigation methods may be addressed in the~~
 547 ~~plan. For livestock watering operations, plans shall include livestock watering~~
 548 ~~requirements (per head) and processes to minimize waste of water. These~~
 549 ~~requirements shall assure that the most practicable use is made of groundwater. If~~
 550 ~~these options are not implemented in the plan, information on the water saving~~
 551 ~~alternatives examined and the water savings associated with the alternatives shall be~~
 552 ~~provided; A water auditing plan for an annual water loss audit that shall be conducted~~
 553 ~~annually or periodically based on agricultural management plans or irrigation~~
 554 ~~management plans, including the anticipated crop rotation schedule or livestock~~
 555 ~~growth stages. The water auditing plan shall include an estimate of water loss for the~~
 556 ~~agricultural operation and a description of the methodology used to determine the~~
 557 ~~quantity of water used throughout the agricultural operation.~~

558 (1) A water loss audit using this methodology shall be conducted. The requirement to
 559 conduct a water loss audit shall begin upon permit issuance. By the end of the first
 560 year of the permit term, the permittee shall submit documentation to the department
 561 that the water loss audit has been initiated. This documentation shall include activities
 562 completed during the first year of the permit term.

563 (2) The applicant shall report the results of the water loss audit in a report submitted
 564 at a minimum every three years.

565 b. ~~A water loss reduction program, which defines the applicant's leak detection and~~
 566 ~~repair program. The water loss reduction program plan shall include requirements for~~
 567 ~~an audit of the total amount of groundwater used in the distribution system and~~
 568 ~~operational processes during the first two years of the permit cycle. Implementation of~~
 569 ~~a~~ be submitted as a component of the water conservation and management plan. The
 570 leak detection and repair program plan shall be required within one year of the date
 571 the permit is issued. The program shall include a schedule for inspection of equipment
 572 and piping for leaks;

573 (1) A description of how the water loss audit results are expected to inform prioritization
 574 of actions to address water loss;

575 (2) For plans submitted for the use of groundwater for irrigation, identification of the
 576 specific type of irrigation system that will be utilized, the efficiency rating of the
 577 irrigation system in comparison to less efficient systems, the irrigation management
 578 methods used to minimize water demand, and the anticipated crop watering
 579 requirements. Multiple types of irrigation methods may be addressed in the plan. For
 580 livestock watering operations, plans shall include livestock watering requirements (per
 581 head) and processes to minimize waste of water. If these options are not implemented
 582 in the plan, information on the water-saving alternatives examined and the water
 583 savings associated with the alternatives shall be provided;

584 (3) Where practicable, a schedule for inspection of equipment and distribution systems
 585 for water loss;

586 (4) Where practicable, the use of water-saving equipment and processes, including
 587 technological, procedural, or programmatic improvements to the facilities and
 588 processes to decrease the amount of water withdrawn or to decrease water loss. The
 589 goal of these requirements is to ensure the most efficient use of groundwater.
 590 Information on the water-saving alternatives examined and the water savings
 591 associated with the alternatives should be provided. Water conservation and
 592 management plans shall discuss high volume water consumption by processes in the
 593 agricultural operation and where conservation measures have previously been
 594 implemented and shall be applied. Where practicable, the use of water-saving fixtures
 595 in new and renovated plumbing, as provided in the Virginia Uniform Statewide Building
 596 Code, shall also be identified in the plan; and

597 (5) In the report required by subdivision 3 a (2) of this subsection, a description of the
 598 leak detection and repair plan's effectiveness in addressing water loss, including
 599 revisions to those elements of the leak detection and repair plan that can be improved
 600 over the short and long term.

601 c. Other components of a water conservation and management plan include:

602 (1) A water use education program that contains requirements for the training of
 603 employees controlling water consuming processes to ~~assure~~ ensure that water
 604 conservation principles are well known by the users of the resource. The program shall
 605 include a schedule for training employees. This requirement may be met through
 606 training employees on water use requirements contained in irrigation management
 607 plans or livestock management plans;

608 d. (2) An evaluation of potential water reuse options and assurances that water shall
 609 be reused in all instances where reuse is practicable and not prohibited by other
 610 regulatory programs; Potential for expansion of the existing reuse practices or
 611 adoption of additional reuse practices shall also be included; ~~and~~

612 e. (3) Requirements for mandatory water use reductions during water shortage
 613 emergencies and compliance with ordinances prohibiting the waste of water generally.

614 This shall include requirements providing for mandatory water use restrictions in
615 accordance with drought response and contingency ordinances implemented to
616 comply with 9VAC25-780-120 during water shortage emergencies. ~~f.~~ and
617 (4) The permittee may submit portions of Agricultural Management Plans or Irrigation
618 Management Plans developed to comply with requirements of federal or state laws,
619 regulations, or guidelines to demonstrate the requirements of subdivisions B 3 a
620 through ~~and~~ B 3 c (3) of this section are being achieved.

Office of Regulatory Management
Economic Review Form

Agency name	Department of Environmental Quality
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-210 9VAC25-610
VAC Chapter title(s)	“Virginia Water Protection Permit Program Regulation” “Groundwater Withdrawal Regulation”
Action title	Amendments establishing criteria for (i) water auditing plans and (ii) leak detection and repair plans and requiring any water withdrawal permit application to include (i) a water auditing plan and (ii) a leak detection and repair plan.
Date this document prepared	March 7, 2025
Regulatory Stage (including Issuance of Guidance Documents)	Final – No changes were made to the regulation since the proposed stage. Updates were made to the ORM form to reflect the current number of active permits and to use an updated version of the ORM form.

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Note: No changes have been made to the regulation since the proposed stage and no changes have occurred to the economic analysis previously conducted at the proposed stage. Updates were made to the ORM form to reflect the current number of active permits.

Agency Note: The Groundwater Withdrawal Regulations (9VAC25-610) and the Virginia Water Protection Permit Program Regulation (9VAC25-210), which applies to permitted surface water withdrawals, both currently contain permit application requirements that address water conservation measures. As required by Chapter 100 of the 2021 Special Session I Acts of Assembly, the proposed amendments bolster existing requirements with enforceable specifications to implement water audit plans and leak detection and repair plans that strengthen existing water conservation requirements for all permitted users who withdraw groundwater and surface water.

Table 1a: Costs and Benefits of the Changes (Primary Option)

<p>(1) Direct & Indirect Costs & Benefits (Monetized)</p>	<ul style="list-style-type: none"> As mandated by Chapter 100 of the 2021 Special Session I Acts of Assembly, the regulation requires every permit application for a surface water withdrawal, and most applications for a groundwater withdrawal, to include a water auditing plan and a leak detection and repair plan. <p>Direct Costs: The direct costs of this regulatory change vary greatly. As of December 2024, out of approximately 375 active Groundwater Withdrawal permits, there are 185 public water supply, 74 agricultural, 45 commercial, 30 industrial, 38 irrigation, 1 nuclear power, and 2 fossil fuel plant permittees. As of December 2024, out of approximately 114 active Virginia Water Protection surface water withdrawal permits, there are 56 public water supply, 2 agricultural, 21 commercial, 9 fossil fuel power, 12 hydropower, 4 irrigation, 1 industrial, 7 mining, and 2 nuclear power plant permittees. Some permittees likely already track the flow of water through their facilities and conduct leak detection and repair in which case this change may not impose any new direct cost. Other permittees may have staff who will develop and implement water audit plans and leak detection and repair plans, while still others may need to hire a consultant to assist them. DEQ estimates costs to conduct a water loss audit every three years and submit a report of the results of the audits is about \$5,000 (every three years) for agricultural use permits, about \$75,000 for municipal permits (total over a 15-year permit term), and potentially as much as \$200,000 for a nuclear power plant (total over a 15-year permit term). These costs include the initial development of the water audit and leak detection and repair plan, data collection, installing meters if needed, periodic plan updates, and reporting of the results. Moreover, if a municipality hires an outside entity such as a consultant, the cost estimate is about \$20,000/year in such cases.</p>
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DEQ’s rough estimate for the leak detection and repair plan of \$5,000 (every three years) for agricultural use permits, about \$40,000-\$50,000 (total over a 15-year permit term) for municipal permits, and potentially as much as \$300,000 for a nuclear power provider (total over a 15-year permit term).

More detailed information is available in the Economic Impact Analysis conducted on the regulation by the Department of Planning and Budget.

Direct Benefits: This regulatory amendment meets the legal mandate of the new state law. The purpose for this statutorily mandated change is to provide for the efficient use of surface water and groundwater and to conserve the resources for future use. There are significant water losses by permitted water withdrawal users that lack adequate water auditing and leak detection and repair plans. Requiring enforceable water auditing and leak detection and repair plans achieves greater long-term conservation and sustainability of finite water resources. This makes more water resources available for population growth and economic development. As noted in the Department of Planning and Budget’s Economic Impact Analysis, benefits to permittees and their customers include reduced waste (avoiding costs of treatment and pumping costs for water that does not reach the end user); improved operational efficiency; lowered water system operational costs; reduced potential for contamination; extended life of facilities; reduced potential property damage and water system liability; and reduced water outage events.

Indirect Benefits: As noted in the Department of Planning and Budget’s Economic Impact analysis, indirect benefits include increased knowledge about the distribution system which can be used to respond more quickly to emergencies; increased firefighting capability; more efficient use of existing capacity and delayed capacity expansion; long-term conservation and sustainability of finite water resources; helping identify needs for infrastructure upgrades before catastrophic leaks occur; and enhancing local and regional water supply planning efforts.

Indirect Costs: Unknown. However, it is expected to be minimal. Some permittees already track and report this information to The Department and Virginia Department of Health (VDH) offices. Other permittees may have staff who will gather and report the number of on-site sewage systems taken off-line and connected to sewerage systems that convey to their facility. Based upon input from members of the Regulatory Advisory Panel (RAP) the cost would more likely be increased time burden on staff, rather than an increased financial burden; however, this burden is anticipated to be minimal.

(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
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	(a) See ranges of costs listed above which are dependent upon facility type.	(b) See above regarding direct and indirect benefits.
(3) Net Monetized Benefit	Not Applicable	
(4) Other Costs & Benefits (Non-Monetized)	While indeterminate, as noted above there are a range of benefits from this regulatory action.	
(5) Information Sources	Discussions with members of the regulated communities. Economic Impact Analysis conducted on the regulation by the Department of Planning and Budget. January 27, 2023, https://townhall.virginia.gov/L/GetFile.cfm?File=103\5816\9871\EIA_DEQ_9871_v1.pdf	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	<ul style="list-style-type: none"> The amendments are mandated by state law. <p>Direct Costs: If the regulations are not amended, they will not meet the directive of the General Assembly for the State Water Control Board to adopt regulations to establish requirements for water auditing plans and leak detection and repair plans.</p> <p>Indirect costs: none</p> <p>Direct Benefits: No direct benefits to maintaining the status quo.</p> <p>Indirect benefits: none</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None	(b) None
(3) Net Monetized Benefit	None	
(4) Other Costs & Benefits (Non-Monetized)	None	
(5) Information Sources	Discussions with members of the regulated communities.	

Table 1c: Costs and Benefits under Alternative Approach(es)

Not required; Amendments are mandated by changes in statute. No alternative approaches are applicable.

(1) Direct & Indirect Costs & Benefits (Monetized)	Not applicable.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable	(b) Not applicable
(3) Net Monetized Benefit	Not Applicable	
(4) Other Costs & Benefits (Non-Monetized)	Not Applicable	
(5) Information Sources	Not applicable.	

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

The Groundwater Withdrawal Regulations (9VAC25-610) and the Virginia Water Protection Permit Program Regulation (9VAC25-210), which applies to permitted surface water withdrawals, both currently contain permit application requirements that address water conservation measures. As required by Chapter 100 of the 2021 Special Session I Acts of Assembly, the amendments bolster existing requirements with enforceable specifications to implement water audit plans and leak detection and repair plans that strengthen existing water conservation requirements for all permitted users who withdraw groundwater and surface water.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	<ul style="list-style-type: none"> As mandated by Chapter 100 of the 2021 Special Session I Acts of Assembly, the regulation requires every permit application for a surface water withdrawal, and most applications for a groundwater withdrawal, to include a water auditing plan and a leak detection and repair plan. <p>Direct Costs: The direct costs of this regulatory change vary greatly. As of December 2024, out of approximately 375 active Groundwater Withdrawal permits, there are 185 public water supply permittees. As of</p>
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	<p>December 2024, out of approximately 114 active Virginia Water Protection surface water withdrawal permits, there are 56 public water supply permittees. Some permittees likely already track the flow of water through their facilities and conduct leak detection and repair in which case this change may not impose any new direct cost. Other permittees may have staff who will develop and implement water audit plans and leak detection and repair plans, while still others may need to hire a consultant to assist them.</p> <p>Indirect costs: The regulated community could incur indirect costs due to the potential need to hire additional staff to implement the regulatory changes.</p> <p>Direct Benefits: Meet the legal mandate of state law. The purpose for the statutorily mandated change is to provide for the efficient use of surface water and groundwater and conserve the resources for future use. There are significant water losses by permitted water withdrawal users that lack adequate water auditing and leak detection and repair plans. Requiring enforceable water auditing and leak detection and repair plans achieves greater long-term conservation and sustainability of finite water resources. This makes more water resources available for population growth and economic development.</p> <p>Indirect benefits: As noted in the Department of Planning and Budget’s Economic Impact analysis, indirect benefits include increased knowledge about the distribution system which can be used to respond more quickly to emergencies; increased firefighting capability; more efficient use of existing capacity and delayed capacity expansion; long-term conservation and sustainability of finite water resources; helping identify needs for infrastructure upgrades before catastrophic leaks occur; and enhancing local and regional water supply planning efforts.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See above regarding direct costs. No indirect costs are expected due to the limited extent of the reporting requirement.	(b) See above regarding direct and indirect benefits
(3) Other Costs & Benefits (Non-Monetized)	The regulated community could incur indirect costs due to the potential need to hire additional staff to implement the regulatory changes.	
(4) Assistance	N/A	

(5) Information Sources	Discussions with members of the regulated communities. Numbers are not available due to the variability in system sizes, water withdrawal amounts, and beneficial uses.
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Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Agency Note: The Groundwater Withdrawal Regulations (9VAC25-610) and the Virginia Water Protection Permit Regulation (9VAC25-210), which applies to permitted surface water withdrawals, both currently contain permit application requirements that address water conservation measures. As required by Chapter 100 of the 2021 Special Session I Acts of Assembly, the amendments bolster existing requirements with enforceable specifications to implement water audit plans and leak detection and repair plans that strengthen existing water conservation requirements for all permitted users who withdraw groundwater and surface water. DEQ anticipates that implementation of the requirement to include water audit plans and leak detection and repair plans in applications for water withdrawal permits will have a minimal economic impact on individual families. Individual private wells, such as groundwater wells for a family home, are not required to obtain a water withdrawal permit from DEQ and therefore are not affected by this regulatory amendment. The regulatory change seeks to ensure availability of water sources for future uses which ensure that adequate water supply is available for Virginia families over the long term.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: There are no direct costs to families associated with this regulatory change. Individual private wells, such as groundwater wells for a family home, are not required to obtain a water withdrawal permit from DEQ and therefore are not affected by this regulation.</p> <p>Indirect costs: No indirect costs expected for families.</p> <p>Direct Benefits: These regulatory amendments are necessary to conform to changes in state law that are currently in effect by establishing regulatory criteria for permitted water withdrawers to follow. The regulatory change seeks to ensure availability of water sources for future uses which ensure that adequate water supply is available for Virginia families over the long term.</p> <p>Indirect benefits: No indirect benefits expected for families.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None	(b) No indirect costs or benefits expected for families.

(3) Other Costs & Benefits (Non-Monetized)	
(4) Information Sources	DEQ procedures, staff, and RAP members

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Agency Note: The Groundwater Withdrawal Regulations (9VAC25-610) and the Virginia Water Protection Permit Regulation (9VAC25-210), which applies to permitted surface water withdrawals, both currently contain permit application requirements that address water conservation measures. As required by Chapter 100 of the 2021 Special Session I Acts of Assembly, the amendments bolster existing requirements with enforceable specifications to implement water audit plans and leak detection and repair plans that strengthen existing water conservation requirements for all permitted users who withdraw groundwater and surface water.

DEQ anticipates that implementation of the requirement to include water audit plans and leak detection and repair plans in applications for water withdrawal permits will have a minimal economic impact on individual small businesses. As of December 2024, out of approximately 375 active Groundwater Withdrawal permits, there are 185 public water supply, 74 agricultural, 45 commercial, 30 industrial, 38 irrigation, 1 nuclear power, and 2 fossil fuel plant permittees. As of December 2024, out of approximately 114 active Virginia Water Protection surface water withdrawal permits, there are 56 public water supply, 2 agricultural, 21 commercial, 9 fossil fuel power, 12 hydropower, 4 irrigation, 1 industrial, 7 mining, and 2 nuclear power plant permittees. The majority of these non-municipal permittees likely are not small businesses as defined in in § 2.2-4007.1.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	<ul style="list-style-type: none"> As mandated by Chapter 100 of the 2021 Special Session I Acts of Assembly, the regulation requires every permit application for a surface water withdrawal, and most applications for a groundwater withdrawal, to include a water auditing plan and a leak detection and repair plan. <p>Direct Costs: The direct costs of this regulatory change vary greatly. Some small businesses with water withdrawal permits may already track the flow of water through their facilities and conduct leak detection and repair in which case this change may not impose any new direct cost. Other small businesses may have staff who will develop and implement water audit plans and leak detection and repair plans, while still others may need to hire a consultant to assist them.</p>
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	<p>Indirect costs: No indirect costs or benefits expected for small businesses.</p> <p>Direct Benefits: Meet the legal mandate of state law. The purpose for the statutorily mandated change is to provide for the efficient use of surface water and groundwater and conserve the resources for future use. There are significant water losses by permitted water withdrawal users that lack adequate water auditing and leak detection and repair plans. Requiring enforceable water auditing and leak detection and repair plans achieves greater long-term conservation and sustainability of finite water resources. This makes more water resources available for population growth and economic development.</p> <p>Indirect benefits: No indirect benefits expected for small businesses.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None	(b) None
(3) Other Costs & Benefits (Non-Monetized)	No indirect costs or benefits expected for small businesses.	
(4) Alternatives	None – these changes are required by state law.	
(5) Information Sources	DEQ procedures, staff, and RAP members	

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Agency Note: The Virginia Water Protection Permit Program Regulation (9VAC25-210), which applies to permitted surface water withdrawals, currently contains 4 requirements for the regulated community to provide information in applications relating to existing water conservation measures and projected demand with and without conservation measures. As mandated by Chapter 100 of 2021 Special Session I Acts of Assembly, the regulatory change to Chapter 210 provides specific enforceable requirements to include a water loss audit plan and a

leak detection and repair plan which is a strengthening of the current requirements related to water conservation.

The Groundwater Withdrawal Regulations (9VAC25-610) currently contains 37 requirements for the regulated community to include a water conservation and management plan, including a water loss reduction program in permit applications. As mandated by Chapter 100 of 2021 Special Session I Acts of Assembly, the regulatory change to Chapter 610 provides specific enforceable requirements to include a water loss audit plan and a leak detection and repair plan which is a strengthening of the current requirement to include a water loss reduction program in the required water conservation and management plan.

Change in Regulatory Requirements

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Total Net Change in Requirements
9VAC25-210-300	(M/A):	1	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	0	0	0
	(D/R):	0	0	0	0
9VAC25-210-340	(M/A):	1	0	0	0
	(D/A):	0	0	0	0
	(M/R):	28	+7	0	+7
	(D/R):	0	0	0	0
9VAC25-610-10	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	0	0	0
	(D/R):	0	0	0	0
9VAC25-610-100	(M/A):	2	0	0	0
	(D/A):	0	0	0	0

	(M/R):	35	+8	-12	-4
	(D/R):	0	0	0	0
				Grand Total of Changes in Requirements:	(M/A):0
					(D/A):0
					(M/R):+3
					(D/R):0

Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:

(M/A): Mandatory requirements mandated by federal and/or state statute affecting the agency itself.

(D/A): Discretionary requirements affecting agency itself.

(M/R): Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies.

(D/R): Discretionary requirements affecting external parties, including other agencies.

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved*	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved*	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	Original Word Count	New Word Count	Net Change in Word Count
<u>NA</u>			

VIRGINIA ACTS OF ASSEMBLY -- 2021 SPECIAL SESSION I

CHAPTER 100

An Act to amend and reenact §§ 62.1-44.15:22 and 62.1-262 of the Code of Virginia, relating to Virginia Water Protection Permit; efficient water use.

[S 1291]

Approved March 12, 2021

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.15:22 and 62.1-262 of the Code of Virginia are amended and reenacted as follows:

§ 62.1-44.15:22. Water withdrawals and preservation of instream flow.

A. 1. Conditions contained in a Virginia Water Protection Permit may include ~~but are not limited to~~ the volume of water ~~which~~ that may be withdrawn as a part of the permitted activity and conditions necessary to protect beneficial uses. Domestic and other existing beneficial uses shall be considered the highest priority uses.

2. Every application for a Virginia Water Protection Permit for a surface water withdrawal shall include a (i) water auditing plan and (ii) leak detection and repair plan. Both such plans shall comply with requirements established by the Board in regulations. The Board shall approve every water auditing plan and leak detection and repair plan that complies with such regulatory requirements. Once approved by the Board, such water auditing plan and leak detection and repair plan shall be incorporated by reference as a condition in the Virginia Water Protection Permit. The Board shall not issue a Virginia Water Protection Permit for a surface water withdrawal without an approved water auditing plan and an approved leak detection and repair plan.

B. Notwithstanding any other provision of law, no Virginia Water Protection Permit shall be required for any water withdrawal in existence on July 1, 1989; however, a permit shall be required if a new § 401 certification is required to increase a withdrawal. No Virginia Water Protection Permit shall be required for any water withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal received a § 401 certification before January 1, 1989, with respect to installation of any necessary withdrawal structures to make such withdrawal; however, a permit shall be required before any such withdrawal is increased beyond the amount authorized by the certification.

C. The Board may issue an Emergency Virginia Water Protection Permit for a new or increased withdrawal when it finds that because of drought there is an insufficient public drinking water supply that may result in a substantial threat to human health or public safety. Such a permit may be issued to authorize the proposed activity only after conservation measures mandated by local or state authorities have failed to protect public health and safety and notification of the agencies designated in *subsection C of § 62.1-44.15:20* ~~€~~ and only for the amount of water necessary to protect public health and safety. ~~These~~ Such agencies shall have five days to provide comments or written recommendations on the issuance of the permit. Notwithstanding the provisions of *subsection B of § 62.1-44.15:20* ~~B~~, no public comment shall be required prior to issuance of the emergency permit. Not later than 14 days after the issuance of the emergency permit, the permit holder shall apply for a Virginia Water Protection Permit authorized under ~~the~~ other provisions of this section. The application for ~~the~~ such Virginia Water Protection Permit shall be subject to public comment for a period established by the Board. Any Emergency Virginia Water Protection Permit issued under this section shall be valid until the Board approves or denies the subsequent request for a Virginia Water Protection Permit or for a period of one year, whichever occurs sooner. The fee for the emergency permit shall be 50 percent of the fee charged for a comparable Virginia Water Protection Permit.

§ 62.1-262. Permits for other ground water withdrawals.

Any application for a ground water withdrawal permit, except as provided in §§ § 62.1-260 ~~and or~~ 62.1-261 ~~and or~~ subsection H of § 62.1-266, shall include a water conservation and management plan approved by the Board. ~~A~~ Such water conservation and management plan shall include: (i) the use of water-saving plumbing and processes including, where appropriate, ~~use of~~ water-saving fixtures in new and renovated plumbing as provided under the Uniform Statewide Building Code; (ii) a water-loss reduction program; (iii) a water-use education program; ~~and~~ (iv) a water auditing plan that complies with requirements established by the Board in regulations; (v) a leak detection and repair plan that complies with requirements established by the Board in regulations; and (vi) mandatory reductions during water-shortage emergencies, including, where appropriate, ordinances prohibiting waste of water generally and providing for mandatory water-use restrictions, with penalties, during water-shortage emergencies. The Board shall approve ~~all~~ any water conservation ~~plans in compliance~~ plan that complies with clauses (i) through ~~(iv)~~ (vi). Once approved by the Board, such water conservation and management plan shall be incorporated by reference as a condition in the ground water withdrawal

permit. The Board shall not issue a ground water withdrawal permit, except as provided in § 62.1-260 or 62.1-261 or subsection H of § 62.1-266, without an approved water conservation and management plan.

2. That the State Water Control Board (the Board) shall adopt regulations to implement the provisions of this act.

3. That the provisions of the first enactment of this act shall become effective 30 days after the adoption by the State Water Control Board of the regulations required by the second enactment of this act.

Water Audit

Regulatory Advisory Panel (RAP)

Members

Drew Blackwell – Cavanaugh & Associates

Andy Crocker – SERCAP

Ron Harris – Newport News Waterworks – Mission H2O

Steve Herzog – Hanover County Public Works

Alan Johnson – City of Danville Water & Wastewater

David Jurgens – City of Chesapeake Public Works

Michael Kerns – Sussex Service Authority

Bill Mawyer – Rivanna Water and Sewer Authority

Mike McEvoy – Western Virginia Water – Virginia Municipal Drinking Water Association

Chris Pomeroy – AquaLaw – Virginia Municipal Drinking Water Association

Jennifer Rogers – Dominion Energy – Virginia Manufacturers Association

Dr. Julie Shortridge – Virginia Tech

**Water Audit
Regulatory Panel Advisory (RAP) Meeting #1**

**Wednesday, June 8, 2022
3rd Floor Conference Room
DEQ Central Office
1111 East Main Street
Richmond, Virginia 23219**

Start – 9:58 AM

Attendees:

- RAP Members
 - Drew Blackwell, Cavanaugh & Associates
 - Andy Crocker, SERCAP
 - Ron Harris (Newport News Waterworks), Mission H₂O
 - Alan Johnson, City of Danville Water & Wastewater
 - David Jurgens, City of Chesapeake Public Works
 - Michael Kerns, Sussex Service Authority
 - Bill Mawyer, Rivanna Water and Sewer Authority
 - Mike McEvoy (Western Virginia Water), Virginia Municipal Drinking Water Association
 - Chris Pomeroy (AquaLaw), Virginia Municipal Drinking Water Association
 - Jennifer Rogers (Dominion Energy), Virginia Manufacturers Association
 - Dr. Julie Shortridge, Virginia Tech
- DEQ Staff
 - Scott Kudlas – Director, Office of Water Supply
 - Joe Grist – Water Withdrawal Permitting & Compliance Manager
 - Elizabeth Gallup – Guidance & Regulation Coordinator, Water Planning Division
 - Brandon Bull – Water Policy Manager
- Members of the Public
 - Traci Goldberg, Fairfax Water

Welcome and Introductions:

Scott Kudlas opened and welcomed everyone to the first RAP meeting. He followed with an overview of the agenda, the purpose of the RAP, and the role of the RAP members.

RAP members and DEQ staff introduced themselves.

Existing Regulations:

Joe Grist presented a summary of existing water withdrawal conservation statutes and regulations. RAP members asked follow-up questions about where in the existing regulations the requirements for water audits and leak detection plans will be incorporated.

Overview of Water Audit Programs:

Elizabeth Gallup presented an overview of existing water audit programs by sector. RAP members asked questions and made comments throughout the presentation concerning the benefits or disadvantages

of requiring the AWWA Water Audit method versus an alternative water audit method and the feasibility of smaller utilities to implement water audit plans. There were also questions regarding Tennessee's switching between requiring the AWWA Water Audit method versus their current requirement of using an internally-developed form.

After the presentation concluded there were discussions regarding what might be required for the manufacturing and agricultural sectors given that an audit tool like the AWWA Water Audit software is only for use in the utilities sector.

AWWA Water Audit Method:

Drew Blackwell provided an overview of the AWWA free water audit software, the steps that occur after completing the audit to examine the real loss analysis results, and showed how states are recognizing progress after implementing the water audit tool. RAP members asked clarification questions throughout the presentation.

Discussion:

The RAP discussion centered around the presentations and information presented earlier in the meeting. Clarifying questions were asked about which types of withdrawal permits the regulations apply to and DEQ staff reiterated that they are for both groundwater individual permits and surface water individual permits. Several group members made comments about the difference programmatically between groundwater and surface water and wondered if the audit requirements should be different for each. With regards to the other sectors affected by this regulation, agriculture and manufacturing, the question was posed whether we could require reporting requirements to align with other programs.

The discussion ended with questions to consider for the next meeting.

- How complex do we want the audit and leak detection requirements to be?
- What do applicants have to provide to prove they are meeting the requirements?

Public Forum:

An opportunity for public comment was provided. Traci Goldberg commented about the realities of leak detection in terms of cost, time, and manpower and asked the group to keep those in mind.

Next Steps:

DEQ staff will develop a strawman to review at the next meeting and will consider reaching out to the Virginia Department of Health to discuss capacity development and aligning efforts.

Meeting ended at 3:15PM

Next Meeting:

Scheduled for Wednesday, June 29, 2022 at DPOR – Commonwealth Conference Center.

**Water Audit
Regulatory Panel Advisory (RAP) Meeting #2**

**Wednesday, June 29, 2022
Virginia Department of Professional and Occupational Regulation
Board Room 1
9960 Mayland Drive
Richmond, Virginia 23233**

Start – 10:05 AM

Attendees:

- RAP Members
 - Drew Blackwell, Cavanaugh & Associates
 - Ron Harris (Newport News Waterworks), Mission H₂O
 - Steve Herzog, Hanover County Public Works
 - Alan Johnson, City of Danville Water & Wastewater
 - David Jurgens, City of Chesapeake Public Utilities
 - Michael Kearns, Sussex Service Authority
 - Bill Mawyer, Rivanna Water and Sewer Authority
 - Mike McEvoy (Western Virginia Water), Virginia Municipal Drinking Water Association
 - Jennifer Rogers (Dominion Energy), Virginia Manufacturers Association
 - Erin Trimyer, City of Chesapeake Public Utilities
- DEQ Staff
 - Jutta Schneider, Director, Division of Water Planning
 - Scott Kudlas – Director, Office of Water Supply
 - Joe Grist – Water Withdrawal Permitting & Compliance Manager
 - Elizabeth Gallup – Guidance & Regulation Coordinator, Water Planning Division
- Members of the Public
 - Barry Matthews, VDH Office of Drinking Water
 - Traci Goldberg, Fairfax Water

Welcome and Introductions:

Scott Kudlas opened and welcomed everyone to the second meeting of the Water Audit RAP. He followed with an overview of the agenda and a review of the discussion during the last meeting.

RAP members and DEQ staff introduced themselves.

VDH Presentation:

Mr. Matthews presented an overview of the Virginia Department of Health – Office of Drinking Water’s (VDH-ODW) programs for training, capacity development, and outreach. He began with an overview of the ODW’s capacity for training, managerial, and funding assistance to small waterworks. Mr. Mawyer asked where Financial & Construction Assistance Programs (FCAP) fits in to which Mr. Matthews replied that it falls under the construction category in the Drinking Water State Revolving Fund (DWSRF).

Specific questions were asked regarding VDH experience with American Water Works Association (AWWA) water audit software:

Mr. Herzog asked if smaller waterworks have been able to use AWWA. Mr. Matthews responded that yes, they have even though it can be overwhelming. He added that any improvements made while implementing use of the AWWA software are useful because of the information the audit provides.

Mr. Herzog followed up with an additional question asking if VDH developed water audit regulations would they require use of the AWWA water audit method. Mr. Matthews replied that currently it is a recommendation from VDH, not a regulation. He also stated that it would be a challenge to implement compliance-wise and likely would require audit submittal as part of the 3-year sanitary survey submittal requirement.

Mr. Matthews moved on to discuss ODW's approach to assisting with design capacity. He reviewed VDH regulations related to capacity. Mr. Mawyer asked if the 80% of permitted capacity referenced in 12VAC5-590-520 applied to reservoirs. Mr. Matthews stated that it applies to system capacity.

After the presentation Mr. Herzog asked Mr. Matthews how the AWWA water audit method could be implemented to be reasonable for regulators and regulatees. Mr. Matthews replied that conducting a water audit is not a one-time activity, it has to be done continually. He reiterated that waterworks need to start somewhere and progress from there. Mr. Jurgens pointed out that sometimes maintaining is considered progress.

Groundwater Straw Man Presentation & Discussion:

Ms. Gallup presented a straw man draft regulation for Chapter 610 to the members for discussion. She explained that before the group was 9VAC25-610-10 containing definitions and 9VAC25-610-100 containing the requirement for water conservation and management plans. The RAP will be amending both of these sections to include the requirements for water audit plans and leak detection and repair plans.

Mr. Herzog asked if we need to define Level 1 validation and also asked for a clarification on the definition in the straw man. Mr. Blackwell clarified that Level 1 validation is a third party review of water audit data and not a measure of accuracy. The general consensus by the members was to strike "Level 1 Validation" from the definitions section completely.

When discussing the definition of "water loss audit" consensus by the group was to define it as the estimation of uses and losses from a water withdrawal system instead of using the term "quantification." Group members also requested that a definition of "water system" be added with a reference to the way it is defined in Virginia Department of Health regulations.

The group moved on to discuss the proposed language for the requirement of water audits for public water suppliers. Mr. Herzog asked if the regulation needs to specify the version of the M36 water audit software to be used. Mr. Kudlas indicated that staff could specify software version in guidance. The draft regulation included the requirement for annual submission of water loss audits and the group weighed the practicality of that versus a longer submission timeframe. Compromise was reached between the suggestion of annual audits and audits on a five year timeframe with consensus being audit submissions on a three year basis. The rationale for this was that submission could coincide with the three year reporting schedule to VDH for sanitary surveys. Further discussion by the group led to the

recommendation that the March 1 submission deadline be changed to June 30. There was further discussion about whether Level 1 validation, or any type of audit data validation, should be required. Consensus was not reached and staff indicated that they would discuss further before making a decision to keep it or strike it.

There were several questions regarding groundwater permit terms and whether existing permits would be retroactively required to submit water audits. Mr. Kudlas clarified that groundwater permits are for 15 years and requirements for the submission of water audits would not begin until a new permit was issued or an existing permit was renewed.

Ms. Gallup next presented proposed language for the requirements leak detection and repair plans. Consensus of the group was to strike the majority of the proposed language and instead move the requirement of setting individualized goals to improve water supply efficiency based on the results of the audit submissions to end of the subsection concerning water audit plans.

The group moved on to discuss water audit and leak detection and repair requirements for commercial and industrial users. Ms. Rogers requested the addition of language stating that the water auditing plan requirement shall include the method to determine the water balance of the operation. Members discussed making the requirements consistent among users and suggested changing the requirement of an annual audit to one submitted every three years. Members also agreed that the language for the leak detection and repair plan should be consistent among users, striking the majority of the proposed language, and keeping the requirement of individualized goals to improve water supply efficiency based on the results of the water auditing plan. Ms. Rogers asked if there was consideration of an exemption for some manufacturing permittees since their operations generally involve fewer miles of pipe than waterworks to which Mr. Kudlas replied that the legislation does not allow us to set exemptions.

Finally, Ms. Gallup presented draft language for water audit and leak detection and repair requirements for agricultural users. To remain consistent, group members recommended changing the requirement of annual audit reporting to an every three years requirement as well as changing the reporting date to be June 30.

Discussion wrapped up with a question regarding the schedule for waterworks that have both groundwater withdrawal and surface water withdrawal permits. Mr. Kudlas replied that this can be addressed during the pre-application meeting to set up timing to align the water audit submissions. Timing can also be addressed through guidance and permit conditions.

Public Forum:

An opportunity for public comment was provided. Ms. Goldberg stated that she supports compromise of a three year submission cycle for water audits, she supports the edits to the leak detection and repair plan language in the draft regulation, and she supports the flexibility to be developed in guidance. She commented on the current regulation section regarding water reuse and Mr. Kudlas clarified that this already exists in the groundwater regulations and will not be carried over to the surface water regulations.

Next Steps:

DEQ staff will revise the draft groundwater regulation language and send out to the members. Based on concurrence by the group, staff will create a proposed surface water regulation amendment for water audit plans and leak detection and repair plans using the groundwater regulation as a boilerplate.

Meeting ended at 2:00PM

Next Meeting:

Scheduled for Thursday, July 21, 2022 at Central Office.

DRAFT

**Water Audit
Regulatory Panel Advisory (RAP) Meeting #3**

**Thursday, July 21, 2022
Third Floor Conference Room
DEQ Central Office
1111 East Main Street
Richmond, Virginia 23219**

Start – 10:00 AM

Attendees:

- RAP Members
 - Drew Blackwell, Cavanaugh & Associates
 - Steve Herzog, Hanover County Public Utilities
 - Alan Johnson, City of Danville Water & Wastewater
 - David Jurgens, City of Chesapeake Public Utilities
 - Michael Kearns, Sussex Service Authority
 - Bill Mawyer, Rivanna Water and Sewer Authority
 - Jennifer Rogers (Dominion Energy), Virginia Manufacturers Association
 - Julie Shortridge, Virginia Tech
 - Andy Crocker, SERCAP
- DEQ Staff
 - Jutta Schneider, Director, Division of Water Planning
 - Scott Kudlas – Director, Office of Water Supply
 - Brandon Bull – Water Policy Manager
 - Elizabeth Gallup – Guidance & Regulation Coordinator, Water Planning Division
- Members of the Public
 - Traci Goldberg, Fairfax Water

Welcome and Introductions:

Scott Kudlas opened and welcomed everyone to the third meeting of the Water Audit RAP. He followed with an overview of the agenda and a review of the discussion during the last meeting.

RAP members and DEQ staff introduced themselves.

Groundwater Proposed Regulation Discussion:

Ms. Gallup reviewed the changes to the proposed regulation definitions made since the previous RAP meeting. Members asked clarifying questions and discussed the need to add language regarding metered locations to the definition for water loss audit. The committee members also agreed to strike the definition for water balance and instead create a definition for water loss to be used by all groundwater user types. Consensus was reached on the definitions section of the regulation and the committee moved on to discuss the specifics of the water audit plan requirements.

Mr. Kudlas presented the water audit and leak detection and repair plan amendments to the regulation and reviewed what the committee discussed at the last meeting. The discussion began with a focus on public water supply. RAP members weighed in regarding requiring annual audits to be submitted on a yearly basis versus requiring annual audits that are reported every three years. After considering the impact of the options on small systems versus larger systems, consensus was reached for the requirement of annual audits to be submitted to DEQ every three years.

Turning to the proposed regulation requiring the use of the AWWA water loss audit software, RAP members discussed the possibility of adding the use of an alternative methodology. While some members were in agreement with requiring all public water supply systems to use the AWWA software, others suggested that the regulation should allow the use of an alternative method provided it estimated water loss in the system. RAP members agreed to add a definition of water loss to the definitions section in order to set parameters around the use of an alternative audit methodology. At this point the committee was in agreement about what methodology water audit plans must use.

The committee moved on to discussing water audit requirements for commercial and industrial users. Discussion centered on the differences in infrastructure and technology used by commercial and industrial users compared to public water supply. RAP members agreed that yearly audits may not be necessary for these users, and the agreed upon reporting requirement for water audit plans landed on one water loss audit to be submitted every three years.

Moving on to agricultural users, the discussion focused on the differences in the ways these users retain data compared to the users described above. Suggestions were made to provide a template for agricultural users and to consider flexible reporting tied to withdrawal reporting. RAP members agreed upon the requirement for annual audit reports to be reported every three years.

Finally, RAP members were directed back to the development of leak detection and repair plans. The group's discussion focused on the language in the proposed requirements of the leak detection and repair plans. The group chose to focus on using submitted water audit data to inform the prioritization of actions to address water loss.

At this point RAP members were in agreement about the revisions to the proposed regulation and Mr. Kudlas opened the floor for public comments.

Public Forum:

One member of the public was present. Ms. Goldberg stated that definitions are important and expressed concern that if water loss definitions evolve in the future there is concern over interpretation. She also suggested that the committee loosen the relationship between the water audit and leak detection and repair plans, and that the leak detection and repair plans could stand on its own merits.

Next Steps:

The RAP reached consensus on the proposed groundwater regulations at today's meeting and will discuss proposed surface water requirements for water audit plans and leak detection and repair plans at the next meeting. Mr. Kudlas asked if there are any charges for DEQ staff ahead of the next meeting adding that Mr. Harris, who was not present, provided comments ahead of today's meeting suggesting

the group should not require the AWWA water audit software in the surface water regulations. The group agreed that the changes made today are sufficient to address his comments ahead of the next meeting.

It was also noted that several RAP members made a request for an alternative date for the next, and likely final, meeting so they can participate.

Meeting ended at 3:05pm

Next Meeting:

Scheduled for Tuesday, August 23, 2022 at Central Office.

DRAFT

**Water Audit
Regulatory Panel Advisory (RAP) Meeting #4**

**Tuesday, August 23, 2022
Third Floor Conference Room
DEQ Central Office
1111 East Main Street
Richmond, Virginia 23219**

Start – 10:00 AM

Attendees:

- RAP Members
 - Drew Blackwell, Cavanaugh & Associates
 - Steve Herzog, Hanover County Public Utilities
 - Alan Johnson, City of Danville Water & Wastewater
 - David Jurgens, City of Chesapeake Public Utilities
 - Michael Kearns, Sussex Service Authority
 - Jennifer Rogers (Dominion Energy), Virginia Manufacturers Association
 - Julie Shortridge, Virginia Tech Extension
- DEQ Staff
 - Jutta Schneider, Director, Division of Water Planning
 - Scott Kudlas – Director, Office of Water Supply
 - Brandon Bull – Water Policy Manager
 - Elizabeth Gallup – Guidance & Regulation Coordinator, Water Planning Division
- Members of the Public
 - Traci Goldberg, Fairfax Water

Welcome and Introductions:

Scott Kudlas opened and welcomed everyone to the fourth and final meeting of the Water Audit RAP. He followed with an overview of the agenda and a review of the discussion during the last meeting.

Surface Water Proposed Regulation Discussion:

Mr. Kudlas reviewed the general structure of the proposed amendments to the surface water withdrawal regulations with an explanation of how they were modeled after the proposed groundwater regulation amendments. He emphasized which portions of existing requirements contained in the groundwater regulations were not carried over to the surface water regulations so RAP members would be aware of those differences. He also explained the removal of the definition for American Water Works Association (AWWA) due to its use in one requirement where it was also defined.

Group review of the proposed surface water regulations focused on user type as done for the proposed groundwater regulations. RAP members were in general agreement with the language contained in the proposed surface water regulations relating to public water supply and no revisions were made. There was a point of clarification relating to the frequency of the requirement to conduct and report water loss audits for commercial and industrial users, and after a brief discussion by the group, staff revised

both groundwater and surface water regulations to state that the water loss audit is to be conducted once every three years. There was discussion related to agricultural users focusing on the water loss audit reporting frequency. This was also resolved to the satisfaction of the RAP.

The discussion regarding the proposed surface water regulation wrapped up with a discussion of changing the definitions of water loss and water loss audit to incorporate the term withdrawal. RAP members agreed with this change and stated that it made the definitions of those terms consistent with what is already reported in their withdrawal reports to DEQ. After reviewing the proposed surface water amendments to require water loss audit plans and leak detection and repair plans, the RAP was in agreement with the language in the proposed regulation.

Economic Impact Requirement Discussion:

Ms. Gallup explained the economic analysis of proposed regulations that DEQ must complete and provide to the Office of Regulatory Management following issuance of the Governor's Executive Order 19. RAP members discussed their views on the potential costs and benefits of implementing the proposed new requirements.

Public Forum:

Mr. Kudlas opened the floor for public comments.

One member of the public provided comment. Ms. Goldberg stated that she supports the incorporation of the leak detection and repair plan being used to inform the water loss audit plan, supports the change of inserting the term withdrawal instead of supply into the water loss definition, and maintains her support of a three-year water loss audit submission requirement for public water suppliers. She also offered her thoughts on costs and benefits related to the proposed regulations.

Next Steps:

Mr. Kudlas thanked the RAP members for their effort and participation. He closed out the meeting with an explanation of the next steps of the regulatory process that occur after the conclusion of the RAP.

Meeting ended at 12:05pm

TAB E



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

www.deq.virginia.gov

Stefanie K. Taillon
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director

MEMORANDUM

TO: State Water Control Board Members

FROM: Rebecca Rochet, Director of Stormwater Programs *Rebecca Rochet*

DATE: February 21, 2025

SUBJECT: Amend and update the Virginia Erosion and Stormwater Management Regulation (9VAC25-875) to correct technical errors

At the March 27, 2025, meeting of the State Water Control Board (Board), the Board will consider the approval of amendments to the Virginia Erosion and Stormwater Management (VESM) Regulationⁱ using the fast-track rulemaking process. The amendments update the regulation to correct technical errors that have been identified since its publication in the *Virginia Register of Regulations* on December 4, 2023.ⁱⁱ The technical corrections will improve clarity and certainty by making the VESM Regulation internally consistent, removing outdated requirements, and accurately reflecting requirements in the State Water Control Law.ⁱⁱⁱ

Background

This rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process. Members of the regulated community and other stakeholders who were involved in the process to adopt the VESM Regulation and develop the new Virginia Stormwater Management Handbook^{iv} requested changes to clarify requirements for localities that implement erosion and stormwater management programs or erosion and sediment control programs and correct other technical errors that have been identified since publication of the final regulation in December 2023.

This rulemaking is similar to a fast-track rulemaking process that the Board authorized on June 25, 2024. Following the 30-day public comment period, the Department withdrew the regulatory action on November 18, 2024, to address stakeholders' comments and concerns about changes to 9VAC25-875-490 (Grandfathering).^v The Department has worked with the stakeholders to develop the revisions to 9VAC25-875-490 that are part of this rulemaking. This rulemaking also includes updates to 9VAC25-875-580 (described below) that address comments the Department

received during the public comment period for the second fast-track regulatory process that the Board approved on June 24, 2024.^{vi}

Amendments

The Agency Background Document (Form TH-04) and amendments that are being presented to the Board for approval to proceed with the fast-track rulemaking process are attached. Detailed changes to the VESM Regulation are listed in the TH-04. Examples of several technical changes are described below:

- Correcting cross-references to Chesapeake Bay Preservation Area requirements (e.g., 9VAC25-875-70, 9VAC25-875-250, and 9VAC25-875-470).
- Moving subsection G of 9VAC25-875-300 to 9VAC25-875-550 E so that the requirement for owners to maintain, inspect, and repair erosion and sediment control structures is in the part of the regulation that has other owner requirements, not the part of the regulation that is specific to localities.
- Updating the Department’s provisions for reviewing and evaluating a locality’s erosion and sediment control program (9VAC25-875-370 D) so that they are consistent with the requirements in the State Water Control Law.
- Revising requirements related to land-disturbing activities considered grandfathered to provide clarification to stakeholders (9VAC25-875-490).
- Clarifying that an erosion and sediment control plan, which is included in a stormwater pollution prevention plan for land-disturbing activity, must be consistent with the erosion and sediment control criteria, techniques, and methods – the “minimum standards” (9VAC25-875-560).
- Clarifying that a Virginia Erosion and Sediment Management Program (VESMP) authority and the department as the Virginia Stormwater Management Program authority may allow plans approved or submitted and deemed complete prior to July 1, 2025, to continue to be followed as approved (9VAC25-875-580). This technical correction responds to comments that a VESMP authority submitted during the fast-track regulatory process that updated water quality requirements in the VESM Regulation (9VAC25-580 and 9VAC25-590). Those amendments will become effective on July 1, 2025. This technical correction provides certainty to VESMP authorities and the regulated community.

Attorney General Certification

The Office of the Attorney General will be sent the final regulation for certification of statutory authority.

Staff Recommendation

Staff recommends the Board authorize the Department to promulgate the amendments to the VESM Regulation 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 constitutes its adoption of the 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 amendments.

Staff also recommends that the Board authorize the Department to set an effective date no earlier than 15 days after close of the 30-day public comment period or July 2, 2025, whichever is later, 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 amendments.

Presenter Contact Information

Name: Rebecca Rochet, P.E., Director of Stormwater Programs

Phone: (804) 801-2950

Email: rebecca.rochet@deq.virginia.gov

Attachments

Attachment A: Text of Regulatory Amendments

Attachment B: Agency Background Document (TH-04)

Attachment C: Office of Regulatory Management Economic Review Form

ⁱ 9VAC25-875, effective July 1, 2024.

ⁱⁱ 40:8 VA.R. 461-557 December 4, 2023 (<https://register.dls.virginia.gov/toc.aspx?voliss=40:08>).

ⁱⁱⁱ Chapter 3.1 of Title 62.1 of the Code of Virginia, (§ 62.1-44.2 et seq.).

^{iv} GM24-2001, available here: <https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=7706>

^v The Department received comments from three persons during the 30-day public comment period that ended November 6, 2024. All of the comments were technical in nature; they did not object to the use of the fast-track process.

^{vi} This fast-track rulemaking action aligned the VESM Regulation with the Virginia Stormwater Management Handbook (Handbook) by updating sections and requirements that are out of date and burdensome to the regulated community because they do not reflect current practices, technology, or data about land use and nutrient loading. The fast-track rulemaking action has a delayed effective date of July 1, 2025.

1 Fast-Track Regulatory Action - 9VAC25-875 – Amend and update the Virginia Erosion and
2 Stormwater Management Regulation to correct technical errors- for March 27, 2025 State Water
3 Control Board meeting (RIS Project 7961)

4
5 Part II

6 Virginia Erosion and Stormwater Management Program

7
8 Article 2

9 Land-Disturbing Activities

10
11 **9VAC25-875-70. Regulated land-disturbing activities.**

12 A. Land-disturbing activities that meet one of the criteria in this subsection are regulated as
13 follows:

14 1. Land-disturbing activity that disturbs 10,000 square feet or more, although the locality
15 may reduce this regulatory threshold to a smaller area of disturbed land, is less than one
16 acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area, and
17 not part of a common plan of development or sale, is subject to criteria defined in Article
18 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-470 et seq.) of this chapter.

19 2. Land-disturbing activity that disturbs 2,500 square feet or more, although the locality
20 may reduce this regulatory threshold to a smaller area of disturbed land, is less than one
21 acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is
22 subject to criteria defined in Article 2 and Article [35](#) (9VAC25-875-~~570~~[740](#) et seq.) of Part
23 V unless Article 4 (9VAC25-875-670 et seq.) of Part V of this chapter is applicable, as
24 determined in accordance with 9VAC25-875-480 and 9VAC25-875-490. For land-
25 disturbing activities for single-family detached residential structures, Article 2 of Part V and
26 water quantity technical criteria, 9VAC25-875-600, shall apply to any land-disturbing
27 activity that disturbs 2,500 square feet or more of land, and the locality also may require
28 compliance with the water quality technical criteria, 9VAC25-875-580 and 9VAC25-875-
29 590.

30 3. Land-disturbing activity that disturbs less than one acre, but is part of a larger common
31 plan of development or sale that disturbs one acre or more, is subject to criteria defined in
32 Article 2 and Article 3 of Part V unless Article 4 of Part V of this chapter is applicable, as
33 determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

34 4. Land-disturbing activity that disturbs one acre or more is subject to criteria defined in
35 Article 2 and Article 3 of Part V unless Article 4 of Part V is applicable, as determined in
36 accordance with 9VAC25-875-480 and 9VAC25-875-490.

37 B. A locality may, by local ordinance adopted pursuant to § 62.1-44.15:33 or 62.1-44.15:65 of
38 the Code of Virginia, adopt more stringent local requirements.

Article 3

Programs Operated by a VESMP Authority

9VAC25-875-140. Inspections.

A. The VESMP authority shall inspect the land-disturbing activity during construction for:

1. Compliance with the approved erosion and sediment control plan;
2. Compliance with the approved stormwater management plan;
3. Development, updating, and implementation of a pollution prevention plan; and
4. Development and implementation of any additional control measures necessary to address a TMDL.

B. The VESMP authority shall conduct periodic inspections on all projects during construction. The VESMP authority shall either:

1. Provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds; or
2. Establish an alternative inspection program that ensures compliance with the approved erosion and sediment control plan. Any alternative inspection program shall be:
 - a. Approved by the department prior to implementation;
 - b. Established in writing;
 - c. Based on a system of priorities that, at a minimum, address the amount of disturbed project area, site conditions, and stage of construction; and
 - d. Documented by inspection records.

C. The VESMP authority shall establish an inspection program that ensures that permanent stormwater management facilities are being adequately maintained as designed after completion of land-disturbing activities. Inspection programs shall:

1. Be approved by the department;
2. Ensure that each stormwater management facility is inspected by the VESMP authority or the VESMP authority's designee, not to include the owner, except as provided in subsections D and E of this section, at least once every five years; and
3. Be documented by records.

D. The VESMP authority may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established in subsection B C of this section if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the code of Virginia; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the department.

E. If a recorded instrument is not required pursuant to 9VAC25-875-130, a VESMP authority shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education,

82 or other method targeted at promoting the long-term maintenance of such facilities. Such facilities
83 shall not be subject to the requirement for an inspection to be conducted by the VESMP authority.

84
85 Part III

86 Virginia Erosion and Sediment Control Program

87
88 Article 2

89 Land-Disturbing Activities

90
91 **9VAC25-875-250. Regulated land-disturbing activities.**

92 A. Land-disturbing activities that meet one of the criteria in this subsection are regulated as
93 follows:

94 1. Land-disturbing activity that disturbs 10,000 square feet or more, although the locality
95 may reduce this regulatory threshold to a smaller area of disturbed land, ~~is less than one~~
96 ~~acre,~~ and not in an area of a locality designated as a Chesapeake Bay Preservation Area
97 is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-
98 470 et seq.) of this chapter.

99 2. Land-disturbing activity that disturbs 2,500 square feet or more, although the locality
100 may reduce this regulatory threshold to a smaller area of disturbed land, ~~is less than one~~
101 ~~acre,~~ and in an area of a locality designated as a Chesapeake Bay Preservation Area is
102 subject to criteria defined in Article 2 and Article 5 (9VAC25-875-740 et seq.) of Part V of
103 this chapter.

104 B. A locality may, by local ordinance adopted pursuant to § 62.1-44.15:65 of the Code of
105 Virginia, adopt more stringent local requirements.

106
107 **9VAC25-875-280. Activities not required to comply with the ESCL.**

108 Notwithstanding any other provisions of the Erosion and Sediment Control Law for Localities
109 Not Administering a Virginia Erosion and Stormwater Management Program (ESCL), the following
110 activities are not required to comply with the ESCL unless otherwise required by federal law:

111 1. Disturbance of a land area of less than 10,000 square feet in size or less than 2,500
112 square feet in an area designated as a Chesapeake Bay Preservation Area pursuant to
113 the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia).
114 However, the governing body of the program authority may reduce this exception to a
115 smaller area of disturbed land or qualify the conditions under which this exception shall
116 apply;

117 2. Minor land-disturbing activities such as home gardens and individual home landscaping,
118 repairs, and maintenance work;

119 3. Installation, maintenance, or repair of any individual service connection;

120 4. Installation, maintenance, or repair of any underground utility line when such activity
121 occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing
122 activity is confined to the area of the road, street, or sidewalk that is hard surfaced;

123 5. Installation, maintenance, or repair of any septic tank line or drainage field unless
124 included in an overall plan for land-disturbing activity relating to construction of the building
125 to be served by the septic tank system;

- 126 6. Permitted surface or deep mining operations and projects or oil and gas operations and
127 projects conducted pursuant to Title 45.2 of the Code of Virginia;
- 128 7. Clearing of lands specifically for bona fide agricultural purposes; the management,
129 tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot
130 operations; agricultural engineering operations, including construction of terraces, terrace
131 outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing,
132 contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally
133 set forth by the board in regulations. However, this exception shall not apply to harvesting
134 of forest crops unless the area on which harvesting occurs is reforested artificially or
135 naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title
136 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture
137 use as described in subsection B of § 10.1-1163 of the Code of Virginia;
- 138 8. Installation of fence and sign posts or telephone and electric poles and other kinds of
139 posts or poles;
- 140 9. Shoreline erosion control projects on tidal waters when all of the land-disturbing
141 activities are within the regulatory authority of and approved by local wetlands boards, the
142 Virginia Marine Resources Commission, or the U.S. Army Corps of Engineers; however,
143 any associated land that is disturbed outside of this exempted area shall remain subject
144 to the ESCL and ~~the regulations adopted pursuant thereto~~[this chapter](#);
- 145 10. Land-disturbing activities in response to a public emergency where the related work
146 requires immediate authorization to avoid imminent endangerment to human health or the
147 environment. In such situations, the VESCP authority shall be advised of the disturbance
148 within seven days of commencing the land-disturbing activity, and compliance with the
149 administrative requirements of Article 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-
150 875-470 et seq.) of this chapter is required within 30 days of commencing the land-
151 disturbing activity;
- 152 11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-
153 disturbing activity; and
- 154 12. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and
155 other related structures and facilities of a railroad company.

156 Article 3

157 Programs Operated by a VESCP Authority

158 159 **9VAC25-875-300. Plan review requirements.**

160 A. The VESCP authority shall review erosion and sediment control plans [prepared in](#)
161 [accordance with 9VAC25-875-550](#) that detail the criteria, techniques, and methods as defined in
162 ~~9VAC25-875-550-560~~[for land-disturbing activities described in 9VAC25-875-560](#). Activities not
163 required to comply with VESCL are defined in 9VAC25-875-280.

164 B. When determined that the plan meets the minimum criteria, techniques, and methods as
165 defined in 9VAC25-875-~~550~~[560](#), the VESCP authority shall review erosion and sediment control
166 plans submitted and grant written approval within 60 days of the receipt of the plan.

167 C. When the VESCP authority determines a plan is inadequate, written notice stating the
168 specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice
169 shall specify the modifications, terms, and conditions that are necessary for approval of the plan.
170 If no action is taken by the VESCP authority within 45 days, the plan shall be deemed approved
171 and the proposed activity authorized. The VESCP authority shall act on any erosion and sediment

172 control plan that has been previously deemed inadequate within 45 days after receipt of a revised
173 plan if deemed adequate.

174 D. For sites requiring coverage under the General VPDES Permit for Discharges of
175 Stormwater from Construction Activities, the VESCP authority shall obtain evidence of such
176 coverage prior to approving the erosion and sediment control plan.

177 E. The person responsible for carrying out the plan shall provide the name of an individual
178 holding a certificate to the VESCP authority who will be in charge of and responsible for carrying
179 out the land-disturbing activity. However, the VESCP authority may waive the Responsible Land
180 Disturber Certificate requirement for an agreement in lieu of a plan in accordance with § 62.1-
181 44.15:55 of the Code of Virginia.

182 F. The VESCP authority may require approval of an erosion and sediment control plan for any
183 land identified as an erosion impact area in accordance with § 62.1-44.15.55 of the Code of
184 Virginia.

185 ~~G. All erosion and sediment control structures and systems shall be maintained, inspected,
186 and repaired as needed to ensure continued performance of their intended function. A statement
187 describing the maintenance responsibilities of the individual responsible for carrying out the land-
188 disturbing activity shall be included in the approved erosion and sediment control plan.~~

189

190

Article 4

191

Review Procedures for VESCPs

192

193 **9VAC25-875-370. Review and evaluation of VESCPs.**

194 A. This section sets forth the criteria that will be used by the department to determine whether
195 a locality operating a VESCP under authority of the ESCL, a "VESCP authority," satisfies
196 minimum standards of effectiveness, as follows.

197 Each VESCP must contain an ordinance or other appropriate document adopted by the
198 VESCP authority. Such document must be consistent with the ESCL and Part III (9VAC25-875-
199 210 et seq.) of this chapter, including the following criteria:

200 1. The document shall include or reference the definition of land-disturbing activity,
201 including exemptions as well as any other significant terms, as necessary to produce an
202 effective VESCP;

203 2. The document shall identify the VESCP authority and any soil and water conservation
204 district, adjacent locality, or other public or private entities that the VESCP authority
205 entered into agreements or contracts with to assist with carrying out the provisions of the
206 ESCL and Part III of this chapter and must include the requirements and design standards
207 to be used in the program;

208 3. The document shall include procedures for submission and approval of plans, issuance
209 of permits, monitoring and inspections of land-disturbing activities. The position, agency,
210 department, or other party responsible for conducting inspections shall be identified. The
211 VESCP authority shall maintain, either onsite or in VESCP files, a copy of the approved
212 plan and a record of inspections for each active land-disturbing activity;

213 4. Each VESCP operated by a county, city, or town shall include provisions for the
214 integration of the VESCP with flood insurance, flood plain management, and other
215 programs requiring compliance prior to authorizing a land-disturbing activity in order to
216 make the submission and approval of plans, payment of fees, and coordination of

217 inspection and enforcement activities more convenient and efficient both for the local
218 governments and those responsible for compliance with the programs; and

219 5. The VESCP authority must take appropriate enforcement actions, where authorized to
220 do so, to achieve compliance with the program and maintain a record of enforcement
221 actions for all active land-disturbing activities.

222 B. The department shall periodically conduct a comprehensive review and evaluation of each
223 VESCP authority pursuant to subdivision (19) of § 62.1-44.15 of the Code of Virginia. The
224 department will coordinate the review with its other program reviews for the same entity to avoid
225 redundancy. The review and evaluation of a VESCP authority shall consist of the following: (i)
226 consultation with the local program administrator or designee; (ii) review of the local ordinance
227 and other applicable documents; (iii) review of plans approved by the VESCP authority; (iv)
228 inspection of regulated activities; and (v) review of enforcement actions where authorized to do
229 so. The department is also authorized to conduct a partial VESCP compliance review.

230 C. Each VESCP authority shall be reviewed and evaluated by the department for effectiveness
231 in carrying out the ESCL and Part III of this chapter using the criteria in this section.

232 D. If deficiencies noted in the review will cause the VESCP to be inconsistent with the ESCL
233 or this chapter, the department shall provide the VESCP authority with a copy of the department's
234 decision that specifies the deficiencies, action needed to be taken, and an approved corrective
235 action plan and schedule required to attain the minimum standard of effectiveness. If the VESCP
236 authority ~~has not implemented the necessary compliance actions identified by the department~~
237 ~~within the corrective action schedule, or such additional period as is granted to complete the~~
238 ~~implementation of the corrective action, then the department shall have the authority to (i) issue~~
239 ~~a special order to any VESCP authority imposing a civil penalty set out in § 62.1-44.15 of the~~
240 ~~Code of Virginia or (ii) revoke its approval of the VESCP fails to bring its program into compliance~~
241 ~~in accordance with the compliance schedule, then the department is authorized to (i) issue a~~
242 ~~special order to any locality imposing a civil penalty not to exceed \$ 5,000 per violation with the~~
243 ~~maximum amount not to exceed \$ 50,000 per order for noncompliance with the state program, to~~
244 ~~be paid into the state treasury and deposited in the Stormwater Local Assistance Fund~~
245 ~~established in § 62.1-44.15:29.1 of the Code of Virginia or (ii) with the consent of the locality,~~
246 ~~provide in an order issued against the locality for the payment of civil charges for violations in lieu~~
247 ~~of civil penalties, in specific sums not to exceed the limit stated in this subdivision.~~ The
248 Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and Article 5 (§ 62.1-44.20
249 et seq.) of Chapter 3.1 of Title 62.1 if the Code of Virginia shall govern the review activities and
250 proceedings of the department and the judicial review thereof. In lieu of issuing a special order or
251 revoking the program, the department is authorized to take legal action against a VESCP authority
252 to ensure compliance.

253 E. Review and evaluation of VESCPs shall be conducted according to a schedule adopted by
254 the department in accordance with subdivision (19) of § 62.1-44.15 of the Code of Virginia.

255

256

Part V

257

Criteria and Requirements for Regulated Land-Disturbing Activities

258

Article 1

259

Administrative Criteria

260

9VAC25-875-470. Applicability.

261

A. Land-disturbing activities that meet one of the criteria in this subsection are regulated as
262 follows:

- 263 1. Land-disturbing activity that disturbs 10,000 square feet or more, although a locality
264 may reduce this regulatory threshold to a smaller area of disturbed land, is less than one
265 acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area, and
266 not part of a common plan of development or sale, is subject to criteria defined in Article
267 2 (9VAC25-875-540 et seq.) of this part of this chapter.
- 268 2. Land-disturbing activity that disturbs 2,500 square feet or more, although a locality may
269 reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre,
270 and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject
271 to criteria defined in Article 2 and Article [35](#) (9VAC25-875-~~570~~[740](#) et seq.) of this part
272 unless Article 4 (9VAC25-875-670 et seq.) of this part is applicable, as determined in
273 accordance with 9VAC25-875-480 and 9VAC25-875-490. For land-disturbing activities for
274 single-family detached residential structures, Article 2 of this part and water quantity
275 technical criteria, 9VAC25-875-600, shall apply to any land-disturbing activity that disturbs
276 2,500 square feet or more of land, and the locality also may require compliance with the
277 water quality technical criteria, 9VAC25-875-580 and 9VAC25-875-590.
- 278 3. Land-disturbing activity that disturbs less than one acre, but is part of a larger common
279 plan of development or sale that disturbs one acre or more, is subject to criteria defined in
280 Article 2 and Article 3 of this part unless Article 4 of this part is applicable, as determined
281 in accordance with 9VAC25-875-480 and 9VAC25-875-490.
- 282 4. Land-disturbing activity that disturbs one acre or more is subject to criteria defined in
283 Article 2 and Article 3 of this part unless Article 4 of this part is applicable, as determined
284 in accordance with 9VAC25-875-480 and 9VAC25-875-490.

285 B. A locality may, by local ordinance adopted pursuant to § 62.1-44.15:33 or 62.1-44.15:65 of
286 the Code of Virginia, adopt more stringent local requirements.

287

288 **9VAC25-875-490. Grandfathering.**

289 A. Any land-disturbing activity shall be considered grandfathered by the VESMP authority and
290 shall be subject to the technical criteria of Article 4 (9VAC25-875-670 et seq.) of this part provided:

- 291 1. A proffered or conditional zoning plan, zoning with a plan of development, preliminary
292 or final subdivision plat, preliminary or final site plan, or any document determined by the
293 locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012; (ii)
294 provided a layout as defined in 9VAC25-875-670; (iii) will comply with the technical criteria
295 of Article 4 of this part; and (iv) has not been subsequently modified or amended in a
296 manner resulting in an increase in the amount of phosphorus leaving each point of
297 discharge and such that there is no increase in the volume or rate of runoff;
- 298 2. A permit has not been issued prior to July 1, 2014; ~~and~~
- 299 3. Land disturbance did not commence prior to July 1, 2014-; ~~and~~
- 300 4. Land disturbance commenced prior to July 1, 2019.

301 B. Locality, state, and federal projects shall be considered grandfathered by the VESMP
302 authority and shall be subject to the technical criteria of Article 4 of this part provided:

- 303 1. There has been an obligation of locality, state, or federal funding, in whole or in part,
304 prior to July 1, 2012, or the department has approved a stormwater management plan
305 prior to July 1, 2012;
- 306 2. A permit has not been issued prior to July 1, 2014; ~~and~~
- 307 3. Land disturbance did not commence prior to July 1, 2014-; ~~and~~
- 308 4. Land disturbance commenced prior to July 1, 2019.

309 C. Land disturbing activities that are grandfathered under subsections A and or B of this
310 section shall remain subject to the technical criteria of Article 4 of this part ~~for one additional permit~~
311 ~~cycle until construction is completed. After such time, portions of the project not under~~
312 ~~construction shall become subject to any new technical criteria adopted by the board. To remain~~
313 ~~subject to the technical criteria of Article 4 of this part, subsequent modifications or amendments~~
314 ~~to a previously approved stormwater management plan may not result in an increase in the~~
315 ~~amount of phosphorus leaving each point of discharge or an increase in the volume or rate of~~
316 ~~runoff. Any modifications or amendments to a previously approved stormwater management plan~~
317 ~~that result in an increase in the amount of phosphorus leaving any point of discharge or an~~
318 ~~increase in the volume or rate of runoff, or additional land-disturbing activities not previously~~
319 ~~authorized, shall comply with the technical criteria in Article 2, 3, or 5 of this part, as applicable.~~

320 D. In cases where governmental bonding or public debt financing has been issued for a project
321 prior to July 1, 2012, such project shall be subject to the technical criteria of Article 4 of this part.

322 E. Nothing in this section shall preclude an operator from constructing to a more stringent
323 standard at the operator's discretion.

324

325 **9VAC25-875-500. Stormwater pollution prevention plan requirements.**

326 A. A stormwater pollution prevention plan shall include an approved erosion and sediment
327 control plan, an approved stormwater management plan, a pollution prevention plan for regulated
328 land-disturbing activities, and a description of any additional control measures necessary to
329 address a TMDL pursuant to subsection E of this section.

330 B. An erosion and sediment control plan consistent with the requirements of 9VAC25-875-
331 550 and 9VAC25-875-560 must be designed and implemented during construction activities. Prior
332 to land disturbance, this plan must be approved by the VESCP authority, VESMP authority, or the
333 department.

334 C. A stormwater management plan consistent with the requirements of 9VAC25-875-510 must
335 be designed and implemented during construction activities. Prior to land disturbance, this plan
336 must be approved by the VESMP authority or the department.

337 D. A pollution prevention plan that identifies potential sources of pollutants that may
338 reasonably be expected to affect the quality of stormwater discharges from the construction site
339 and describe control measures that will be used to minimize pollutants in stormwater discharges
340 from the construction site must be developed before land disturbance commences.

341 E. In addition to the requirements of subsections A through D of this section, if a specific
342 wasteload allocation for a pollutant has been established in an approved TMDL and is assigned
343 to stormwater discharges from a construction activity, additional control measures must be
344 identified and implemented by the operator so that discharges are consistent with the
345 assumptions and requirements of the wasteload allocation.

346 F. The stormwater pollution prevention plan (SWPPP) must address the following
347 requirements as specified in 40 CFR 450.21, to the extent otherwise required by state law or
348 regulations and any applicable requirements of a permit:

- 349 1. Control stormwater volume and velocity within the site to minimize soil erosion;
- 350 2. Control stormwater discharges, including both peak flow rates and total stormwater
351 volume, to minimize erosion at outlets and to minimize downstream channel and stream
352 bank erosion;
- 353 3. Minimize the amount of soil exposed during construction activity;
- 354 4. Minimize the disturbance of steep slopes;

- 355 5. Minimize sediment discharges from the site. The design, installation, and maintenance
356 of erosion and sediment controls must address factors such as the amount, frequency,
357 intensity, and duration of precipitation, the nature of resulting stormwater runoff, and soil
358 characteristics, including the range of soil particle sizes expected to be present on the site;
- 359 6. Provide and maintain natural buffers around surface waters, direct stormwater to
360 vegetated areas to increase sediment removal, and maximize stormwater infiltration,
361 unless infeasible;
- 362 7. Minimize soil compaction and, unless infeasible, preserve topsoil;
- 363 8. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever
364 any clearing, grading, excavating, or other earth disturbing activities have permanently
365 ceased on any portion of the site, or temporarily ceased on any portion of the site and will
366 not resume for a period exceeding 14 calendar days. Stabilization must be completed
367 within a period of time determined by the VESMP authority or the department as the VSMP
368 authority. In arid, semi-arid, and drought-stricken areas where initiating vegetative
369 stabilization measures immediately is infeasible, alternative stabilization measures must
370 be employed as specified by the VESMP authority or department; and
- 371 9. Utilize outlet structures that withdraw water from the surface, unless infeasible, when
372 discharging from basins and impoundments.

373 G. The SWPPP shall be amended whenever there is a change in design, construction,
374 operation, or maintenance that has a significant effect on the discharge of pollutants to state
375 waters and that has not been previously addressed in the SWPPP. The SWPPP must be
376 maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's
377 location must be posted near the main entrance at the construction site.

378

379

Article 2

380

Soil Erosion Requirements

381

9VAC25-875-550. Erosion and sediment control plan requirements.

383 A. An erosion and sediment control plan shall be filed for a development and the buildings
384 constructed within, regardless of the phasing of construction. The erosion and sediment control
385 plan shall contain all major conservation decisions to ensure that the entire unit of land will be so
386 treated to achieve the conservation objectives [and minimum standards](#) in 9VAC25-875-560. The
387 erosion and sediment control plan may include:

- 388 1. Appropriate maps;
- 389 2. An appropriate soil and water plan inventory and management information with needed
390 interpretations; and
- 391 3. A record of decisions contributing to conservation treatment.

392 B. The person responsible for carrying out the plan shall provide the name of an individual
393 holding a certificate who will be in charge of and responsible for carrying out the land-disturbing
394 activity to the VESCP or VESMP authority. However, the VESCP or VESMP authority may waive
395 the Responsible Land Disturber Certificate requirement for an agreement in lieu of a plan in
396 accordance with § 62.1-44.15:34 or 62.1-44.15:55 of the Code of Virginia.

397 C. If individual lots or sections in a residential development are being developed by different
398 property owners, all land-disturbing activities related to the building construction shall be covered
399 by an erosion and sediment control plan or an agreement in lieu of a plan signed by the property
400 owner.

401 D. Land-disturbing activity of less than 10,000 square feet on individual lots in a residential
402 development shall not be considered exempt from the provisions of the VESMA, ESCL, or this
403 chapter if the total land-disturbing activity in the development is equal to or greater than 10,000
404 square feet.

405 E. All erosion and sediment control structures and systems shall be maintained, inspected,
406 and repaired as needed to ensure continued performance of their intended function. A statement
407 describing the maintenance responsibilities of the individual responsible for carrying out the land-
408 disturbing activity shall be included in the approved erosion and sediment control plan.

409
410 **9VAC25-875-560. Erosion and sediment control criteria, techniques, and methods:**
411 **minimum standards.**

412 A. An erosion and sediment control plan consistent with the following criteria, techniques, and
413 methods shall be submitted to the VESMP authority or VESCP authority for review and approval:

414 1. Permanent or temporary soil stabilization shall be applied to denuded areas within
415 seven days after final grade is reached on any portion of the site. Temporary soil
416 stabilization shall be applied within seven days to denuded areas that may not be at final
417 grade but will remain dormant for longer than 14 days. Permanent stabilization shall be
418 applied to areas that are to be left dormant for more than one year.

419 2. During construction of the project, soil stockpiles and borrow areas shall be stabilized
420 or protected with sediment trapping measures. The applicant is responsible for the
421 temporary protection and permanent stabilization of all soil stockpiles on site as well as
422 borrow areas and soil intentionally transported from the project site.

423 3. A permanent vegetative cover shall be established on denuded areas not otherwise
424 permanently stabilized. Permanent vegetation shall not be considered established until a
425 ground cover is achieved that is uniform, is mature enough to survive, and will inhibit
426 erosion.

427 4. Sediment basins and traps, perimeter dikes, sediment barriers, and other measures
428 intended to trap sediment shall be constructed as a first step in any land-disturbing activity
429 and shall be made functional before upslope land disturbance takes place.

430 5. Stabilization measures shall be applied to earthen structures such as dams, dikes, and
431 diversions immediately after installation.

432 6. Sediment traps and sediment basins shall be designed and constructed based upon
433 the total drainage area to be served by the trap or basin.

434 a. The minimum storage capacity of a sediment trap shall be 134 cubic yards per acre
435 of drainage area and the trap shall only control drainage areas less than three acres.

436 b. Surface runoff from disturbed areas that is comprised of flow from drainage areas
437 greater than or equal to three acres shall be controlled by a sediment basin. The
438 minimum storage capacity of a sediment basin shall be 134 cubic yards per acre of
439 drainage area. The outfall system shall, at a minimum, maintain the structural integrity
440 of the basin during a 25-year storm of 24-hour duration. Runoff coefficients used in
441 runoff calculations shall correspond to a bare earth condition or those conditions
442 expected to exist while the sediment basin is utilized.

443 7. Cut and fill slopes shall be designed and constructed in a manner that will minimize
444 erosion. Slopes that are found to be eroding excessively within one year of permanent
445 stabilization shall be provided with additional slope stabilizing measures until the problem
446 is corrected.

- 447 8. Concentrated runoff shall not flow down cut or fill slopes unless contained within an
448 adequate temporary or permanent channel, flume, or slope drain structure.
- 449 9. Whenever water seeps from a slope face, adequate drainage or other protection shall
450 be provided.
- 451 10. All storm sewer inlets that are made operable during construction shall be protected
452 so that sediment-laden water cannot enter the conveyance system without first being
453 filtered or otherwise treated to remove sediment.
- 454 11. Before newly constructed stormwater conveyance channels or pipes are made
455 operational, adequate outlet protection and any required temporary or permanent channel
456 lining shall be installed in both the conveyance channel and receiving channel.
- 457 12. When work in a live watercourse is performed, precautions shall be taken to minimize
458 encroachment, control sediment transport, and stabilize the work area to the greatest
459 extent possible during construction. Nonerodible material shall be used for the
460 construction of causeways and cofferdams. Earthen fill may be used for these structures
461 if armored by nonerodible cover materials.
- 462 13. When a live watercourse must be crossed by construction vehicles more than twice in
463 any six-month period, a temporary vehicular stream crossing constructed of nonerodible
464 material shall be provided.
- 465 14. All applicable federal, state, and local requirements pertaining to working in or crossing
466 live watercourses shall be met.
- 467 15. The bed and banks of a watercourse shall be stabilized immediately after work in the
468 watercourse is completed.
- 469 16. Underground utility lines shall be installed in accordance with the following standards
470 in addition to other applicable criteria:
- 471 a. No more than 500 linear feet of trench may be opened at one time.
 - 472 b. Excavated material shall be placed on the uphill side of trenches.
 - 473 c. Effluent from dewatering operations shall be filtered or passed through an approved
474 sediment trapping device, or both and discharged in a manner that does not adversely
475 affect flowing streams or off-site property.
 - 476 d. Material used for backfilling trenches shall be properly compacted in order to
477 minimize erosion and promote stabilization.
 - 478 e. Restabilization shall be accomplished in accordance with this chapter.
 - 479 f. Applicable safety requirements shall be complied with.
- 480 17. Where construction vehicle access routes intersect paved or public roads, provisions
481 shall be made to minimize the transport of sediment by vehicular tracking onto the paved
482 surface. Where sediment is transported onto a paved or public road surface, the road
483 surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed
484 from the roads by shoveling or sweeping and transported to a sediment control disposal
485 area. Street washing shall be allowed only after sediment is removed in this manner. This
486 provision shall apply to individual development lots as well as to larger land-disturbing
487 activities.
- 488 18. All temporary erosion and sediment control measures shall be removed within 30 days
489 after final site stabilization or after the temporary measures are no longer needed, unless
490 otherwise authorized by the VESCP or VESMP authority. Trapped sediment and the
491 disturbed soil areas resulting from the disposition of temporary measures shall be
492 permanently stabilized to prevent further erosion and sedimentation.

493 19. Properties and waterways downstream from development sites shall be protected from
494 sediment deposition, erosion, and damage due to increases in volume, velocity, and peak
495 flow rate of stormwater runoff for the stated frequency storm of 24-hour duration in
496 accordance with the following standards and criteria. Stream restoration and relocation
497 projects that incorporate natural channel design concepts are not manmade channels and
498 shall be exempt from any flow rate capacity and velocity requirements for natural or
499 manmade channels:

500 a. Concentrated stormwater runoff leaving a development site shall be discharged
501 directly into an adequate natural or manmade receiving channel, pipe, or storm sewer
502 system. For those sites where runoff is discharged into a pipe or pipe system,
503 downstream stability analyses at the outfall of the pipe or pipe system shall be
504 performed.

505 b. Adequacy of all channels and pipes shall be verified in the following manner:

506 (1) The applicant shall demonstrate that the total drainage area to the point of analysis
507 within the channel is 100 times greater than the contributing drainage area of the
508 project in question; or

509 (2) (a) Natural channels shall be analyzed by the use of a two-year storm to verify that
510 stormwater will not overtop channel banks nor cause erosion of channel bed or banks.

511 (b) All previously constructed manmade channels shall be analyzed by the use of a
512 10-year storm to verify that stormwater will not overtop the stormwater's banks and by
513 the use of a two-year storm to demonstrate that stormwater will not cause erosion of
514 channel bed or banks; and

515 (c) Pipes and storm sewer systems shall be analyzed by the use of a 10-year storm to
516 verify that stormwater will be contained within the pipe or system.

517 c. If existing natural receiving channels or previously constructed manmade channels
518 or pipes are not adequate, the applicant shall:

519 (1) Improve the channels to a condition where a 10-year storm will not overtop the
520 banks and a two-year storm will not cause erosion to the channel, the bed, or the
521 banks;

522 (2) Improve the pipe or pipe system to a condition where the 10-year storm is
523 contained within the appurtenances;

524 (3) Develop a site design that will not cause the predevelopment peak runoff rate from
525 a two-year storm to increase when runoff outfalls into a natural channel or will not
526 cause the predevelopment peak runoff rate from a 10-year storm to increase when
527 runoff outfalls into a manmade channel; or

528 (4) Provide a combination of channel improvement, stormwater detention, or other
529 measures that is satisfactory to the VESCP or VESMP authority to prevent
530 downstream erosion.

531 d. The applicant shall provide evidence of permission to make the improvements.

532 e. All hydrologic analyses shall be based on the existing watershed characteristics and
533 the ultimate development condition of the subject project.

534 f. If the applicant chooses an option that includes stormwater detention, the applicant
535 shall obtain approval from the VESCP or VESMP authority for a plan for maintenance
536 of the detention facilities. The plan shall set forth the maintenance requirements of the
537 facility and the person responsible for performing the maintenance.

538 g. Outfall from a detention facility shall be discharged to a receiving channel, and
539 energy dissipators shall be placed at the outfall of all detention facilities as necessary
540 to provide a stabilized transition from the facility to the receiving channel.

541 h. All on-site channels must be verified to be adequate.

542 i. Increased volumes of sheet flows that may cause erosion or sedimentation on
543 adjacent property shall be diverted to a stable outlet, adequate channel, pipe, or pipe
544 system or to a detention facility.

545 j. In applying these stormwater management criteria, individual lots or parcels in a
546 residential, commercial, or industrial development shall not be considered to be
547 separate development projects. Instead, the development, as a whole, shall be
548 considered to be a single development project. Hydrologic parameters that reflect the
549 ultimate development condition shall be used in all engineering calculations.

550 k. All measures used to protect properties and waterways shall be employed in a
551 manner that minimizes impacts on the physical, chemical, and biological integrity of
552 rivers, streams, and other waters of the state.

553 l. Any plan approved prior to July 1, 2014, that provides for stormwater management
554 that addresses any flow rate capacity and velocity requirements for natural or
555 manmade channels shall satisfy the flow rate capacity and velocity requirements for
556 natural or manmade channels if the practices are designed to (i) detain the water
557 quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour
558 period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce
559 the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year 24-hour
560 storms to a level that is less than or equal to the peak flow rate from the site assuming
561 the site was in a good forested condition, achieved through multiplication of the
562 forested peak flow rate by a reduction factor that is equal to the runoff volume from the
563 site when the site was in a good forested condition divided by the runoff volume from
564 the site in the site's proposed condition, and shall be exempt from any flow rate
565 capacity and velocity requirements for natural or manmade channels as defined in any
566 regulations promulgated pursuant to § 62.1-44.15:28 of the Code of Virginia (VESMA)
567 or § 62.1-44.15:54 or 62.1-44.15:65 of the Code of Virginia (ESCL).

568 m. For plans approved on and after July 1, 2014, the flow rate capacity and velocity
569 requirements of § 62.1-44.15:52 A of the Code of Virginia (ESCL) and this subdivision
570 19 shall be satisfied by compliance with water quantity requirements in the VESMA
571 and attendant regulations, unless such land-disturbing activities (i) are in accordance
572 with provisions for time limits on applicability of approved design criteria in 9VAC25-
573 875-480 or grandfathering in 9VAC25-875-490, in which case the flow rate capacity
574 and velocity requirements of § 62.1-44.15:52 A of the Code of Virginia (ESCL) shall
575 apply; or (ii) are exempt pursuant to § 62.1-44.15:34 G 2 of the Code of Virginia
576 (VESMA).

577 n. Compliance with the water quantity minimum standards set out in 9VAC25-875-600
578 shall be deemed to satisfy the requirements of this subdivision 19.

579 [B. All land-disturbing activities shall be conducted in a manner that is consistent with the](#)
580 [applicable requirements of subsection A of this section.](#)

581

582 **9VAC25-875-580. Water quality design criteria requirements.**

583 A. In order to protect the quality of state waters and to control the discharge of stormwater
584 pollutants from regulated activities, the following minimum design criteria and statewide standards
585 for stormwater management shall be applied to the site.

586 1. New development. For plans submitted on or after July 1, 2025, the total phosphorus
587 load of new development projects shall not exceed 0.26 pounds per acre per year, as
588 calculated pursuant to 9VAC25-875-590.

589 2. Development on prior developed lands.

590 a. For land-disturbing activities disturbing greater than or equal to one acre that result
591 in no net increase in impervious cover from the predevelopment condition, the total
592 phosphorus load shall be reduced at least 20% below the predevelopment total
593 phosphorus load.

594 b. For regulated land-disturbing activities disturbing less than one acre that result in
595 no net increase in impervious cover from the predevelopment condition, the total
596 phosphorus load shall be reduced at least 10% below the predevelopment total
597 phosphorus load.

598 c. For land-disturbing activities that result in a net increase in impervious cover over
599 the predevelopment condition, the design criteria for new development shall be applied
600 to the increased impervious area. Depending on the area of disturbance, the criteria
601 of subdivision 2 a or 2 b of this subsection shall be applied to the remainder of the site.

602 d. In lieu of subdivision 2 c of this subsection, the total phosphorus load of a linear
603 development project occurring on prior developed lands shall be reduced 20% below
604 the predevelopment total phosphorus load.

605 e. The total phosphorus load shall not be required to be reduced to below the
606 applicable standard for new development unless a more stringent standard has been
607 established by a locality.

608 B. Compliance with subsection A of this section shall be determined in accordance with
609 9VAC25-875-590.

610 C. For plans submitted and deemed complete pursuant to 9VAC25-875-110 before July 1,
611 2025, the total phosphorus load of new development projects shall not exceed 0.41 pounds per
612 acre per year, as calculated using the Virginia Runoff Reduction Method Version 3.0, May 2,
613 2016, or another equivalent methodology that is approved by the department.

614 D. For plans submitted and deemed complete pursuant to 9VAC25-875-110 before July 1,
615 2025, for land-disturbing activities on prior developed lands, compliance with subsection A 2 of
616 this section shall be determined using the Virginia Runoff Reduction Method Version 3.0, May 2,
617 2016, 9VAC25-875-590, or another equivalent methodology that is approved by the department.

618 E. Nothing in this section shall prohibit a VESMP authority from establishing more stringent
619 water quality design criteria requirements in accordance with § 62.1-44.15:33 of the Code of
620 Virginia.

621

622

Part VII

623

Virginia Pollutant Discharge Elimination System (VPDES) Permits

624

Article 1

625

Definitions

626

9VAC25-875-850. Definitions.

628

For the purposes of this part only, the following words and terms have the following meanings
629 unless the context clearly indicates otherwise:

630 "Administrator" means the Administrator of the U.S. Environmental Protection Agency or an
631 authorized representative.

632 "Applicable standards and limitations" means all state, interstate, and federal standards and
633 limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA)
634 (33 USC § 1251 et seq.) and VESMA, including effluent limitations, water quality standards,
635 standards of performance, toxic effluent standards or prohibitions, best management practices,
636 and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308,
637 403, and 405 of the CWA.

638 "Approved program" or "approved state" means a state or interstate program that has been
639 approved or authorized by EPA under 40 CFR Part 123.

640 "Bypass" means the intentional diversion of waste streams from any portion of a treatment
641 facility.

642 "Contiguous zone" means the entire zone established by the United States under Article 24
643 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906 June 15, 1972).

644 "Continuous discharge" means a discharge that occurs without interruption throughout the
645 operating hours of the facility, except for infrequent shutdowns for maintenance, process changes,
646 or other similar activities.

647 "Co-permittee" means a permittee to a VPDES permit that is only responsible for permit
648 conditions relating to the discharge for which it is the operator.

649 "Daily discharge" means the discharge of a pollutant measured during a calendar day or any
650 24-hour period that reasonably represents the calendar day for purposes of sampling. For
651 pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total
652 mass of the pollutant discharged over the day. For pollutants with limitations expressed in other
653 units of measurement, the daily discharge is calculated as the average measurement of the
654 pollutant over the day.

655 "Discharge" when used without qualification, means the discharge of a pollutant.

656 "Discharge of a pollutant" means:

657 1. Any addition of any pollutant or combination of pollutants to state waters from any point
658 source; or

659 2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous
660 zone or the ocean from any point source other than a vessel or other floating craft that is
661 being used as a means of transportation.

662 This definition includes additions of pollutants into surface waters from surface runoff that is
663 collected or channeled by man; discharges through pipes, sewers, or other conveyances owned
664 by a state, municipality, or other person that do not lead to a treatment works; and discharges
665 through pipes, sewers, or other conveyances, leading into privately owned treatment works. This
666 term does not include an addition of pollutants by any indirect discharger.

667 "Discharge Monitoring Report" or "DMR" means the form supplied by the department, or an
668 equivalent form developed by the operator and approved by the department, for the reporting of
669 self-monitoring results by operators.

670 "Draft permit" means a document indicating the department's tentative decision to issue or
671 deny, modify, revoke and reissue, terminate, or reissue an individual or general permit. A notice
672 of intent to deny an individual or general permit is a type of draft permit. A denial of a request for
673 modification, revocation and reissuance, or termination is not a draft permit.

674 "Effluent limitation" means any restriction imposed by the board on quantities, discharge rates,
675 and concentrations of pollutants that are discharged from point sources into surface waters, the
676 waters of the contiguous zone, or the ocean.

677 "Effluent limitations guidelines" means a regulation published by the administrator under §
678 304(b) of the CWA to adopt or revise effluent limitations.

679 "Existing permit" means for the purposes of this chapter a permit issued by the department
680 and currently held by a permit applicant.

681 "Existing source" means any source that is not a new source or a new discharger.

682 "Facilities or equipment" means buildings, structures, process or production equipment or
683 machinery that form a permanent part of a new source and that will be used in its operation if
684 these facilities or equipment are of such value as to represent a substantial commitment to
685 construct. The term excludes facilities or equipment used in connection with feasibility,
686 engineering, and design studies regarding the new source or water pollution treatment for the
687 new source.

688 "Facility or activity" means any VPDES point source or treatment works treating domestic
689 sewage or any other facility or activity, including land or appurtenances thereto, that is subject to
690 regulation under the VPDES program.

691 "Hazardous substance" means any substance designated under the Code of Virginia or 40
692 CFR Part 116 pursuant to § 311 of the CWA.

693 "Illicit discharge" means any discharge to a municipal separate storm sewer that is not
694 composed entirely of stormwater, except discharges pursuant to a separate VPDES or permit
695 (other than the permit for discharges from the municipal separate storm sewer), discharges
696 resulting from firefighting activities, and discharges identified by and in compliance with 9VAC25-
697 875-970 D 2 c (3).

698 "Indian country" means (i) all land within the limits of any Indian reservation under the
699 jurisdiction of the United States government, notwithstanding the issuance of any patent, and
700 including rights-of-way running through the reservation; (ii) all dependent Indian communities
701 within the borders of the United States whether within the originally or subsequently acquired
702 territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments,
703 the Indian titles to which have not been extinguished, including rights-of-way running through the
704 same.

705 "Indirect discharger" means a nondomestic discharger introducing "pollutants" to a "publicly
706 owned treatment works (POTW)."

707 "Large municipal separate storm sewer system" means all municipal separate storm sewers
708 that are either:

709 1. Located in an incorporated place with a population of 250,000 or more as determined
710 by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F);

711 2. Located in the counties listed in 40 CFR Part 122 Appendix H, except municipal
712 separate storm sewers that are located in the incorporated places, townships, or towns
713 within such counties;

714 3. Owned or operated by a municipality other than those described in subdivision 1 or 2
715 of this definition and that are designated by the department as part of the large or medium
716 municipal separate storm sewer system due to the interrelationship between the
717 discharges of the designated storm sewer and the discharges from municipal separate
718 storm sewers described under subdivision 1 or 2 of this definition. In making this
719 determination the department may consider the following factors:

720 a. Physical interconnections between the municipal separate storm sewers;

721 b. The location of discharges from the designated municipal separate storm sewer
722 relative to discharges from municipal separate storm sewers described in subdivision
723 1 of this definition;

- 724 c. The quantity and nature of pollutants discharged to surface waters;
 725 d. The nature of the receiving surface waters; and
 726 e. Other relevant factors;
- 727 4. The department may, upon petition, designate as a large municipal separate storm
 728 sewer system, municipal separate storm sewers located within the boundaries of a region
 729 defined by a stormwater management regional authority based on a jurisdictional,
 730 watershed, or other appropriate basis that includes one or more of the systems described
 731 in this definition.
- 732 "Major facility" means any facility or activity classified as such by the regional administrator in
 733 conjunction with the board.
- 734 "Major municipal separate storm sewer outfall" or "major outfall" means a municipal separate
 735 storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or
 736 more or its equivalent (discharge from a single conveyance other than circular pipe which is
 737 associated with a drainage area of more than 50 acres); or for municipal separate storm sewers
 738 that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning
 739 plans or the equivalent), with an outfall that discharges from a single pipe with an inside diameter
 740 of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated
 741 with a drainage area of two acres or more).
- 742 "Maximum daily discharge limitation" means the highest allowable daily discharge.
- 743 "Maximum extent practicable" or "MEP" means, [in the context of a municipal separate](#)
 744 [stormwater sewer system](#), the technology-based discharge standard for municipal separate storm
 745 sewer systems established by CWA § 402(p). MEP is achieved, in part, by selecting and
 746 implementing effective structural and nonstructural best management practices (BMPs) and
 747 rejecting ineffective BMPs and replacing them with effective best management practices (BMPs).
 748 MEP is an iterative standard, which evolves over time as urban runoff management knowledge
 749 increases. As such, the operator's MS4 program must continually be assessed and modified to
 750 incorporate improved programs, control measures, and BMPs to attain compliance with water
 751 quality standards.
- 752 "Medium municipal separate storm sewer system" means all municipal separate storm sewers
 753 that are either:
- 754 1. Located in an incorporated place with a population of 100,000 or more but less than
 755 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR
 756 Part 122 Appendix G);
- 757 2. Located in the counties listed in 40 CFR Part 122 Appendix I, except municipal separate
 758 storm sewers that are located in the incorporated places, townships, or towns within such
 759 counties;
- 760 3. Owned or operated by a municipality other than those described in subdivision 1 or 2
 761 of this definition and that are designated by the department as part of the large or medium
 762 municipal separate storm sewer system due to the interrelationship between the
 763 discharges of the designated storm sewer and the discharges from municipal separate
 764 storm sewers described under subdivision 1 or 2 of this definition. In making this
 765 determination the department may consider the following factors:
- 766 a. Physical interconnections between the municipal separate storm sewers;
 767 b. The location of discharges from the designated municipal separate storm sewer
 768 relative to discharges from municipal separate storm sewers described in subdivision
 769 1 of this definition;
 770 c. The quantity and nature of pollutants discharged to surface waters;

771 d. The nature of the receiving surface waters; or
772 e. Other relevant factors;

773 4. The department may, upon petition, designate as a medium municipal separate storm
774 sewer system, municipal separate storm sewers located within the boundaries of a region
775 defined by a stormwater management regional authority based on a jurisdictional,
776 watershed, or other appropriate basis that includes one or more of the systems described
777 in subdivisions 1, 2, and 3 of this definition.

778 "Municipality" means a city, town, county, district, association, or other public body created by
779 or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other
780 wastes or an Indian tribe or an authorized Indian tribal organization or a designated and approved
781 management agency under § 208 of the CWA.

782 "New discharger" means any building, structure, facility, or installation:

783 1. From which there is or may be a discharge of pollutants;

784 2. That did not commence the discharge of pollutants at a particular site prior to August
785 13, 1979;

786 3. Which is not a new source; and

787 4. Which has never received a finally effective separate VPDES or permit for discharges
788 at that site.

789 This definition includes an indirect discharger that commences discharging into surface waters
790 after August 13, 1979. It also includes any existing mobile point source (other than an offshore or
791 coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such
792 as a seafood processing rig, seafood processing vessel, or aggregate plant that begins
793 discharging at a site for which it does not have a separate VPDES or permit, and any offshore or
794 coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental
795 drilling rig that commences the discharge of pollutants after August 13, 1979.

796 "New source" means any building, structure, facility, or installation from which there is or may
797 be a discharge of pollutants, the construction of which commenced:

798 1. After promulgation of standards of performance under § 306 of the CWA that are
799 applicable to such source; or

800 2. After proposal of standards of performance in accordance with § 306 of the CWA that
801 are applicable to such source, but only if the standards are promulgated in accordance
802 with § 306 of the CWA within 120 days of their proposal.

803 "Oil and gas exploration, production, processing, or treatment operations or transmission
804 facilities" means all field activities or operations associated with exploration, production, or
805 treatment operations, or transmission facilities, including activities necessary to prepare a site for
806 drilling and for the movement and placement of drilling equipment, whether or not such field
807 activities or operations may be considered to be construction activity. (33 USC § 1362(24))

808 "Outfall," when used in reference to municipal separate storm sewers, means a point source
809 at the point where a municipal separate storm sewer discharges to surface waters and does not
810 include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels,
811 or other conveyances that connect segments of the same stream or other surface waters and are
812 used to convey surface waters.

813 "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies
814 a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not
815 disturbed by mining operations.

816 "Permit" means a VPDES permit issued by the department pursuant to § 62.1-44.15 of the
817 Code of Virginia for stormwater discharges from a land-disturbing activity or MS4.

818 "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage,
819 garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials
820 (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et
821 seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and
822 agricultural waste discharged into water. It does not mean:

- 823 1. Sewage from vessels; or
824 2. Water, gas, or other material that is injected into a well to facilitate production of oil or
825 gas or water derived in association with oil and gas production and disposed of in a well if
826 the well used either to facilitate production or for disposal purposes is approved by the
827 department and if the department determines that the injection or disposal will not result
828 in the degradation of groundwater or surface water resources.

829 "Privately owned treatment works" or "PVOTW" means any device or system that is (i) used
830 to treat wastes from any facility whose operator is not the operator of the treatment works and (ii)
831 not a POTW.

832 "Publicly owned treatment works" or "POTW" means a treatment works as defined by § 212
833 of the CWA that is owned by a state or municipality (as defined by § 502(4) of the CWA). This
834 definition includes any devices and systems used in the storage, treatment, recycling, and
835 reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers,
836 pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The
837 term also means the municipality as defined in § 502(4) of the CWA, that has jurisdiction over the
838 indirect discharges to and the discharges from such a treatment works.

839 "Recommencing discharger" means a source that recommences discharge after terminating
840 operations.

841 "Regional administrator" means the Regional Administrator of Region III of the Environmental
842 Protection Agency or the authorized representative of the regional administrator.

843 "Revoked" means an existing VPDES permit that is terminated by the department before its
844 expiration.

845 "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as
846 runoff.

847 "Schedule of compliance" means a schedule of remedial measures included in a permit,
848 including an enforceable sequence of interim requirements (for example, actions, operations, or
849 milestone events) leading to compliance with the VESMA, the CWA, and regulations.

850 "Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

851 "Severe property damage" means substantial physical damage to property, damage to the
852 treatment facilities that causes them to become inoperable, or substantial and permanent loss of
853 natural resources that can reasonably be expected to occur in the absence of a bypass. Severe
854 property damage does not mean economic loss caused by delays in production.

855 "Significant materials" means but is not limited to raw materials; fuels; materials such as
856 solvents, detergents, and plastic pellets; finished materials such as metallic products; raw
857 materials used in food processing or production; hazardous substances designated under §
858 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant
859 to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as
860 ashes, slag, and sludge that have the potential to be released with stormwater discharges.

861 "Small municipal separate storm sewer system" or "small MS4" means all separate storm
862 sewers that are (i) owned or operated by the United States, a state, city, town, borough, county,
863 parish, district, association, or other public body (created by or pursuant to state law) having
864 jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including
865 special districts under state law such as a sewer district, flood control district or drainage district,

866 or similar entity or an Indian tribe or an authorized Indian tribal organization or a designated and
867 approved management agency under § 208 of the CWA that discharges to surface waters and
868 (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated
869 under 9VAC25-875-950 A 1. This term includes systems similar to separate storm sewer systems
870 in municipalities, such as systems at military bases, large hospital or prison complexes, and
871 highway and other thoroughfares. The term does not include separate storm sewers in very
872 discrete areas, such as individual buildings.

873 "Source" means any building, structure, facility, or installation from which there is or may be
874 a discharge of pollutants.

875 "Stormwater discharge associated with construction activity" means a discharge of
876 stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or
877 excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow
878 area, concrete truck washout, fueling); or other industrial stormwater directly related to the
879 construction process (e.g., concrete or asphalt batch plants) are located.

880 "Stormwater discharge associated with large construction activity" means the discharge of
881 stormwater from large construction activities.

882 "Stormwater discharge associated with small construction activity" means the discharge of
883 stormwater from small construction activities.

884 "Total dissolved solids" means the total dissolved (filterable) solids as determined by use of
885 the method specified in 40 CFR Part 136.

886 "Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the
887 case of sludge use or disposal practices, any pollutant identified in regulations implementing §
888 405(d) of the CWA.

889 "Upset" means an exceptional incident in which there is unintentional and temporary
890 noncompliance with technology based permit effluent limitations because of factors beyond the
891 reasonable control of the operator. An upset does not include noncompliance to the extent caused
892 by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack
893 of preventive maintenance, or careless or improper operation.

894 "Variance" means any mechanism or provision under § 301 or 316 of the CWA or under 40
895 CFR Part 125, or in the applicable federal effluent limitations guidelines that allows modification
896 to or waiver of the generally applicable effluent limitation requirements or time deadlines of the
897 CWA. This includes provisions that allow the establishment of alternative limitations based on
898 fundamentally different factors or on § 301(c), (g), (h), or (i), or 316(a) of the CWA.

899 "Virginia Pollutant Discharge Elimination System permit" or "VPDES permit" means a
900 document issued by the department pursuant to the State Water Control Law authorizing, under
901 prescribed conditions, the potential or actual discharge of pollutants from a point source to surface
902 waters.

903 "Water quality standards" or "WQS" means provisions of state or federal law that consist of a
904 designated use or uses for the waters of the Commonwealth and water quality criteria for such
905 waters based on such uses. Water quality standards are to protect the public health or welfare,
906 enhance the quality of water, and serve the purposes of the State Water Control Law (§ 62.1-44.2
907 et seq. of the Code of Virginia), the VESMA (§ 62.1-44.15:24 et seq. of the Code of Virginia), and
908 the CWA (33 USC § 1251 et seq.).

909 "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by
910 a toxicity test.

911 DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-875)

- 912 [Virginia Runoff Reduction Method: Compliance Spreadsheet User's Guide & Documentation](#)
913 [Version 3.0, April 2016](#), effective May 2, 2016
- 914 Virginia Runoff Reduction Method: ~~Instructions and Compliance Spreadsheet User's Guide &~~
915 ~~Documentation~~ [Version 4.1, July 2024](#), effective April 27, 2024
- 916 Virginia Erosion and Sediment Control Regulation Minimum Standard 19 in effect prior to July 1,
917 2014
- 918



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Fast-Track Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9 VAC 25-875
VAC Chapter title(s)	Virginia Erosion and Stormwater Management Regulation
Action title	Amend and update the Virginia Erosion and Stormwater Management Regulation to correct technical errors
Date this document prepared	February 11, 2025

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

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.

The intent of this fast-track regulatory action is to correct technical errors in the Virginia Erosion and Stormwater Management (VESM) Regulation (9VAC25-875, effective July 1, 2024) that have been identified since publication in the *Virginia Register of Regulations* on December 4, 2023. (40:8 VA.R. 461-557, December 4, 2023.)

The technical corrections will improve clarity and certainty by making the VESM Regulation internally consistent, removing outdated requirements, and accurately reflecting requirements in the State Water Control Law. Chapter 3.1 of Title 62.1 of the Code of Virginia (§ 62.1-44.2 et seq.).

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

- BMP: Best management practice
- DEQ (or Department): Department of Environmental Quality
- ESCL: Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program, Code of Virginia § 62.1-44.15:51 et seq., effective July 1, 2024
- MS4: Municipal Separate Stormwater Sewer System
- VAC: Virginia Administrative Code
- VESCP: Virginia Erosion and Sediment Control Program
- VESMP: Virginia Erosion and Stormwater Management Program
- VESM Regulation: Virginia Erosion and Stormwater Management Regulation, 9VAC25-875
- VPDES: Virginia Pollutant Discharge Elimination System
- VRRM: Virginia Runoff Reduction Method

Statement of Final Agency Action

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.

On March 27, 2025, the State Water Control Board:

1. Authorized DEQ to 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 constituted its adoption of the 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) DEQ does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.

2. Authorized DEQ to set an effective date no earlier than 15 days after close of the 30-day public comment period, or July 2, 2025, whichever is later, provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) DEQ does not find it necessary to make any changes to the proposal.

Mandate and Impetus

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, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “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.”

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

Section 62.1-44.15:28 of the Code of Virginia (effective July 1, 2024) authorizes the Board to adopt regulations that establish requirements for the effective control of soil erosion, sediment deposition, and

stormwater, including nonagricultural runoff, that shall be met in any Virginia Erosion and Stormwater Management Program (VESMP) to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources; subsection 3 requires the Board’s regulations to be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the Commonwealth, including data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services; and subsection 6 requires the regulations to establish water quality and water quantity technical criteria that shall be periodically modified as required in order to reflect current engineering methods.

This rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because the regulated community and other stakeholders who have been involved in the process to adopt the VESM Regulation and develop the new Virginia Stormwater Management Handbook (GM24-2001 V 1.1, available here: <https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=7734>) have requested changes that clarify requirements for localities that implement erosion and stormwater management programs or erosion and sediment control programs and correct other technical errors that have been identified since publication of the final regulation in December 2023.

The limited scope of this rulemaking benefits the regulated community, localities, DEQ, and other stakeholders by correcting technical errors and improving clarity in a timely manner.

Legal Basis

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

Promulgating Entity

The promulgating entity for this regulation is the State Water Control Board.

State Requirements

Section 62.1-44.15 (3a) of the Code of Virginia (effective July 1, 2024) requires the Board to establish such standards of quality and policies for any state waters consistent with the general policy set forth in the State Water Control Law; subsection (5) requires the Board to issue, revoke, or amend certificates and land-disturbance approvals under prescribed conditions for (a) the discharge of sewage, stormwater, industrial wastes, and other wastes into or adjacent to state waters; and subsection (10) requires the Board to adopt such regulations as it deems necessary to enforce the general soil erosion control and stormwater management program and water quality management program of the Board in all or part of the Commonwealth.

Additional authority for the Board to adopt and amend regulations for erosion control and stormwater management is in § 62.1-44.15:28 as cited above.

Purpose

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 is intended to solve.

The proposed regulatory action protects water quality in the Commonwealth of Virginia which is essential to the health, safety and welfare of Virginia’s citizens and is needed in order to establish appropriate and necessary permitting requirements for discharges of stormwater. The goal of this regulatory action is to amend Chapter 875 to improve clarity and certainty by making the VESM Regulation internally consistent, removing outdated requirements, and accurately reflecting requirements in the State Water Control Law. Chapter 3.1 of Title 62.1 of the Code of Virginia (§ 62.1-44.2 et seq.).

Substance

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.

Technical corrections and changes to the VESM Regulation include:

- Correcting cross-references to Chesapeake Bay Preservation Area requirements (e.g., 9VAC25-875-70, 9VAC25-875-250, and 9VAC25-875-470);
- Moving subsection G of 9VAC25-875-300 to 9VAC25-875-550 E so that the requirement for owners to maintain, inspect, and repair erosion and sediment control structures is in the part of the regulation that has other owner requirements, not the part of the regulation that is specific to localities;
- Updating the Department’s provisions for reviewing and evaluating a locality’s erosion and sediment control program (9VAC25-875-370 D) so that they are consistent with the requirements in the State Water Control Law;
- Revising requirements related to land-disturbing activities considered grandfathered to provide clarification to stakeholders (9VAC25-875-490);
- Clarifying that an erosion and sediment control plan, which is included in a stormwater pollution prevention plan for land-disturbing activity, must be consistent with the erosion and sediment control criteria, techniques, and methods (minimum standards, 9VAC25-875-560); and
- Clarifying that a Virginia Erosion and Sediment Management Program (VESMP) authority and the department as the Virginia Stormwater Management Program authority may allow plans approved or submitted and deemed complete prior to July 1, 2025, to continue to be followed as approved (9VAC25-875-580).

Collectively, these and other technical corrections will provide clarity and improve understanding of the regulation.

Issues

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.

1. Public: There are no direct impacts on the public as the amendments update existing regulatory requirements, so they reflect current requirements in the State Water Control Law, clarify requirements, and improve understanding of the regulation, which in turn contributes to the efficient and effective functioning of government. There are no disadvantages to the public.

2. DEQ: The amendments update existing regulatory requirements and will allow DEQ and localities that implement erosion and stormwater management programs or erosion and sediment control programs to utilize regulations that reflect current requirements in the State Water Control Law, and improve the

understanding of the regulation, which in turn contributes to the efficient and effective functioning of government. This is an advantage. There are no disadvantages to the agency or the Commonwealth.

Requirements More Restrictive than Federal

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.

There are no applicable federal requirements and therefore no requirements that exceed federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "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

There is no state agency which will bear any identified disproportionate material water quality impact due to the proposal which would not be experienced by other state agencies.

Localities Particularly Affected

There is no locality which will bear any identified disproportionate material water quality impact due to the proposal which would not be experienced by other localities.

Other Entities Particularly Affected

There is no entity which will bear any identified disproportionate material water quality impact due to the proposal which would not be experienced by other entities.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, 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. Keep in mind that this is the proposed 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>The regulatory change will not result in any cost to DEQ.</p>
<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>The regulatory change will not result in any cost to any state agency.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The direct benefit to state agencies of making technical corrections and improving clarity of requirements will be to save time for localities and the regulated community, improve understanding of regulatory requirements, and result in better compliance with the minimum standards for erosion and sediment control and stormwater management program requirements.</p>

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>No impacts to any locality are anticipated.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>ORM Economic Impact form, Table 2</p>

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

<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>ORM Economic Impact form, Tables 1a, 3 and 4</p>
<p>Agency's best estimate of the number of such entities that will be affected. 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>ORM Economic Impact form, Tables 1a, 3 and 4</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p>	<p>ORM Economic Impact form, Tables 1a, 3 and 4</p>

<p>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>	
<p>Benefits the regulatory change is designed to produce.</p>	<p>Updating regulations will allow localities to perform better for a lower cost in many cases; promotes the efficient and effective functioning of government.</p>

Alternatives to Regulation

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.

There are no practical alternatives. Leaving technical errors in Chapter 875 will likely cause misunderstanding, confusion, and inconsistent application of regulatory requirements for DEQ and the localities that implement erosion and stormwater management or erosion and sediment control programs.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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.

There are no alternatives to this regulatory action other than continuing to operate with the existing language with no updates.

This regulatory change is very limited in scope to include technical changes for consistency with state law and/or to provide clarify and certainty. This action does not change the substantive requirements for owners and operators to submit plans, obtain permits, and maintain compliance with requirements to control erosion and stormwater runoff from land-disturbing activities. In addition, it does not change the technical requirements, such as erosion and sediment control minimum standards and post-construction stormwater management criteria that protect public health and the environment.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, 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.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

DEQ is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to Rebecca Rochet, Director of Stormwater Programs, Virginia Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia 23218, or Rebecca.Rochet@deq.virginia.gov. 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

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. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
9VAC25-875-70 A 2		Land-disturbing activity that disturbs 2,500 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a	Changes applicable article in Part V from Article 3 to Article 5: Land-disturbing activity that disturbs 2,500 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated

		Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of this chapter is applicable...	as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 and Article 3 5 (9VAC25-875-570 740 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of this chapter is applicable... This is a technical correction to the regulation to clarify applicable requirements in Chesapeake Bay Preservation Areas.
9VAC25-875-140 D		The VESMP authority may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established in subsection B of this section if the inspection is conducted by a person who is licensed...	The VESMP authority may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established in subsection B <u>C</u> of this section if the inspection is conducted by a person who is licensed... This is a technical correction to the cross-reference.
9VAC25-875-250 A 1		1. Land-disturbing activity that disturbs 10,000 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-470 et seq.) of this chapter.	Removes upper limit of one acre to make the requirement to comply with erosion and sediment control criteria consistent with the statutory requirement at § 62.1-44.15:55 (effective July 1, 2024): 1. Land-disturbing activity that disturbs 10,000 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, <u>and not in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-470 et seq.) of this chapter.</u> This is a technical correction to the regulation to be consistent with state law.
9VAC25-875-250 A 2		2. Land-disturbing activity that disturbs 2,500 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 of Part V of this chapter.	Removes upper limit of one acre to make requirement to comply with erosion and sediment control criteria consistent with statutory requirement at § 62.1-44.15:55 (effective July 1, 2024) and cites both articles in Part V that are applicable to land disturbing activities in a Chesapeake Bay Preservation Area: 2. Land-disturbing activity that disturbs 2,500 square feet or more, although the locality may reduce this regulatory

			<p>threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 <u>and Article 5 (9VAC25-875-740 et seq.)</u> of Part V of this chapter.</p> <p>These are technical corrections to the regulation to be consistent with state law and to clarify applicable requirements in Chesapeake Bay Preservation Areas.</p>
<p>9VAC25-875-280 9</p>		<p>9. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Virginia Marine Resources Commission, or the U.S. Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to the ESCL and the regulations adopted pursuant thereto;</p>	<p>Specifies that regulations adopted pursuant to the ESCL are 9VAC25-875:</p> <p>9. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Virginia Marine Resources Commission, or the U.S. Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to the ESCL and the regulations adopted pursuant thereto <u>this chapter</u>;</p> <p>This is a technical correction to the regulation.</p>
<p>9VAC25-875-300 A and B</p>		<p>A. The VESCP authority shall review erosion and sediment control plans that detail the criteria, techniques, and methods as defined in 9VAC25-875-550 for land-disturbing activities described in 9VAC25-875-560. Activities not required to comply with VESCL are defined in 9VAC25-875-280.</p> <p>B. When determined that the plan meets the minimum criteria, techniques, and methods as defined in 9VAC25-875-550, the VESCP authority shall review erosion and sediment control plans submitted and grant written</p>	<p>A. The VESCP authority shall review erosion and sediment control plans <u>prepared in accordance with 9VAC25-875-550</u> and detail the criteria, techniques, and methods as defined in 9VAC25-875-550<u>560</u> for land-disturbing activities described in 9VAC25-875-560. Activities not required to comply with VESCL are defined in 9VAC25-875-280.</p> <p>B. When determined that the plan meets the minimum criteria, techniques, and methods as defined in 9VAC25-875-550<u>560</u>, the VESCP authority shall review erosion and sediment control plans submitted and grant written approval within 60 days of the receipt of the plan.</p> <p>This is a technical correction to the regulation to correct the regulatory citations for the preparation of erosion</p>

		<p>approval within 60 days of the receipt of the plan.</p>	<p>and sediment control plans, as well as the location of the criteria, techniques, and methods for erosion and sediment control plans.</p>
<p>9VAC25-875-300 G</p>		<p>G. All erosion and sediment control structures and systems shall be maintained, inspected, and repaired as needed to ensure continued performance of their intended function. A statement describing the maintenance responsibilities of the individual responsible for carrying out the land-disturbing activity shall be included in the approved erosion and sediment control plan.</p>	<p>9VAC25-875-300 is intended to outline the requirements for a VESCP authority to review erosion and sediment controls plans.</p> <p>Subsection G is being relocated to 9VAC25-875-550 E as this requirement outlines a requirement of the actual plan, not a requirement for the VESCP authority in reviewing plans.</p>
<p>9VAC25-875-370 D</p>		<p>If deficiencies noted in the review will cause the VESCP to be inconsistent with the ESCL or this chapter, the department shall provide the VESCP authority with a copy of the department's decision that specifies the deficiencies, action needed to be taken, and an approved corrective action plan and schedule required to attain the minimum standard of effectiveness. If the VESCP authority has not implemented the necessary compliance actions identified by the department within the corrective action schedule, or such additional period as is granted to complete the implementation of the corrective action, then the department shall have the authority to (i) issue a special order to any VESCP authority imposing a civil penalty set out in § 62.1-44.15 of the Code of Virginia or (ii) revoke its approval of the VESCP.</p>	<p>Removes revocation of the VESCP as an alternative when a VESCP authority fails to implement necessary compliance actions identified by the Department and replaces it with options specified in § 62.1-44.15 (19):</p> <p>If deficiencies noted in the review will cause the VESCP to be inconsistent with the ESCL or this chapter, the department shall provide the VESCP authority with a copy of the department's decision that specifies the deficiencies, action needed to be taken, and an approved corrective action plan and schedule required to attain the minimum standard of effectiveness. If the VESCP authority has not implemented the necessary compliance actions identified by the department within the corrective action schedule, or such additional period as is granted to complete the implementation of the corrective action, then the department shall have the authority to (i) issue a special order to any VESCP authority imposing a civil penalty set out in § 62.1-44.15 of the Code of Virginia or (ii) <u>revoke its approval of the VESCP fails to bring its program into compliance in accordance with the compliance schedule, then the department is authorized to (i) issue a special order to any locality imposing a civil penalty</u></p>

			<p><u>not to exceed \$ 5,000 per violation with the maximum amount not to exceed \$ 50,000 per order for noncompliance with the state program, to be paid into the state treasury and deposited in the Stormwater Local Assistance Fund established in § 62.1-44.15:29.1 of the Code of Virginia or (ii) with the consent of the locality, provide in an order issued against the locality for the payment of civil charges for violations in lieu of civil penalties, in specific sums not to exceed the limit stated in this subdivision.</u></p> <p>This is a technical correction to the regulation to make it consistent with state law (§ 62.1-44.15 (19) (effective July 1, 2024)).</p>
<p>9VAC25-875-470 A 2</p>		<p>Land-disturbing activity that disturbs 2,500 square feet or more, although a locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of this chapter is applicable...</p>	<p>Changes applicable article in Part V from Article 3 to Article 5:</p> <p>Land-disturbing activity that disturbs 2,500 square feet or more, although a locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of this chapter is applicable...</p> <p>This is a technical correction to the regulation to clarify applicable requirements in Chesapeake Bay Preservation Areas.</p>
<p>9VAC25-875-490 A, B and C</p>		<p>A. Any land-disturbing activity shall be considered grandfathered by the VESMP authority and shall be subject to the technical criteria of Article 4 (9VAC25-875-670 et seq.) of this part provided:</p> <p>1. A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the locality to be equivalent</p>	<p>Land-disturbing activities that were grandfathered under subsection A were only subject to the technical criteria of Article 4 for one 5-year permit cycle after 2014 (subsection C). Applicability ended with the re-issuance of the General VPDES Permit for Discharges of Construction Stormwater, 9VAC25-880, when it became effective on July 1, 2019. Subsections A, B and C have been revised to clarify these provisions, as well as clarify how plan modifications for land-disturbing activities approved under these provisions are addressed:</p>

	<p>thereto (i) was approved by the locality prior to July 1, 2012; (ii) provided a layout as defined in 9VAC25-875-670; (iii) will comply with the technical criteria of Article 4 of this part; and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge and such that there is no increase in the volume or rate of runoff;</p> <p>2. A permit has not been issued prior to July 1, 2014; and</p> <p>3. Land disturbance did not commence prior to July 1, 2014. Any land-disturbing activity shall be considered grandfathered by the VESMP authority and shall be subject to the technical criteria of Article 4 provided that a proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan was adopted prior to July 1, 2012, a permit has not been issued prior to July 1, 2014, and land disturbance did not commence prior to July 1, 2014.</p> <p>B. Locality, state, and federal projects shall be considered grandfathered by the VESMP authority and shall be subject to the technical criteria of Article 4 of this part provided:</p> <p>1. There has been an obligation of locality, state, or federal funding, in whole or in part, prior to July 1,</p>	<p>A. Any land-disturbing activity shall be considered grandfathered by the VESMP authority and shall be subject to the technical criteria of Article 4 (9VAC25-875-670 et seq.) of this part provided:</p> <p>1. A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012; (ii) provided a layout as defined in 9VAC25-875-670; (iii) will comply with the technical criteria of Article 4 of this part; and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge and such that there is no increase in the volume or rate of runoff;</p> <p>2. A permit has not been issued prior to July 1, 2014; and</p> <p>3. Land disturbance did not commence prior to July 1, 2014. Any land-disturbing activity shall be considered grandfathered by the VESMP authority and shall be subject to the technical criteria of Article 4 provided that a proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan was adopted prior to July 1, 2012, a permit has not been issued prior to July 1, 2014, and land disturbance did not commence prior to July 1, 2014.; and</p> <p><u>4. Land disturbance commenced prior to July 1, 2019.</u></p> <p>B. Locality, state, and federal projects shall be considered grandfathered by the VESMP authority and shall be subject to the technical criteria of Article 4 of this part provided:</p> <p>1. There has been an obligation of locality, state, or federal funding, in</p>
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		<p>2012, or the department has approved a stormwater management plan prior to July 1, 2012;</p> <p>2. A permit has not been issued prior to July 1, 2014; and</p> <p>3. Land disturbance did not commence prior to July 1, 2014.</p> <p>C. Land disturbing activities grandfathered under subsections A and B of this section shall remain subject to the technical criteria of Article 4 of this part for one additional permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.</p>	<p>whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 1, 2012;</p> <p>2. A permit has not been issued prior to July 1, 2014; and</p> <p>3. Land disturbance did not commence prior to July 1, 2014; <u>and</u></p> <p><u>4. Land disturbance commenced prior to July 1, 2019.</u></p> <p>C. Land disturbing activities <u>that are</u> grandfathered under subsections A and or B of this section shall remain subject to the technical criteria of Article 4 of this part <u>until construction is completed.</u> for one additional permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board. To <u>remain subject to the technical criteria of Article 4 of this part, subsequent modifications or amendments to a previously approved stormwater management plan may not result in an increase in the amount of phosphorus leaving each point of discharge or an increase in the volume or rate of runoff. Any modifications or amendments to a previously approved stormwater management plan that result in an increase in the amount of phosphorus leaving any point of discharge or an increase in the volume or rate of runoff, or additional land-disturbing activities not previously authorized, shall comply with the technical criteria in Article 2, 3, or 5 of this part, as applicable.</u></p> <p>This is a technical correction to the regulation to clarify the grandfathering provisions.</p>
<p>9VAC25-875-500 B</p>		<p>B. An erosion and sediment control plan consistent with the requirements of 9VAC25-875-550 must be</p>	<p>B. An erosion and sediment control plan consistent with the requirements of 9VAC25-875-550 <u>and 9VAC25-875-560</u> must be designed and</p>

		designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VESCP authority, VESMP authority, or the department.	implemented during construction activities. Prior to land disturbance, this plan must be approved by the VESCP authority, VESMP authority, or the department. This is a technical correction to clarify that erosion and sediment control plans must meet the requirements of both 9VAC25-875-550 and 9VAC25-875-560.
9VAC25-875-550 A		A. An erosion and sediment control plan shall be filed for a development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit of land will be so treated to achieve the conservation objectives in 9VAC25-875-560. The erosion and sediment control plan may include:	Clarifies requirements for erosion and sediment control plans by adding the name of the requirements that are in 9VAC25-875-560: A. An erosion and sediment control plan shall be filed for a development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit of land will be so treated to achieve the conservation objectives and <u>minimum standards</u> in 9VAC25-875-560. The erosion and sediment control plan may include: This is a technical correction to the regulation to properly refer to the minimum standards in 9VAC25-875-560. Minimum Standards.
	9VAC25-875-550 E		<u>E. All erosion and sediment control structures and systems shall be maintained, inspected, and repaired as needed to ensure continued performance of their intended function. A statement describing the maintenance responsibilities of the individual responsible for carrying out the land-disturbing activity shall be included in the approved erosion and sediment control plan.</u> This language was relocated from 9VAC25-875-300 E for clarification as it relates to the requirements of the erosion and sediment control plan contents, not the review performed by the VESCP authority.
9VAC25-875-560	9VAC25-875-560 A	An erosion and sediment control plan...	<u>A.</u> An erosion and sediment control plan...

			<p>Added subsection “A” and “B” labels to comply with regulatory formatting requirements.</p>
	9VAC25-875-560 B		<p><u>B. All land-disturbing activities shall be conducted in a manner that is consistent with the applicable requirements of subsection A of this section.</u></p> <p>Subsection B provides certainty to the regulated community by clearly stating a requirement that has been implied by the regulation, that all land-disturbing activities shall be conducted in a manner consistent with the minimum standards.</p>
9VAC25-875-580 C		<p>9VAC25-875-580 C. Nothing in this section shall prohibit a VESMP authority from establishing more stringent water quality design criteria requirements in accordance with § 62.1-44.15:33 of the Code of Virginia.</p>	<p>On July 1, 2025, a separate fast-track regulatory action to remove out of date requirements will become effective. It will update the maximum total phosphorus load of new development projects to 0.26 pounds per acre per year, as calculated pursuant to 9VAC25-875-590. During the public comment period for that fast-track regulatory action, comments were submitted by a local Virginia Erosion and Stormwater Management Program (VESMP) authority that expressed concerns that the amendment unintentionally does not allow existing projects in review and/or under construction to remain subject to the total phosphorus load in effect at the time of plan review and/or approval.</p> <p>The amendments to 9VAC25-875-580 clarify how the department and VESMP authorities will handle plans that are submitted and deemed complete before July 1, 2025, by clarifying that existing projects in review and/or under construction (including modifications of previously submitted, deemed completed and approved plans) continue to remain subject to the total phosphorus load and related standards and specifications upon which they were developed.</p> <p>The change, “For plans submitted and deemed complete pursuant to</p>

			<p>9VAC25-875-110 before July 1, 2025, the total phosphorus load shall be calculated using the Virginia Runoff Reduction Method (VRRM) Version 3.0 or another equivalent methodology that is approved by the department” includes VRRM Version 4.1. VRRM Version 4.1 was approved by the department and became effective on April 27, 2024. This language is also consistent with guidance previously issued by the department.</p> <p><u>C. For plans submitted and deemed complete pursuant to 9VAC25-875-110 before July 1, 2025, the total phosphorus load of new development projects shall not exceed 0.41 pounds per acre per year, as calculated using the Virginia Runoff Reduction Method Version 3.0, May 2, 2016, or another equivalent methodology that is approved by the department.</u></p> <p>This technical correction, along with the addition of subsection D, provides clarification and certainty to local VESMP authorities and the regulated community.</p> <p>The original content of subsection C will move to subsection E without changing.</p>
	<p>9VAC25-875-580 D</p>		<p><u>D. For plans submitted and deemed complete pursuant to 9VAC25-875-110 before July 1, 2025, for land-disturbing activities on prior developed lands, compliance with subsection A 2 of this section shall be determined using the Virginia Runoff Reduction Method Version 3.0, May 2, 2016, 9VAC25-875-590, or another equivalent methodology that is approved by the department.</u></p> <p>This technical correction provides clarification and certainty to local VESMP authorities and the regulated community by allowing existing projects in review and/or under construction to utilize methodology in effect at the time of plan review and/or approval.</p>

	9VAC25-875-580 E		<p><u>E.</u> Nothing in this section shall prohibit a VESMP authority from establishing more stringent water quality design criteria requirements in accordance with § 62.1-44.15:33 of the Code of Virginia.</p> <p>Inserted content in subsection C and added subsection D, moving this to new subsection "E."</p>
9VAC25-875-850 Definition of "Maximum extent practicable"		<p>"Maximum extent practicable" or "MEP" means the technology-based discharge standard for municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, and BMPs to attain compliance with water quality standards.</p>	<p>Adds condition to ensure use of the term, as defined in the section, is consistent with and limited to MS4s:</p> <p>"Maximum extent practicable" or "MEP" means, <u>in the context of a municipal separate stormwater sewer system</u>, the technology-based discharge standard for municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, and BMPs to attain compliance with water quality standards.</p> <p>This is a technical correction to ensure, where the term is used in other parts of the regulation, the meaning is appropriate for the context.</p>
Documents Incorporated by Reference (9VAC25 875)		<p>Virginia Runoff Reduction Method: Instructions and Documentation, effective April 27, 2024</p> <p>Virginia Erosion and Sediment Control Regulation Minimum Standard 19 in effect prior to July 1, 2014</p>	<p>This updates the Documents Incorporated by Reference to include the version of the Instructions and Documentation for the VRRM that is consistent with plans submitted and deemed complete prior to July 1, 2025 (consistent with the amendments to 9VAC25-875-580). It also updates the title of Version 4.1 of the VRRM so that it matches what is on the cover of the User's Guide:</p> <p><u>Virginia Runoff Reduction Method: Compliance Spreadsheet User's Guide</u></p>

			<p><u>& Documentation Version 3.0, April 2016), effective May 2, 2016</u></p> <p>Virginia Runoff Reduction Method: <u>Instructions and Compliance Spreadsheet User's Guide & Documentation (Version 4.1, July 2024), effective April 27, 2024</u></p> <p>Virginia Erosion and Sediment Control Regulation Minimum Standard 19 in effect prior to July 1, 2014</p> <p>This is a technical revision to include specified documents by reference for regulated parties, program administrators, and other stakeholders.</p>
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Office of Regulatory Management
Economic Review Form

Agency name	Department of Environmental Quality (“Department”)
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-875
VAC Chapter title(s)	Virginia Erosion and Stormwater Management Regulation
Action title	Amend and update the Virginia Erosion and Stormwater Management Regulation to correct technical errors
Date this document prepared	February 11, 2025
Regulatory Stage (including Issuance of Guidance Documents)	Fast-Track Regulation

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><u>Background</u></p> <p>Chapters 68 and 758 of the 2016 Acts of Assembly (the “Consolidation Bill”), as amended by Chapters 656 and 666 of the 2023 Acts of Assembly, combined requirements in the Stormwater Management Act and Erosion and Sediment Control Law to create the Virginia Erosion and Stormwater Management Act (effective July 1, 2024). The Consolidation Bill directed the State Water Control Board (Board) to adopt regulations – to permit, regulate, and control both erosion and stormwater runoff – for the legislation to become effective. At its June</p>
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22, 2023 meeting, the Board approved final regulations that consolidated 9VAC25-840 (Erosion and Sediment Control Regulations), 9VAC25-850 (Erosion and Sediment Control and Stormwater Certification Regulations), and 9VAC25-870 (Virginia Stormwater Management Program Regulations) into a single regulatory chapter, the Virginia Erosion and Stormwater Management Regulation (9VAC25-875). The Virginia Erosion and Stormwater Management (VESM) Regulation became effective July 1, 2024, concurrent with the effective date of the Consolidation Bill, as amended.

Consistent with the Notice of Intended Regulatory Action for Chapter 870 that was posted in the Virginia Register of Regulations on February 4, 2019, no substantive changes to existing erosion and sediment control minimum standards or to the post-construction stormwater management technical criteria were part of the regulatory action that resulted in the Board’s adoption of Chapter 875. The intent of this regulatory action is to amend Chapter 875 by correcting technical errors that have been identified since the publication of the final regulation in December 2023.

Direct & Indirect Costs:

The Virginia Erosion and Stormwater Management (VESM) Regulation revisions include technical corrections for consistency with state law and/or to provide clarify and certainty to localities that implement either erosion and stormwater management or erosion and sediment control programs. This action does not change the substantive requirements for owners and operators to submit plans, obtain permits, and maintain compliance with requirements to control erosion and stormwater runoff from land-disturbing activities. In addition, it does not change the technical requirements such as erosion and sediment control minimum standards and post-construction stormwater management criteria that protect public health and the environment. Therefore, there are no new direct or indirect costs associated with the proposed changes.

Direct Benefits:

The technical corrections ensure the VESM Regulation is consistent with state law and internally consistent to provide clarity and certainty to stakeholders and the localities that implement erosion and stormwater management or erosion and sediment control programs. This regulatory action makes the regulation easier to understand and implement, as well as providing certainty to stakeholders. The Department is unable to quantify these benefits because they do not make any substantive changes to the regulation or its requirements.

Indirect Benefits:

Improving clarity of requirements saves time for localities and the regulated community, improves understanding of regulatory

	requirements, and should result in better compliance with the minimum standards for erosion and sediment control and stormwater management program requirements (i.e., limits on water quantity and water quality that are released to surface waters from land-disturbance sites). Better compliance protects state waters, water quality, habitat, and recreational use.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) No monetized direct or indirect costs associated with these regulatory changes.	(b) The Department is unable to quantify these benefits.
(3) Net Monetized Benefit	Unknown (see discussion above).	
(4) Other Costs & Benefits (Non-Monetized)	Unknown (see discussion above).	
(5) Information Sources	Department permit records; communications with Department staff that worked for consulting firms that prepare and work with stormwater plans.	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: The “status quo” option would be to continue to use language that is inconsistent with existing law, internally inconsistent, or vague. No direct costs will be occurred by the Department.</p> <p>Indirect Costs: The primary indirect costs with the “status quo” are the additional operator, consultant, Department, and local authority staff time to resolve plan review issues due to the inconsistencies between the VESM Regulation and the existing specifications and outdated manuals. The Department is unable to quantify these costs.</p> <p>Direct Benefits: There are no benefits to maintaining incorrect information and requirements in the regulation.</p> <p>Indirect Benefits: There are not any indirect benefits to maintaining the status quo.</p>
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(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Unable to monetize indirect costs associated with the status quo.	(b) Unable to monetize direct and indirect benefits.
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	N/A	

Table 1c: Costs and Benefits under Alternative Approach(es)

(1) Direct & Indirect Costs & Benefits (Monetized)	The Department is not aware of any alternatives to this regulatory change. The regulatory change is very limited in scope to include technical corrections for consistency with state law and/or to provide clarify and certainty. This action does not change the substantive requirements for owners and operators to submit plans, obtain permits, and maintain compliance with requirements to control erosion and stormwater runoff from land-disturbing activities. In addition, it does not change the technical requirements such as erosion and sediment control minimum standards and post-construction stormwater management criteria that protect public health and the environment.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	N/A	N/A
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	N/A	

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

<p>(1) Direct & Indirect Costs & Benefits (Monetized)</p>	<p>Direct Costs: There are no direct costs to local partners because this action does not change the existing responsibilities of local governments to implement either an erosion and stormwater management or erosion and sediment control program consistent with requirements in the Virginia Erosion and Stormwater Management Act and Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program (Chapters 2.3 and 2.4 of the State Water Control Law, Article 3.1 of Title 62.1 of the Code of Virginia).</p> <p>Indirect Costs: The indirect costs associated with the proposed change are additional staff time necessary for local staff to gain awareness of and implement the regulatory changes. The Department is unable to quantify these costs.</p> <p>Direct Benefits: The direct benefit to local partners is reduced confusion, which will result in less staff time in reviewing, inspecting, and working through issues before and during construction.</p> <p>Indirect Benefits: The indirect benefits associated with this change is that construction projects will be completed faster and with fewer delays caused by uncertainty, thus supporting economic growth within the locality.</p>	
<p>(2) Present Monetized Values</p>	<p>Direct & Indirect Costs</p> <p>(a) Unable to monetize direct and indirect costs.</p>	<p>Direct & Indirect Benefits</p> <p>(b) Unable to monetize direct and indirect benefits.</p>
<p>(3) Other Costs & Benefits (Non-Monetized)</p>	<p>N/A</p>	
<p>(4) Assistance</p>	<p>N/A</p>	
<p>(5) Information Sources</p>	<p>N/A</p>	

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: There are no direct costs that impact families associated with the proposed changes.</p> <p>Indirect Costs: There are no indirect costs that impact families associated with the proposed changes.</p> <p>Direct Benefits: There are no direct benefits that impact families associated with the proposed changes.</p> <p>Indirect Benefits: There are no indirect benefits that impact families associated with the proposed changes.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Other Costs & Benefits (Non-Monetized)	N/A	
(4) Information Sources	N/A	

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	Small businesses would have the same impact as described in Table 1a above. The department is unable to identify the number of small businesses that would benefit from this regulatory change.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) No monetized direct or indirect costs associated with the regulatory changes.	(b) Unable to monetize direct and indirect benefits.

(3) Other Costs & Benefits (Non-Monetized)	N/A
(4) Alternatives	N/A
(5) Information Sources	N/A

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Total Net Change in Requirements
9VAC25-875-70	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	1	0	0	0
	(D/R):	0	0	0	0
9VAC25-875-140	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	4	0	0	0
	(D/R):	0	0	0	0
9VAC25-875-250	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	1	0	0	0
	(D/R):	0	0	0	0
9VAC25-875-280	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	1	0	0	0
	(D/R):	0	0	0	0
9VAC25-875-300	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	10	0	2	-2
	(D/R):	0	0	0	0
9VAC25-875-370	(M/A):	8	0	1	-1
	(D/A):	0	0	0	0
	(M/R):	10	0	0	0

	(D/R):	0	0	0	0
9VAC25-875-470	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	1	0	0	0
	(D/R):	0	0	0	0
9VAC25-875-490	(M/A):	2	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	0	0	0
	(D/R):	0	0	2	+2 ^A
9VAC25-875-500	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	7	0	0	0
	(D/R):	0	0	0	0
9VAC25-875-550	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	4	2	0	+2 ^B
	(D/R):	0	0	0	0
9VAC25-875-560	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	59	1	0	+1 ^C
	(D/R):	0	0	0	0
9VAC25-875-580	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	7	0	0	0
	(D/R):	0	0	0	0
9VAC25-875-850	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	0	0	0
	(D/R):	0	0	0	0
				Grand Total of Changes in Requirements:	(M/A):0
					(D/A):0
					(M/R):+1
					(D/R): +2

^A The discretionary requirements in 9VAC25-875-490 specify conditions that an owner must satisfy to continue land-disturbing activity that has been grandfathered (i.e., subject to less-stringent conditions) until construction is complete. This is a benefit to those projects that qualify for grandfathering because it provides certainty.

^B The “additional requirements” in 9VAC25-875-550 have been moved from 9VAC25-875-300 without any changes to the requirements.

^C The additional requirement in 9VAC25-875-560 provides clarification by stating what is implied by the 59 existing requirements – that land-disturbing activities shall be conducted in a

manner that is consistent with the minimum standards that are required to be part of the permittee's erosion and sediment control plan.

Key:

Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:

(M/A): Mandatory requirements mandated by federal and/or state statute affecting the agency itself

(D/A): Discretionary requirements affecting agency itself

(M/R): Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies

(D/R): Discretionary requirements affecting external parties, including other agencies

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved*	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
N/A				

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved*	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden
N/A		

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	Original Length	New Length	Net Change in Length
N/A			

TAB F



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

www.deq.virginia.gov

Stefanie K. Taillon
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director

MEMORANDUM

TO: State Water Control Board Members

FROM: Rebecca Rochet, Director of Stormwater Programs *Rebecca Rochet*

DATE: February 21, 2025

SUBJECT: 9VAC25-875 – Amend the regulations to change the statewide permit fee schedule in accordance with Chapter 2 of the 2024 Special Session I Acts of Assembly

At the March 27, 2025, meeting of the State Water Control Board (Board), the Board will consider proposed amendments to the Virginia Erosion and Stormwater Management (VESM) Regulation, effective July 1, 2025. The proposed amendments increase fees for an individual Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities, a VPDES General Permit for Discharges of Stormwater from Construction Activities, municipal separate storm sewer system (MS4) permits, permit modification fees, and permit maintenance fees so they collectively provide 60 percent to 62 percent of the direct costs for the administration, compliance, and enforcement of the Department of Environmental Quality's (Department) erosion and stormwater management program.

Background

Chapter 2 of the 2024 Special Session I Acts of Assembly (Budget Bill, Item 363 J) directs the Board to amend the existing permit fee schedule such that the fees for the VPDES Permit for Discharges of Stormwater from Construction Activities and MS4 permits are set at an amount representing no less than 60 percent, not to exceed 62 percent, of the direct costs for the administration, compliance, and enforcement of such permits.

A Notice of Intended Regulatory Action (NOIRA) for the proposed amendments was published in the *Virginia Register of Regulations* on September 9, 2024, initiating a 30-day public comment period that ended October 9, 2024. Four persons submitted comments. A summary of the comments received and the Department's responses to those comments are included in the attached Agency Background Document, the Form TH-02.

Following the conclusion of the 30-day public comment period, the Department formed a regulatory advisory panel (RAP) to assist in the development of the proposed amendments. Members of the RAP are listed in the table that follows this memorandum. The RAP met on February 7, 2025, and provided feedback and recommendations that the Department used to develop the proposed amendments that the Board will consider on March 27, 2025.

Proposed Amendments

Proposed amendments to the VESM Regulation include revising the fee schedules in sections 9VAC25-875-1380, -1390, -1400, -1410, and -1420 so that, based on fiscal year 2024 revenue, fees will cover 60 percent to 62 percent of the program costs. In addition, section 9VAC25-875-1360 was updated to reflect the portion of the total permit fee paid to the department by local VESM Program authorities which was increased from 28 percent to 30 percent, as allowed per § 62.1-44.15:28 of the Code of Virginia. A new section, 9VAC25-875-1375, adjusts the fees annually based on changes in the Consumer Price Index (CPI). The annual adjustment factor provides a mechanism to ensure that fees keep pace with the Department's costs to administer and enforce the erosion and stormwater management program, as required by the Budget Bill. Detailed changes to the VESM Regulation are listed in the TH-02.

Attorney General Certification

The Office of the Attorney General will be sent the proposed amendments for certification of statutory authority.

Staff Recommendation

The Department recommends that the Board authorize a public comment period and a public hearing for proposed amendments to the fee schedules in the Virginia Erosion and Stormwater Management Regulation (9VAC25-875). Department staff also recommends that the Board authorize staff to serve as the hearing officer at the public hearing.

Presenter Contact Information

Name: Rebecca Rochet, P.E., Director of Stormwater Programs
Phone: (804) 801-2950
Email: rebecca.rochet@deq.virginia.gov

Attachments

Attachment A: Text of Proposed Regulatory Amendments
Attachment B: Agency Background Document (TH-02)
Attachment C: Office of Regulatory Management Economic Review Form

Regulatory Advisory Panel Membership
 Amend or Modify Provisions of the Virginia Erosion and Stormwater Management Regulation
 (9VAC25-875) to Change the Permit Fee Schedule

<p>Andrew Clark (Primary) Vice President of Government Affairs Home Builders Association of Virginia 1051 E. Cary Street, Suite 603, Richmond, VA 23219 Phone: 978-460-1331 Email: aclark@hbav.com</p>	<p>Philip Abraham (Primary) Director and General Counsel The Vectre Corporation (representing Virginia Association of Commercial Real Estate) 707 East Main Street, Suite 1800 Richmond, VA 23219 Phone: 804-644-6600 Email: pabraham@vectrecorp.com</p>
<p>Kristen Carter, P.E. (Primary) Associate Director for Environmental Resources University of Virginia PO Box 400726, Charlottesville, VA 22904- 4726 The Bay Companies, Inc. Phone: 434-982-5034 Email: kma4z@virginia.edu</p>	<p>Chris Soldan, P.E. (Primary) Principal Environmental Engineer Arcadis U.S., Inc. 9954 Mayland Drive Suite 2400, Richmond, VA 23233 Phone: 804-665-1095 Email: Chris.Soldan@arcadis.com</p>
<p>Jeff Blackford, P.E. (Primary) Executive Director Engineers & Surveyors Institute 4795 Meadow Wood Lane, Suite 115 East, Chantilly, VA 20151 Phone: 703-263-2232 Email: jblackford@esinova.org</p> <p>Sohaila Shekib (Alternate) Phone: 703-615-6785 Email: sshekib@esinova.org</p>	<p>Jillian Sunderland (Primary) Senior Water Resources Planner Hampton Roads Planning District Commission 723 Woodlake Drive, Chesapeake, VA 23320 Phone: 757-420-8300 Email: jsunderland@hrpdcvva.gov</p>
<p>Lisa Ochsenhirt, Esq. (Primary) Vice-President AquaLaw, PLC (representing Virginia Municipal Stormwater Association) 6 South 5th Street, Richmond, VA 23219 Phone: 804-303-5894 Email: Lisa@Aqualaw.com</p> <p>Chris Pomeroy, Esq. (Alternate) Phone: 804-303-5890 Email: Chris@Aqualaw.com</p>	<p>Jessica Lassetter (Primary) Senior Environmental Specialist / CE III City of Alexandria, Virginia Transportation & Environmental Services Alexandria City Hall, 301 King Street, Alexandria, VA 22314 Phone: 703-746-4127 Email: jessica.lassetter@alexandriava.gov</p> <p>Gavin Pellitteri (Alternate) Phone: 703-746-4071 Email: gavin.pellitteri@alexandriava.gov</p>

<p>Chris Swanson, P.E. (Primary) Environmental Division Director Virginia Department of Transportation 1401 East Broad Street, Richmond, VA 23219 Phone: 804-786-6839 Email: chris.swanson@vdot.virginia.gov</p> <p>J. Alex Forasté, P.E. (Alternate) Phone: 804-786-2548 Email: alex.foraste@vdot.virginia.gov</p>	<p>Joe Lerch (Primary) Director of Local Government Policy Virginia Association of Counties 1207 E Main St #300, Richmond, VA 23219 Phone: 804-343-2506 Email: jlerch@vaco.org</p>
<p>Mitchell Smiley (Primary) Policy Manager for Transportation and Natural Resources Virginia Municipal League P.O. Box 12164, Richmond, VA 23241 Phone: 804-401-7425 Email: mstyley@vml.org</p>	

Project 8011 – Proposed Amendments to change the statewide permit fee schedule in accordance with Chapter 2 of the 2024 Special Session I Acts of Assembly

Virginia Erosion and Stormwater Management Regulation (9VAC25-875)

9VAC25-875-1360. Deposit and use of fees.

A. All fees collected by the department pursuant to this chapter shall be deposited into the Virginia Stormwater Management Fund and shall be used and accounted for as specified in § 62.1-44.15:29 of the Code of Virginia. Fees collected by the department shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

B. All fees collected by a VESMP authority pursuant to this chapter shall be subject to accounting review and shall be used solely to carry out the VESMP authority's responsibilities pursuant to the VESMA, Article 3 (9VAC25-875-100 et seq.) of Part II (9VAC25-875-40 et seq.) and Part V (9VAC25-875-470 et seq.) of this chapter, local ordinances, or standards and specifications.

Pursuant to subdivision A 9 of § 62.1-44.15:28 of the Code of Virginia, whenever the department has authorized the administration of a VESMP by a VESMP authority, ~~28%~~ 30% of the total revenue generated by the statewide stormwater management fees collected in accordance with 9VAC25-875-1400 shall be remitted on a schedule determined by the department to the State Treasurer for deposit in the Virginia Stormwater Management Fund unless otherwise collected electronically. If the VESMP authority waives or reduces any fee due in accordance with 9VAC25-875-1400, the VESMP authority shall remit the ~~28%~~ 30% portion that would be due to the Virginia Stormwater Management Fund if such fee were charged in full. Any fee increases established by the VESMP authority beyond the base fees established in this part shall not be subject to the fee distribution formula.

9VAC25-875-1375. Fee calculation.

A. Fees set forth in sections 9VAC25-875-1380, 9VAC25-875-1400, and 9VAC25-875-1420 shall be adjusted annually by the change in the Consumer Price Index (CPI). The Consumer Price Index is the Consumer Price Index for all-urban consumers (CPI-U) for the 12-month period ending on April 30 of the calendar year preceding the year the fee is due. The Consumer Price Index for all-urban consumers is published by the U.S. Department of Labor, Bureau of Labor Statistics, U.S. All items, CUUR0000SA0.

B. The permit fee due shall be calculated according to the following formulae:

$$F = B \times C$$

$$C = 1 + \Delta CPI$$

$$\Delta CPI = \frac{(CPI-U - 314.54)}{314.54}$$

Where:

F = the permit fee due (in \$)

B = the base fee rate for the type of MS4 or Construction General Permit

C = the Consumer Price Index adjustment factor

ΔCPI = the difference between CPI-U and 314.54, expressed as a proportion of 314.54 (the reference base is 1982-84 = 100; 314.54 is the unadjusted average CPI for all urban consumers for July 2024)

CPI-U = the Consumer Price Index for all-urban consumers for the 12-month period ending on April 30 of the calendar year preceding the year the fee is due, CUUR0000SA0.

44 For example, if calculating the hypothetical 2026 permit fee (F) for a General / Stormwater
 45 Management – Large Construction Activity/Land Clearing permit (> 5 acres < 10 acres):

46 CPI-U = 317.67 (hypothetical CPI-U for April 30, 2025, which would be used for the 2026
 47 permit fee calculation).

48 Δ CPI = 0.01 for the 2026 permit fee calculation (i.e., $(317.67 - 314.54) / 314.54 = (3.13) /$
 49 $314.54 = 0.01$).

50 C = 1.01 for the 2026 permit fee calculation (i.e., $1 + 0.01 = 1.01$).

51 B = \$5,100 (i.e. the fee for a General / Stormwater Management – Large Construction
 52 Activity/Land Clearing permit (> 5 acres < 10 acres), taken from subsection A of 9VAC25-875-
 53 1400).

54 F = \$5,151 for the hypothetical 2026 permit fee calculation for this General / Stormwater
 55 Management – Large Construction Activity/Land Clearing permit (i.e., $\$5,100 \times 1.01 = \$5,150.75$).

56 C. Permit fees (F) calculated for each facility or permitted land-disturbing activity shall be
 57 rounded to the nearest dollar.

58 D. The total amount of permit fees collected by the department (permit application fees plus
 59 permit maintenance fees) shall not exceed 62% of direct costs for administration, compliance,
 60 and enforcement of MS4 permits and VPDES Permits for Discharges of Stormwater from
 61 Construction Activities. The director shall take whatever action is necessary to ensure that this
 62 limit is not exceeded.

63 **9VAC25-875-1380. Fee schedules for municipal separate storm sewer system new permit**
 64 **issuance.**

65 A. The following fee schedule applies to permit applications for issuance of a new individual
 66 municipal separate storm sewer system permit or coverage under a MS4 General Permit. All
 67 regulated MS4s that apply for joint coverage under an individual permit or general permit
 68 registration shall each pay the appropriate fees set out in the following table.

Municipal Stormwater / MS4 Individual (Large and Medium)	\$16,000 <u>\$25,000</u>
Municipal Stormwater / MS4 Individual (Small)	\$8,000 <u>\$13,000</u>
Municipal Stormwater / MS4 General Permit (Small)	\$4,000 <u>\$6,500</u>

69 B. The amount of the permit fee due for a MS4 permit for a specified year as required by
 70 subsection A of this section shall be calculated according to the formulae in 9VAC25-875-1375

71 B.

72 **9VAC25-875-1390. Fee schedules for major modification of MS4 individual permits**
 73 **requested by the operator.**

74 The following fee schedule applies to applications for major modification of an individual MS4
 75 permit requested by the permittee:

Municipal Stormwater / MS4 Individual (Large and Medium)	\$5,000 <u>\$8,000</u>
Municipal Stormwater / MS4 Individual (Small)	\$2,500 <u>\$4,000</u>

76 **9VAC25-875-1400. Fees for individual permit or coverage under the General Permit of**
 77 **for Discharges of Stormwater from Construction Activities.**

78 A. The following total fees to be paid by an applicant apply to any operator seeking coverage
 79 under a General VPDES Permit for Discharges of Stormwater from Construction Activities or a
 80 state agency or federal entity that does not file standards and specifications or an individual permit
 81 issued by the department. On and after approval by the department of ~~or~~ a VESMP authority for

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82 coverage under the General VPDES Permit for Discharges of Stormwater from Construction
 83 Activities, no more than 50% of the total fee to be paid by an applicant set out in this part shall be
 84 due at the time that a stormwater management plan or an initial stormwater management plan is
 85 submitted for review in accordance with 9VAC25-875-530. The remaining total fee balance to be
 86 paid by an applicant shall be due prior to the issuance of coverage under the General VPDES
 87 Permit for Discharges of Stormwater from Construction Activities.

88 When a site is purchased for development within a previously permitted common plan of
 89 development or sale, the applicant shall be subject to fees ("total fee to be paid by applicant"
 90 column) in accordance with the disturbed acreage of the applicant's site according to the following
 91 table.

Fee type	Total fee to be paid by applicant (includes both VESMP authority and department portions where applicable)	Department portion of "total fee to be paid by applicant" (based on 28% <u>30%</u> of total fee paid*)
Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than one acre)	\$290	\$0
General / Stormwater Management - Small Construction Activity/Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres)	\$209	\$0
General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)	\$290 <u>\$450</u>	\$81 <u>\$135</u>
General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres)	\$2,700 <u>\$4,100</u>	\$756 <u>\$1,230</u>

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General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	\$3,400 <u>\$5,100</u>	\$952 <u>\$1,530</u>
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$4,500 <u>\$6,800</u>	\$1,260 <u>\$2,040</u>
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$6,100 <u>\$9,100</u>	\$1,708 <u>\$2,730</u>
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)	\$9,600 <u>\$14,300</u>	\$2,688 <u>\$4,290</u>
Individual VPDES Permit for Discharges of Stormwater from Construction Activities (This will be administered by the department)	\$15,000 <u>\$24,000</u>	\$15,000 <u>\$24,000</u>
If the project is completely administered by the department such as may be the case for a state or federal project or projects covered by individual permits, the entire applicant fee shall be paid to the department.		

92 The following fees apply to coverage under the General VPDES Permit for Discharges of
 93 Stormwater from Construction Activities issued by the department for a state agency or federal
 94 entity that has standards and specifications approved by the department.

General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or common plans of development equal to or greater than five acres)	\$750 <u>\$1,200</u>
General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites or common plans of development equal to or greater than one acre and less than five acres)	\$450 <u>\$700</u>

95 B. The amount of the permit fee due for a General VPDES Permit for Discharges of
 96 Stormwater from Construction Activities for a specified year as required by subsection A of this
 97 section shall be calculated according to the formulae in 9VAC25-875-1375 B.

98 **9VAC25-875-1410. Fees for the modification or transfer of individual permits or of**
 99 **registration statements for the General VPDES Permit for Discharges of Stormwater from**
 100 **Construction Activities.**

101 The following fees apply to modification or transfer of individual permits or of registration
 102 statements for the General VPDES Permit for Discharges of Stormwater from Construction
 103 Activities issued by the department. If the permit modifications result in changes to stormwater
 104 management plans that require additional review by the VESMP authority, such reviews shall be
 105 subject to the fees set out in this section. The fee assessed shall be based on the total disturbed
 106 acreage of the site. In addition to the permit modification fee, modifications resulting in an increase
 107 in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee
 108 that would have applied for the total disturbed acreage in 9VAC25-875-1400. No modification or
 109 transfer fee shall be required until such department-approved programs exist. These fees shall
 110 only be effective when assessed by a VESMP authority, including the department when acting in
 111 that capacity, that has been approved by the department. No modification fee shall be required
 112 for the General VPDES Permit for Discharges of Stormwater from Construction Activities for a
 113 state agency or federal entity that is administering a project in accordance with approved
 114 standards and specifications but shall apply to all other state or federal agency projects.

General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)	\$20 <u>\$30</u>
General / Stormwater Management – Small Construction Activity/Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the locality is the VESMP authority)	\$20
General / Stormwater Management – Small Construction Activity/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the department is the VSMP authority)	\$0
General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one and less than five acres)	\$200 <u>\$320</u>
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	\$250 <u>\$400</u>
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$300 <u>\$480</u>
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$450 <u>\$720</u>

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General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)	\$700 <u>\$1,120</u>
Individual VPDES Permit for Discharges of Stormwater from Construction Activities	\$5,000 <u>\$8,000</u>

115 **9VAC25-875-1420. Permit maintenance fees.**

116 A. The following annual permit maintenance fees apply to each permit identified below,
 117 including expired permits that have been administratively continued. With respect to the General
 118 VPDES Permit for Discharges of Stormwater from Construction Activities, these fees shall apply
 119 until the permit coverage is terminated and shall only be effective when assessed by a VESMP
 120 authority, including the department when acting in that capacity that has been approved by the
 121 department. No maintenance fee shall be required for the General VPDES Permit for Discharges
 122 of Stormwater from Construction Activities for a state agency or federal entity that is administering
 123 a project in accordance with approved standards and specifications but shall apply to all other
 124 state or federal agency projects. All regulated MS4s that are issued joint coverage under an
 125 individual permit or general permit registration shall each pay the appropriate fees set out in the
 126 following table:

Municipal Stormwater / MS4 Individual (Large and Medium)	\$8,800 <u>\$14,100</u>
Municipal Stormwater / MS4 Individual (Small)	\$6,000 <u>\$9,600</u>
Municipal Stormwater / MS4 General Permit (Small)	\$3,000 <u>\$4,800</u>
Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than one acre)	\$50 <u>\$80</u>
General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)	\$50 <u>\$80</u>
General / Stormwater Management – Small Construction Activity/Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the locality is the VESMP authority)	\$50 <u>\$80</u>
General / Stormwater Management – Small Construction Activity/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the department is the VSMP authority)	\$0

Proposed amendments to 9VAC25-875 for March 27, 2025 State Water Control Board meeting

General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance equal to or greater than one acre and less than five acres)	\$400 <u>\$650</u>
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	\$500 <u>\$800</u>
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$650 <u>\$1,050</u>
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$900 <u>\$1450</u>
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater 100 acres)	\$1,400 <u>\$2,250</u>
Individual VPDES Permit for Discharges from Construction Activities	\$3,000 <u>\$4,800</u>

127 B. The amount of the annual permit maintenance fee due for a MS4 permit or permit for
 128 discharges of stormwater from construction activities for a specified year as required by
 129 subsection A of this section shall be calculated according to the formulae in 9VAC25-875-1375
 130 B.



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Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-875
VAC Chapter title(s)	Virginia Erosion and Stormwater Management Regulation
Action title	Amend the regulations to change the statewide permit fee schedule in accordance with Chapter 2 of the 2024 Special Session I Acts of Assembly
Date this document prepared	February 21, 2025

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

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.

The intent of this regulatory action is to amend provisions of the Virginia Erosion and Stormwater Management (VESM) Regulation (9VAC25-875) to increase fees for an individual Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities, a VPDES General Permit for Discharges of Stormwater from Construction Activities, municipal separate storm sewer system (MS4) permits, permit modification fees, and permit maintenance fees so they collectively provide 60 percent to 62 percent of the direct costs for the administration, compliance and enforcement of the Department of Environmental Quality's (department) erosion and stormwater management program. The last regulatory action to modify most of the department's fees was in 2010 (26:9 VA.R.1220-1229 January 4, 2010) and, except for the General / Stormwater Management – Phase I and Phase II Land Clearing permit, they have not changed since 2010.

Permit fees are being increased for the following:

- new MS4 permit coverage;
- MS4 permit major modifications;
- new individual VPDES Permit for Discharges of Stormwater from Construction Activities;
- new coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities (Construction General Permit or CGP);
- modifications and/or transfers of individual VPDES Permit for Discharges of Stormwater from Construction Activities or CGPs; and
- permit maintenance fees for MS4 permits and VPDES Permits for Discharges of Stormwater from Construction Activities.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

- Board – State Water Control Board
- CGP – Construction General Permit
- CPI – Consumer Price Index
- DEQ or department – Department of Environmental Quality
- FY2024 – Fiscal year 2024 (July 1, 2023 through June 30, 2024)
- MS4 – Municipal Separate Storm Sewer System
- NOIRA – Notice of Intended Regulatory Action
- RAP – Regulatory Action Panel
- VAC – Virginia Administrative Code
- VESM – Virginia Erosion and Stormwater Management
- VESMP – Virginia Erosion and Stormwater Management Program
- VPDES – Virginia Pollutant Discharge Elimination System
- VSMP – Virginia Stormwater Management Program

Mandate and Impetus

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, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “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.”

Chapter 2 (Budget Bill, Item 363 J) of the 2024 Special Session I Acts of Assembly directs the Board to amend the existing permit fee schedule such that the fees for the VPDES Permit for Discharges of Stormwater from Construction Activities and MS4 permits are set at an amount representing no less than 60 percent, not to exceed 62 percent, of the direct costs for the administration, compliance, and enforcement of such permits.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the

promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Section 62.1-44.15:28 of the Code of Virginia (effective July 1, 2024) authorizes the Board to adopt regulations that establish requirements for the effective control of soil erosion, sediment deposition, and stormwater, including nonagricultural runoff, that shall be met in any Virginia Erosion and Stormwater Management Program (VESMP) to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources; subsection 9 requires the Board's regulations to include a statewide fee schedule to cover all costs associated with the implementation of a VESMP related to land-disturbing activities where permit coverage is required, and for land-disturbing activities where the Board serves as a VESMP authority or Virginia Stormwater Management Program (VSMP) authority.

In addition, Chapter 2 (Budget Bill, Item 363 J) of the 2024 Special Session I Acts of Assembly directs the Board to amend the existing permit fee schedule such that the fees for the VPDES Permit for Discharges of Stormwater from Construction Activities and MS4 permits are set at an amount representing no less than 60 percent, not to exceed 62 percent, of the direct costs for the administration, compliance, and enforcement of such permits.

Purpose

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 is intended to solve.

This regulatory action is essential to protecting the water quality in the Commonwealth of Virginia, which is essential to the health, safety, and welfare of Virginia's citizens and is needed in order to effectively administer an erosion and stormwater management program in Virginia. Controlling erosion and stormwater runoff from land-disturbing activity and its impacts is a serious issue throughout the Commonwealth and its local governments. Numerous studies have documented the cumulative effects of urbanization on stream and watershed ecology. Research has established that as impervious cover in a watershed increases, stream stability is reduced, water quality becomes degraded, and biological diversity decreases largely due to stormwater runoff. Impervious areas are documented to decrease the natural stormwater purification functions of watersheds and increase the potential for water quality impacts in receiving waters. Additionally, runoff from managed turf is recognized as a significant source of pollutants to the local tributaries and the Chesapeake Bay.

The erosion and stormwater management program is funded through the fees established pursuant to the VESM Regulation and is necessary to address water quality within the Commonwealth. Based on FY2024 data, the current fee revenue collected from permit fees and applications only covers approximately 38-39% of the overall program costs. The current fees have been in effect since January 2010 (see 26:9 VA.R.1220-1229 January 4, 2010) and, except for the General / Stormwater Management – Phase I and Phase II Land Clearing permit, they have not changed since 2010.

The regulatory amendments are necessary to conform the VESM Regulation (9VAC25-875) to Chapter 2 (Budget Bill, Item 363 J) of the 2024 Special Session I Acts of Assembly. Per the Budget Bill, the fees need to be set at a level not less than 60%, but not more than 62% of the program costs, to sufficiently cover expenses associated with all portions of the administration of the Commonwealth's erosion and stormwater management permit program, including: plan review, permit review and issuance, inspections, compliance assistance, enforcement, program administration, permit termination, guidance development, and local program assistance and auditing. The program costs also include costs associated with department oversight functions and database management.

Substance

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.

The substance of this regulatory action is to amend or modify language in the VESM Regulation (9VAC25-875) to meet the requirements in Chapter 2 (Budget Bill, Item 363 J) of the 2024 Special Session I Acts of Assembly. The proposed amendments revise the existing statewide permit fee schedules such that the fees for the VPDES Permit for Discharges of Stormwater from Construction Activities, MS4 permits, permit modification, and permit maintenance are set at an amount representing no less than 60 percent, not to exceed 62 percent, of the direct costs for the administration, compliance, and enforcement of such permits.

Changes to the existing regulation include revising the fee schedules in Sections 1380 through 1420 to cover 60-62% of the program costs, as well as the inclusion of a consumer price index (CPI) annual adjustment factor, in new section 1375, to provide a mechanism to ensure that fees keep pace with the costs of doing business. In addition, section 9VAC25-875-1360 was updated to reflect the portion of the total permit fee paid to the department by local VESM Program authorities which was increased from 28% to 30%, as allowed per § 62.1-44.15:28 of the Code of Virginia.

Issues

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.

The primary advantage of this regulatory change for the public is an enhanced statewide erosion and stormwater management program that will be properly funded and administered. This will result in improved compliance and consistency with the VESM Regulation and thus improved water quality. The regulated community will also benefit from properly funded and staffed stormwater management programs because the department uses program funds to provide support and assistance to local program authorities, develop guidance to assist local authorities and the regulated community with how to comply with state law and regulations, and operate as the program authority for localities that chose to opt out of adopting a program. By developing the fee structure based upon the actual costs of administering the erosion and stormwater management program, there is not expected to be any disadvantage to localities or to the department from the fees associated with permits for construction activities or MS4s.

The primary disadvantage of this proposed regulation is increased permit fees for the regulated community. However, the existing fees for permits associated with construction activities are set at levels insufficient to support the vast majority of responsibilities associated with administering an erosion and stormwater management program. The fees proposed by this regulatory action, will allow for proper funding of permit oversight and administration.

The fees proposed by this regulatory action for MS4 permits are, like the CGP fees, are based on the actual cost of permit administration. The primary disadvantage is an increase to the annual maintenance fee for existing localities and state entities that are existing MS4 permittees. However, the increase is needed to provide adequate permit issuance and administration, annual review, program assistance, and permit compliance.

Requirements More Restrictive than Federal

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.

There are no applicable federal requirements related to fees for stormwater management permits. Section 402 of the federal Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the National Pollutant Discharge Elimination System permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991, to authorize the Commonwealth to administer a VPDES Permit Program, which includes both the permit for discharges from construction activities and MS4 permits. The fee schedules proposed by this regulatory action are necessary to properly fund the implementation of the statewide stormwater program and comply with Chapter 2 (Budget Bill, Item 363 J) of the 2024 Special Session I Acts of Assembly.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. “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

The Virginia Department of Transportation (VDOT) is particularly affected because of the amount of land-disturbing activities that they undertake requiring a CGP. In addition, other state entities that perform land-disturbing activities which require a CGP would be affected by the proposed increased CGP permit fees. Furthermore, VDOT and 25 other state entities (colleges, universities, etc.) currently have a MS4 permit, and would be affected by the proposed increase to the annual maintenance fees for their MS4 permit.

Localities Particularly Affected

The regulations are not intended to have a disproportionate impact upon any locality. There are currently 93 localities throughout the Commonwealth of Virginia that operate a Virginia Erosion and Stormwater Management Program (VESMP). Other localities have opted to have the department will administer a stormwater management program within their jurisdiction. As such, the fees proposed by this action may be received by either a locality administering a VESMP or the department, as may be applicable. Fees are calculated to fund the costs of program administration; thus, no locality should bear a fiscal burden under either program administration scenario. The increased revenue would also support the local VESMPs in the administration, compliance, and enforcement of the land-disturbing activities which require a CGP within their locality.

In addition, there are currently 59 localities in the Commonwealth that have a MS4 permit. These localities would be affected by the proposed increase in MS4 permit fees.

Other Entities Particularly Affected

The increased stormwater fee schedules would affect all developers that perform land-disturbing activities that require a CGP. During discussions with the Regulatory Advisory Panel, an option was investigated to only raise fees in localities where the department administers the stormwater program. This was not identified as the preferred approach as it was thought that this could lead to competitive disadvantages within those localities who do not operate a local program. Thus, the fee schedule has been set to be applied equally Commonwealth wide.

Furthermore, there are 26 other federal entities and one airport authority that currently have a MS4 permit. These entities would be affected by the proposed increase to MS4 permit fees.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, 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. Keep in mind that this is the proposed 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>Chapter 2 (Budget Bill, Item 363 J) of the 2024 Special Session I Acts of Assembly requires fees to cover 60-62% of the department’s program costs. The regulatory change will result in an increase in revenue to the department to operate a statewide stormwater program. Per § 62.1-44.15:29 a of the Code of Virginia, revenue generated from the statewide fee is deposited in the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29. The fee increases are on-going and apply to new and modified/transferred permits, as well as annual maintenance fees to existing permittees. The increased permit fees are needed to sufficiently cover expenses associated with all portions of the administration of a statewide stormwater program.</p>
<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>The regulatory change will result in an increase in permit fees associated with land-disturbing projects performed by state agencies, as well as an increase in permit fees for state agencies that are current MS4 permittees. The increase will be on-going as it will affect new construction project, as well as annual maintenance fees for on-going construction projects and MS4 permits.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The regulatory change will allow the department to provide a statewide stormwater management program that will be properly funded and administered. Fees have been set to cover 60-62% of the program costs, as required by Chapter 2 (Budget Bill, Item 363 J) of the 2024 Special Session I Acts of Assembly.</p>

Impact on Localities

This analysis has been reporting on the ORM Economic Impact Form in Tables 1a and 2.

Impact on Other Entities

This analysis has been reporting on the ORM Economic Impact Form in Tables 1a, 3, and 4.

Alternatives to Regulation

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.

One option to the proposed changes is to keep the stormwater permit fee schedules within the VESM Regulation unchanged. This was not selected as the regulatory amendments are necessary to conform the Virginia Erosion and Stormwater Management Regulation (9VAC25-875) to Chapter 2 (Budget Bill, Item 363 J) of the 2024 Special Session I Acts of Assembly.

This analysis has been reported on the ORM Economic Impact form in Tables 1b and 1c.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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.

Several fee schedule options were provided to the RAP for review and consideration, including one option to only raise fees in localities where the department administers the stormwater program. This was not determined to be the preferred approach as it was thought that this could lead to competitive disadvantages within those localities who do not operate a local program. Many small businesses are located in more rural localities where the department administers the stormwater program. Increases the fees in those areas only would have a negative impact on these small businesses. The proposed regulation includes fee schedules that are set to be applied equally across the Commonwealth.

This analysis has been reporting on the ORM Economic Impact Form in Table 1b and Table 4.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

No periodic review or small business impact review was announced during the NOIRA stage.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

A public comment period ran from September 9, 2024, through October 9, 2024. Below is a summary of the comments received.

Commenter	Comment	Agency response
Kristen Carter, P.E., Associate Director for Environmental Resources, University of Virginia	<p>In response to the NOIRA posted for updating the permit fee schedule for construction general permits and MS4 permits, I am resubmitting comments on behalf of several higher education standards and specifications entities for your consideration.</p> <p>In addition, I am interested in participating in the panel to develop recommended regulation amendments for Department consideration. I was on the last stormwater fee RAP in 2022.</p> <p>I am writing on behalf of a group of annual standards and specifications (AS&S) holders affiliated with Virginia’s public colleges and universities.</p>	<p>Thank you for your comments on the NOIRA to amend or modify provisions of the Virginia Erosion and Stormwater Management Regulation (9VAC25-875) to change the statewide permit fee schedule for the Virginia Pollutant Discharge Elimination System Permit for Discharges of Stormwater from Construction Activities and municipal separate storm sewer system permits in accordance with Chapter 2 (Budget Bill, Item 363 J) of the 2024 Special Session I Acts of Assembly.</p> <p>Commentor was invited to participate on the Regulatory Advisory Panel (RAP).</p> <p>Members of the RAP discussed fees applicable to state agency standards and specifications holders during the RAP meeting held on February 7, 2025.</p>

<p>Collectively, we have a strong interest in this action, particularly the fees associated with the construction general permit (CGP), since our schools are all state agencies with active construction programs.</p> <p>The lower fees applicable to state agency AS&S holders appropriately reflect the level of effort given by these state agencies to administer their stormwater management and erosion & sediment control programs, which includes plan review, compliance inspections for construction site operations and BMP installations, as well as enforcement.</p> <p>The lower fee schedule is not currently provided to the private contractors working on behalf of state agencies with board approved AS&S. As a result, state agencies are indirectly paying these higher fees as the contractors pass along these costs directly to our schools. We believe that since these contractors are working directly on behalf of a state agency with a board approved AS&S, the lower fee should be applicable to them. The undersigned schools require the general contractor or a member of the construction team to hold the CGP coverage since they contractually control and are responsible for the activity that occurs within the limits of disturbance. The CGP registration process includes submittal of a signed AS&S Entity Information Sheet that clearly links the private contractor's registration statement to the corresponding state agency. The level of effort for DEQ's oversight of construction activity on state property covered by AS&S is no different whether the AS&S entity themselves or their private contractor is the permit holder.</p> <p>We believe this change in invoicing could simply be addressed through</p>	<p>The purpose of this rulemaking action, as stated in the NOIRA, is to increase fees to provide 60% to 62% of the Department's cost to implement the stormwater program. With respect to whether contractors working on behalf of a public university with approved standards and specifications can pay the associated state agency permit fee rather than those applied to other permittees, the Department will review its implementation practices.</p>
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	different implementation practices by DEQ staff.	
Jessica Lassetter, City of Alexandria, VA	I wanted to express interest in joining the RAP pertaining to MS4 Permit Fees. I currently serve as the MS4 Administrator for the City of Alexandria.	Commentor was invited to participate on the RAP.
Jillian Sunderland, Senior Water Resources Planner, Hampton Roads Planning District Commission	<p>The HRPDC respectfully requests a seat on the Regulatory Advisory Panel (“RAP”), as our planning district includes 16 Virginia Erosion and Stormwater Management Program (“VESMP”) Authorities and 11 MS4 permittees who will be directly impacted by permit fee changes.</p> <p>Additionally, the HRPDC asks the Department of Environmental Quality (“DEQ”) to address the concerns that were raised during the 2022 RAP that first discussed changing the Construction General Permit and MS4 permit fee schedule to fund 60-62 percent of each program’s costs. During the RAP meetings held in February and April of 2022, DEQ presented estimates of program costs, projected program revenues, and estimated deficits. At that time, DEQ estimated the deficits for the MS4 and construction stormwater programs to be \$485,010 and \$2,018,020, respectively. To cover these deficits, DEQ proposed an 119% increase in MS4 permit maintenance fees and an 86% increase in Construction General Permit fees, which were significantly greater than the localities anticipated.</p> <p>Several concerns were raised by the RAP when discussing the proposed increases to the permit fees, including: 1) whether DEQ had sufficient tracking data to accurately estimate the costs of each program, 2) whether state General Funds could be increased to help offset deficits, 3) consideration to ensure the VESMP Authorities will not subsidize the localities who chose to opt-out of administering their</p>	<p>Thank you for your comments on the NOIRA to amend or modify provisions of the Virginia Erosion and Stormwater Management Regulation (9VAC25-875) to change the statewide permit fee schedule for the Virginia Pollutant Discharge Elimination System Permit for Discharges of Stormwater from Construction Activities and municipal separate storm sewer system permits in accordance with Chapter 2 (Budget Bill, Item 363 J) of the 2024 Special Session I Acts of Assembly.</p> <p>Commentor was invited to participate on the RAP.</p> <p>The comments submitted during the NOIRA comment period were discussed during the RAP meeting held on February 7, 2025. The proposed modified fee schedules increase the permit fees for the VPDES Permit for Discharges of Stormwater from Construction Activities and MS4 permits by approximately 61%, which is lower than what was presented by the department in previous meetings.</p> <p>Rather than a phased increase of fees, the proposed amendments include an annual adjustment based on the change in the Consumer Price Index. The adjustment will allow fee revenue to keep up with program costs.</p>

	<p>own stormwater programs, 4) whether a few large-scale solar projects with several iterations of plan review were driving up the costs for the construction program, and 5) consideration of ways to more gradually increase permit fees instead of requiring such significant increases at one time.</p>	
<p>Virginia Municipal Stormwater Association (VAMSA)</p>	<p>In 2021, DEQ issued a NOIRA proposing to amend the Virginia Stormwater Management Program Regulation (9VAC25-870) to implement Chapter 552 (Budget Bill, Item 377 L 2) of the 2021 Special Session I Acts of Assembly. Chapter 552 directed the Board to modify the regulations so that “the permit fee regulations...for Discharges of Stormwater from Construction Activities and municipal separate storm sewer system permits shall be set at an amount representing no less than 60 percent, not to exceed 62 percent, of the direct costs for the administration, compliance and enforcement” of the CGP and MS4 permits. DEQ withdrew this NOIRA on July 25, 2024, presumably to issue the 2024 NOIRA.</p> <p>VAMSA actively participated in the legislative process giving rise to the 2021 Budget Bill language. During those negotiations, the General Assembly agreed to increase stormwater permit fees to 60% of direct costs to oversee the program and to avoid DEQ staff layoffs; the General Assembly also provided general funds at approximately \$1.1 Million to ensure that the program would remain financially viable. VAMSA’s understanding was that the increase for MS4s was meant to be very modest, because MS4s were already paying 54.6% of program costs. We calculated a maximum increase of 9.8% would be needed to bring the fees up to 60% of program costs. We look forward to future RAP discussions regarding this history of the MS4 and CGP fee structures.</p>	<p>Thank you for your comments on the NOIRA to amend or modify provisions of the Virginia Erosion and Stormwater Management Regulation (9VAC25-875) to change the statewide permit fee schedule for the Virginia Pollutant Discharge Elimination System Permit for Discharges of Stormwater from Construction Activities and municipal separate storm sewer system permits in accordance with Chapter 2 (Budget Bill, Item 363 J) of the 2024 Special Session I Acts of Assembly.</p> <p>Commentor was invited to participate on the RAP.</p> <p>The comments submitted during the NOIRA comment period were discussed during the RAP meeting held on February 7, 2025. Based on the department’s review of the actual Fiscal Year (FY) 2024 stormwater program costs and revenues, permit fees would need to increase by approximately 61% across the board (including fees associated with MS4 permits) to cover 62% of the program costs. Department staff presented, and the RAP discussed, four alternatives to increase fees. The proposed amendments reflect feedback from RAP members.</p>

	<p>VAMSA hereby respectfully requests the opportunity to participate as a member of the RAP.</p>	
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Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

In addition to any other comments, DEQ is seeking comments on the costs and benefits of the proposal, the potential impacts of this regulatory proposal and any impacts of the regulation on farm and forest land preservation. DEQ is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: 1) projected reporting, 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 through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Anyone wishing to submit written comments for the public comment file may do so by mail or email to Rebecca Rochet, DEQ, P.O. Box 1105 Richmond, VA 23218, phone number 804-801-2950 (for questions), email: rebecca.rochet@deq.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

Detail of Changes

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. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
9VAC25-875-1360 B		...Pursuant to subdivision A 9 of § 62.1-44.15:28 of the Code of Virginia, whenever the department has authorized the administration of a VESMP by a VESMP authority, 28% of the total revenue generated by the	<p>The portion of the total permit fee paid to the department by local VESMP authorities pursuant to § 62.1-44.15:28 of the Code of Virginia is being increased from 28% to 30%.</p> <p>...Pursuant to subdivision A 9 of § 62.1-44.15:28 of the Code of Virginia,</p>

		<p>statewide stormwater management fees collected in accordance with 9VAC25-875-1400 shall be remitted on a schedule determined by the department to the State Treasurer for deposit in the Virginia Stormwater Management Fund unless otherwise collected electronically. If the VESMP authority waives or reduces any fee due in accordance with 9VAC25-875-1400, the VESMP authority shall remit the 28% portion that would be due to the Virginia Stormwater Management Fund if such fee were charged in full. Any fee increases established by the VESMP authority beyond the base fees established in this part shall not be subject to the fee distribution formula.</p>	<p>whenever the department has authorized the administration of a VESMP by a VESMP authority, 28% 30% of the total revenue generated by the statewide stormwater management fees ... If the VESMP authority waives or reduces any fee due in accordance with 9VAC25-875-1400, the VESMP authority shall remit the 28% 30% portion that would be due to the Virginia Stormwater Management Fund ...</p> <p>Increasing the percentage of the fee VESMP authorities pay to the department from 28% to the statutory maximum, 30%, results in a lower overall fee increase in sections 9VAC25-875-1380, -1390, -1400, -1410, and -1420 for the department to cover the 60% to 62% of program costs required by the Budget Bill. In other words, if the Department expects to collect \$300 from a hypothetical permit fee, at 28%, the hypothetical permit fee would need to be \$1,071; at 30%, the hypothetical permit fee would be \$1,000.</p>
	<p>9VAC25-875-1375</p>	<p>None</p>	<p>The change adds a section that sets out the requirement to adjust fees annually based on changes to the Consumer Price Index (CPI), provides formulae to calculate the adjustment, and includes an example calculation.</p> <p>The annual adjustment factor provides a mechanism to ensure that fees keep pace with the department's costs to administer and enforce the erosion and stormwater management program, as required by Chapter 2 (Budget Bill, Item 363 J) of the 2024 Special Session I Acts of Assembly.</p> <p><u>A. Fees set forth in sections 9VAC25-875-1380, 9VAC25-875-1400, and 9VAC25-875-1420 shall be adjusted annually by the change in the Consumer Price Index (CPI). The Consumer Price Index is the Consumer Price Index for all-urban consumers (CPI-U) for the 12-month period ending on April 30 of the calendar year preceding the year the annual fee is due. The Consumer Price Index for all-urban consumers is published by the U.S. Department of</u></p>

			<p><u>Labor, Bureau of Labor Statistics, U.S. All items, CUUR000SA0.</u></p> <p><u>B. The permit fee due shall be calculated according to the following formulae:</u></p> <p><u>$F = B \times C$</u></p> <p><u>$C = 1 + \Delta CPI$</u></p> <p><u>$\Delta CPI = (CPI-U - 314.54) / 314.54$</u></p> <p><u>Where:</u></p> <p><u>F = the permit fee due (in \$)</u></p> <p><u>B = the base fee rate for the type of MS4 or Construction General Permit</u></p> <p><u>C = the Consumer Price Index adjustment factor</u></p> <p><u>ΔCPI = the difference between CPI-U and 314.54, expressed as a proportion of 314.54 (the reference base is 1982-84 = 100; 314.54 is the unadjusted average CPI for all urban consumers for July 2024)</u></p> <p><u>CPI-U = the Consumer Price Index for all-urban consumers for the 12-month period ending on April 30 of the calendar year preceding the year the fee is due, CUUR000SA0.</u></p> <p><u>For example, if calculating the hypothetical 2026 permit fee (F) for a General / Stormwater Management – Large Construction Activity/Land Clearing permit (> 5 acres < 10 acres):</u></p> <p><u>CPI-U = 317.67 (hypothetical CPI-U for April 30, 2025, which would be used for the 2026 permit fee calculation).</u></p> <p><u>$\Delta CPI = 0.01$ for the 2026 permit fee calculation (i.e., $(317.67 - 314.54) / 314.54 = (3.13) / 314.54 = 0.01$).</u></p> <p><u>C = 1.01 for the 2026 permit fee calculation (i.e., $1 + 0.01 = 1.01$).</u></p> <p><u>B = \$5,100 (i.e. the fee for a General / Stormwater Management – Large Construction Activity/Land Clearing permit (> 5 acres < 10 acres), taken from subsection A of 9VAC25-875-1400).</u></p> <p><u>F = \$5,151 for the hypothetical 2026 permit fee calculation for this General / Stormwater Management – Large Construction Activity/Land Clearing permit (i.e., $\\$5,100 \times 1.01 = \\$5,150.75$).</u></p> <p><u>C. Permit fees (F) calculated for each facility or permitted land-disturbing activity shall be rounded to the nearest dollar.</u></p> <p><u>D. The total amount of permit fees collected by the department (permit</u></p>
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			<p><u>application fees plus permit maintenance fees) shall not exceed 62% of direct costs for administration, compliance, and enforcement of MS4 permits and VPDES Permits for Discharges of Stormwater from Construction Activities. The director shall take whatever action is necessary to ensure that this limit is not exceeded.</u></p>
9VAC25-875-1380	9VAC25-875-1380 A	Fee schedules for municipal separate storm sewer system new permit issuance	<p>Revised the permit fee schedule for MS4 new permit issuances to cover at least 60%, but no more than 62%, of the program costs.</p> <p>This regulatory amendment is necessary to conform the VESM Regulation to the Budget Bill which requires the fees to be set at level not less than 60%, not more than 62%, to sufficiently to cover expenses associated with all portions of the administration of the Commonwealth's stormwater management permit program.</p>
	9VAC25-875-1380 B	None	<p><u>B. The amount of the permit fee due for a MS4 permit for a specified year as required by subsection A of this section shall be calculated according to the formulae in 9VAC25-875-1375 B.</u></p> <p>Added a reference to new subsection 9VAC25-875-1375 B. The annual adjustment factor provides a mechanism to ensure that fees keep pace with the department's costs to administer and enforce the erosion and stormwater management program, as required by the Budget Bill.</p>
9VAC25-875-1390		Fee schedules for major modification of MS4 individual permits requested by the operator	<p>Revised the permit fee schedule for major modifications of MS4 individual permits requested by the operator to cover at least 60%, but no more than 62%, of the program costs.</p> <p>This regulatory amendment is necessary to conform the VESM Regulation to the Budget Bill which requires the fees to be set at level not less than 60%, not more than 62%, to sufficiently to cover expenses associated with all portions of the administration of the Commonwealth's stormwater management permit program.</p>
9VAC25-875-1400		Fees for individual permit or coverage under the General Permit of Discharges of	Fees for individual permit or coverage under the General Permit of <u>for</u>

		Stormwater from Construction Activities	Discharges of Stormwater from Construction Activities The change corrects the section catchline.
9VAC25-875-1400	9VAC25-875-1400 A	Fees for individual permit or coverage under the General Permit of Discharges of Stormwater from Construction Activities	Replaced “of” with “or” in the second sentence to correctly state the Department or a VESMP authority approve coverage. Revised the permit fee schedule for individual permit or coverage under the General CGP to cover at least 60%, but no more than 62%, of the program costs. In addition, the portion of the total permit fee paid to the department by local VESMP authorities was increased from 28% to 30%, as allowed per § 62.1-44.15:28 of the Code of Virginia. This regulatory amendment is necessary to conform the VESM Regulation (9VAC25-875) to the Budget Bill, Item 363 J. Per Budget Bill, the fees need to be set at level not less than 60%, not more than 62%, to sufficiently to cover expenses associated with all portions of the administration of the Commonwealth’s stormwater management permit program. The department’s portion was raised from 28% to 30% as allowed by state code to reduce increasing the total fee, but still provide the department with sufficient fee revenue to support the stormwater program operating costs.
	9VAC25-875-1400 B		<u>B. The amount of the permit fee due for a General VPDES Permit for Discharges of Stormwater from Construction Activities for a specified year as required by subsection A of this section shall be calculated according to the formulae in 9VAC25-875-1375 B.</u> Added a reference to new subsection 9VAC25-875-1375 B. The annual adjustment factor provides a mechanism to ensure that fees keep pace with the department’s costs to administer and enforce the erosion and stormwater management program, as required by the Budget Bill.
9VAC25-875-1410		Fees for the modification or transfer of individual permits or of registration statements	Revised the permit fee schedule for the modification or transfer of individual permits or of registration statements for

		for the General VPDES Permit for Discharges of Stormwater from Construction Activities	<p>the CGP to cover at least 60%, but no more than 62%, of the program costs.</p> <p>This regulatory amendment is necessary to conform the VESM Regulation to the Budget Bill, Item 363 J Per the Budget Bill, the fees need to be set at level not less than 60%, not more than 62%, to sufficiently to cover expenses associated with all portions of the administration of the Commonwealth's stormwater management permit program.</p>
9VAC25-875-1420	9VAC25-875-1420 A	Permit maintenance fees	<p>Revised the permit fee schedule for permit maintenance fees to cover at least 60%, but no more than 62%, of the program costs.</p> <p>This regulatory amendment is necessary to conform the VESM Regulation to the Budget Bill, Item 363 J. Per the Budget Bill, the fees need to be set at level not less than 60%, not more than 62%, to sufficiently to cover expenses associated with all portions of the administration of the Commonwealth's stormwater management permit program.</p>
	9VAC25-875-1420 B		<p><u>B. The amount of the annual permit maintenance fee due for a MS4 permit or permit for discharges of stormwater from construction activities for a specified year as required by subsection A of this section shall be calculated according to the formulae in 9VAC25-875-1375 B.</u></p> <p>Added a reference to new subsection 9VAC25-875-1375 B. The annual adjustment factor provides a mechanism to ensure that fees keep pace with the department's costs to administer and enforce the erosion and stormwater management program, as required by the Budget Bill.</p>

Office of Regulatory Management
Economic Review Form

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-875
VAC Chapter title(s)	Virginia Erosion and Stormwater Management Regulation
Action title	Amend the regulations to change the statewide permit fee schedule in accordance with Chapter 2 of the 2024 Special Session I Acts of Assembly
Date this document prepared	February 21, 2025
Regulatory Stage (including Issuance of Guidance Documents)	Proposed

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

<p>(1) Direct & Indirect Costs & Benefits (Monetized)</p>	<p>Background: Section 62.1-44.15:28 of the Code of Virginia (effective July 1, 2024) authorizes the State Water Control Board (Board) to adopt regulations that establish requirements for the effective control of soil erosion, sediment deposition, and stormwater, including nonagricultural runoff, that shall be met in any Virginia Erosion and Stormwater Management Program (VESMP) to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources; subsection 9 requires the Board’s regulations a statewide fee schedule to cover all costs associated with the implementation of a VESMP related to land-disturbing activities where permit coverage is required, and for land-disturbing activities where the Board serves as a VESMP authority or Virginia Stormwater Management Program (VSMP) authority.</p> <p>In addition, Item 363 J of the 2024-2026 budget, as introduced during the 2024 General Assembly Session in HB 6001 / SB 6001 and enacted in Chapter 2 of the 2024 Special Session I Acts of Assembly (Budget Bill), directs the State Water Control Board (Board) to amend the existing permit fee schedule such that the fees for the Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities and municipal storm sewer system (MS4) permits are set at an amount representing no less than 60 percent, not to exceed 62 percent, of the direct costs for the administration, compliance, and enforcement of such permits.</p> <p>Direct Costs: Based on Fiscal Year (FY) 2024 data, the current fee revenue collected from permit fees and applications only covers approximately 38-39% of the overall program costs. Therefore, an approximate 61% increase in all stormwater permit fees is needed to generate sufficient fee revenue to cover 60% to 62% of the stormwater program costs, as directed in the Budget Bill.</p> <p>The existing permit fee for owners to obtain coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities (Construction General Permit or CGP) ranges from \$290 to \$9,600 based on the total acreage of land disturbance. The permit fee for owners to obtain coverage under an individual VPDES Permit for Discharges of Stormwater from Construction Activities permit is currently \$15,000. The proposed permit fee for new permittees to obtain cover under the CGP ranges from \$450 to \$14,300, and to obtain coverage under an individual permit is \$24,000. Proposed fees for modification, transfer, and annual maintenance would increase by approximately 61%.</p>
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	<p>Likewise, the existing permit fee for coverage under a MS4 permit would increase approximately 61% from \$4,500 for a general permit to \$6,500; from \$8,000 for an individual (small) permit to \$13,000; and from \$16,000 for an individual (large and medium) permit to \$25,000. Permit fees for major modifications of MS4 individual permits and annual maintenance fees for MS4 individual permits would also increase by approximately 61%.</p> <p>In order for the fee schedule to continue to cover costs associated with the administration, compliance, and enforcement of the stormwater program, the proposed amendments also include an annual adjustment based on the change in the Consumer Price Index for all urban consumers.</p> <p>Indirect Costs: There are no indirect costs of the proposed change.</p> <p>Direct Benefits: The stormwater management program is funded through the fees authorized pursuant to the Virginia Erosion and Stormwater Management (VESM) Regulation and is necessary to ensure land-disturbing activities and post-construction stormwater management in the Commonwealth do not result in excessive runoff, flooding, or other negative impacts on public health, water quality, and the environment. In addition to issuing permits, ensuring compliance, and enforcing state law and regulations, the department uses program funds to provide support and assistance to local program authorities, develop guidance to assist local authorities and the regulated community with how to the comply with state law and regulations, and operate as the program authority for localities that chose to opt out of adopting a program. The additional revenue generated by the increased permit fees will result in an enhanced statewide stormwater management program that will be properly funded and administered.</p> <p>Indirect Benefits: A sufficiently funded statewide stormwater program will result in improved compliance and consistency with the VESM Regulation and thus improved water quality in the Commonwealth of Virginia, which is essential to the health, safety, and welfare of Virginia’s citizens. The regulated community will also benefit from properly funded and staffed stormwater management programs.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Based on the department’s FY2024 stormwater program	(b) Unable to monetize direct and indirect benefits.

	operating costs and revenue generated by permit and application fees, a 61% increase in permit fees for both the VPDES Permit for Discharges of Construction Activity and MS4 permits is needed to sufficiently cover 62% of the program costs.	
(3) Net Monetized Benefit	NA	
(4) Other Costs & Benefits (Non-Monetized)	NA	
(5) Information Sources	NA	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Background: The regulatory amendments are in response to Chapter 2 (Budget Bill, Item 363 J) of the 2024 Special Session I Acts of Assembly.</p> <p>Direct Costs: The regulated community would continue to pay current permit fees established in regulation, resulting in an inadequately funded statewide stormwater management fund.</p> <p>Indirect Costs: There are no indirect costs to the department, local VESMP authorities, or the regulated community with retaining the status quo.</p> <p>Direct Benefits: There is no direct benefit to the department, local VESMP authorities, or the regulated community with retaining the status quo. Retaining the status quo would result in an inadequately funded statewide stormwater management fund, which would continue to require additional general funds to support the costs of operating the existing program. In addition, localities that operate a VESMP would also need to continue to supplement their stormwater program administration costs with additional local fees and/or general funds.</p>
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	<p>Indirect Benefits: There is no indirect benefit to the department with retaining the regulation as currently written.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Unable to determine monetized direct or indirect costs associated with the status quo.	(b) None.
(3) Net Monetized Benefit	NA	
(4) Other Costs & Benefits (Non-Monetized)	NA	
(5) Information Sources	NA	

Table 1c: Costs and Benefits under Alternative Approach(es)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Background: The department presented four different fee schedule options to the Regulatory Advisory Panel for discussion and consideration. The proposed amendments reflect feedback and recommendations from the Regulatory Advisory Panel.</p> <p>Direct Costs: The direct costs of all of the fee schedule options are an increase in overall permit fees.</p> <p>Indirect Costs: There are no indirect costs of the proposed change.</p> <p>Direct Benefits: The indirect benefits are the same as outlined in Table 1a.</p> <p>Indirect Benefits: One option was investigated to only raise fees in localities where the department administers the stormwater program. This was not determined to be the preferred approach as it was thought that this could lead to competitive disadvantages within those localities who do not operate a local program. Thus, the fee schedule has been set to be applied equally Commonwealth wide.</p>
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(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Unable to monetize direct and indirect benefits.	(b) Unable to monetize direct and indirect benefits.
(3) Net Monetized Benefit	NA	
(4) Other Costs & Benefits (Non-Monetized)	NA	
(5) Information Sources	NA	

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

<p>(1) Direct & Indirect Costs & Benefits (Monetized)</p>	<p>Background: The regulations are not intended to have a disproportionate impact upon any locality. There are currently 93 localities throughout the Commonwealth of Virginia that operate a Virginia Erosion and Stormwater Management Program (VESMP). Other localities have adopted ordinances to have the department administer a stormwater management program within their jurisdiction. As such, the fees proposed by this action may be received by either a locality administering a VESMP or the department, as may be applicable. Fees are calculated to fund the costs of program administration; thus, no locality should bear a fiscal burden under either program administration scenario.</p> <p>Direct Costs: The increased revenue generated by the increased permit fees would also support the local VESMPs in the administration, compliance, and enforcement of the land-disturbing activities which require a CGP within their locality.</p> <p>There are currently 59 localities in the Commonwealth that have a MS4 permit. These localities would be directly affected by the proposed increase in MS4 permit fees.</p> <p>Indirect Costs: There are no indirect costs of the proposed change.</p>
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	<p>Direct Benefits: The additional revenue generated by the increased permit fees will result in an enhanced statewide stormwater management program that will be properly funded and administered. The regulated community will also benefit from properly funded and staffed stormwater management programs throughout the Commonwealth, as well as more consistency between the administration of the statewide stormwater program and the administration of local VESMPs. Direct benefits are outlined in Table 1a.</p> <p>Indirect Benefits: A sufficiently funded statewide stormwater program will result in improved compliance and consistency with the VESM Regulation and thus improved water quality in the Commonwealth of Virginia, which is essential to the health, safety, and welfare of Virginia’s citizens.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Unable to monetize the direct and indirect costs. The increased CGP permit fees would result in revenue for 93 local VESMP authorities; however, the increased MS4 permit fees would result in an increased cost to the 59 localities that have MS4 permits and are also VESMP authorities.	(b) Unable to monetize direct and indirect benefits.
(3) Other Costs & Benefits (Non-Monetized)	NA	
(4) Assistance	NA	
(5) Information Sources	NA	

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs &	Direct Costs:
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Benefits (Monetized)	<p>There are no direct costs that impact families associated with the proposed changes.</p> <p>Indirect Costs: There are no indirect costs that impact families associated with the proposed changes.</p> <p>Direct Benefits: There are no direct benefits that impact families associated with the proposed changes.</p> <p>Indirect Benefits: The indirect benefits for families associated with the proposed changes is the improved local water quality that may result from improved pollutant discharge controls.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) NA	(b) Unable to monetize direct and indirect benefits.
(3) Other Costs & Benefits (Non-Monetized)	NA	
(4) Information Sources	NA	

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Small businesses would have the same impact as described in Table 1a.</p> <p>Direct Costs: The existing permit fee for owners to obtain coverage under the Construction General Permit ranges from \$290 to \$9,600 based on the total acreage of land disturbance. The permit fee for owners to obtain coverage under an individual VPDES Permit for Discharges of Stormwater from Construction Activities permit is currently \$15,000. The proposed permit fee for new permittees to obtain cover under the CGP ranges from \$450 to \$14,300, and to obtain coverage under an individual permit is \$24,000. Proposed fees for modification, transfer, and annual maintenance increase by approximately 61%.</p>
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	<p>Indirect Costs: There are no indirect costs of the proposed change.</p> <p>Direct Benefits: The stormwater management program is funded through the fees authorized pursuant to the VESM Regulation and is necessary to address water quality within the Commonwealth. The addition revenue generated by the increased permit fees will result in an enhanced statewide stormwater management program that will be properly funded and administered. Direct benefits are outlined in Table 1a.</p> <p>Indirect Benefits: A sufficiently funded statewide stormwater program will result in improved compliance and consistency with the VESM Regulation and thus improved water quality in the Commonwealth of Virginia, which is essential to the health, safety, and welfare of Virginia’s citizens. The regulated community will also benefit from properly funded and staffed stormwater management programs.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See Table 1a.	(b) See Table 1a.
(3) Other Costs & Benefits (Non-Monetized)	NA	
(4) Alternatives	NA	
(5) Information Sources	NA	

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Total Net Change in Requirements
9VAC25-875-1360	(M/A):	2	0	0	0
	(D/A):	0	0	0	0
	(M/R):	4	0	0	0
	(D/R):	0	0	0	0
9VAC25-875-1375	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	0 ^A	0	0
	(D/R):	0	0	0	0
9VAC25-875-1380	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	1	0	0	0 ^B
	(D/R):	0	0	0	0
9VAC25-875-1390	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	0	0	0
	(D/R):	0	0	0	0
9VAC25-875-1400	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	3	0	0	0 ^B
	(D/R):	0	0	0	0
9VAC25-875-1410	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	0	0	0
	(D/R):	0	0	0	0
9VAC25-875-1420	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	1	0	0	0 ^B
	(D/R):	0	0	0	0
				Grand Total of Changes in Requirements:	(M/A): 0 (D/A): 0 (M/R): 0 (D/R): 0

^A The fee adjustment set out in 9VAC25-875-1375 is necessary to ensure that fee revenue continues to meet the requirement in the Budget Bill (60% to 62% of program costs) as costs change over time. The section specifies how fees will be adjusted each year to account for inflation, based on changes in the Consumer Price Index. It does not create additional requirements for permittees or permit applicants – each continues to be required to pay a new permit fee, or annual maintenance fee for an existing permit.

^B 9VAC25-875-1380, 9VAC25-875-1400, and 9VAC25-875-1420 each contains a new subsection, B, which directs applicants for new permits and existing permit holders to 9VAC25-875-1375. The new subsection does not add-to or change the primary requirement to pay a fee for a new permit, or an annual permit maintenance fee.

Key:

Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:

(M/A): Mandatory requirements mandated by federal and/or state statute affecting the agency itself

(D/A): Discretionary requirements affecting agency itself

(M/R): Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies

(D/R): Discretionary requirements affecting external parties, including other agencies

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved*	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
9VAC25-875-1380	Fee schedules for MS4 new permit issuance	\$4,000 to \$16,000	\$6,500 to \$25,000	Approximately 61% increase
9VAC25-875-1390	Fee schedules for major modification of MS4 individual permits	\$2,500 to \$5,000	\$4,000 to \$8,000	Approximately 61% increase
9VAC25-875-1400	Fees for individual coverage under the CGP	\$290 to \$15,000	\$450 to \$24,000	Approximately 61% increase
9VAC25-875-1410	Fees for modification or transfer of CGPs	\$20 to \$5,000	\$30 to \$8,000	Approximately 61% increase
9VAC25-875-1420	Permit maintenance fees	\$50 to \$8,800	\$80 to \$14,100	Approximately 61% increase

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved*	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden
NA	NA	NA

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	Original Word Count	New Word Count	Net Change in Word Count
NA			

*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the appropriate chart(s).