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HOUSE BILL NO. 1177

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake, and Natural Resources
on January 28, 2004)

(Patron Prior to Substitute— Delegate Bryant)

A BILL to amend and reenact §§ 10.1-603.2 through 10.1-603.9, 10.1-603.11 through 10.1-603.15, and 62.1-44.5 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 10.1-603.2:1, 10.1-603.2:2, 10.1-603.4:1, 10.1-603.12:1 through 10.1-603.12:7, and 10.1-603.13:1, and to repeal § 10.1-603.10 of the Code of Virginia, relating to the reorganization of stormwater management programs; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-603.2 through 10.1-603.9, 10.1-603.11 through 10.1-603.15, and 62.1-44.5 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 10.1-603.2:1, 10.1-603.2:2, 10.1-603.4:1, 10.1-603.12:1 through 10.1-603.12:7, and 10.1-603.13:1 as follows:

§ 10.1-603.2. Definitions.

As used in this article, unless the context requires a different meaning:

"Applicant" means any person submitting a stormwater management plan for approval.

"Board" means the Virginia Soil and Water Conservation Board of Conservation and Recreation.

"CWA" means the federal Clean Water Act (33 USC § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

"Department" means the Department of Conservation and Recreation.

"Director" means the Director of the Department of Conservation and Recreation.

"Flooding" means a volume of water which that is too great to be confined within the banks or walls of the stream, water body, or conveyance system and which that overflows onto adjacent lands, thereby causing or threatening damage.

"Land development disturbance" or "land development project disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics including any clearing, grading, or excavation associated with a construction activity regulated pursuant to the federal Clean Water Act.

"Linear development project" means a land development project that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; and (iii) highway construction projects.

"Local stormwater management program" or "local program" means a statement of the various methods employed by a locality to manage the quality and quantity of runoff resulting from land development projects disturbing activities and may shall include such items as local ordinances, permit requirements, policies and guidelines, technical materials, inspection, enforcement, and evaluation consistent with this article.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system or "MS4," including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;

2. Designed or used for collecting or conveying storm water;

3. That is not a combined sewer; and

4. That is not part of a publicly owned treatment works.

"Municipal Separate Storm Sewer System Management Program" means a management program covering the duration of a permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

"Nonpoint source pollution" means pollution whose sources cannot be pinpointed but rather is washed from the land surface in a diffuse manner by stormwater runoff.

60 "Runoff" means that portion of precipitation that is discharged across the land surface or through
61 conveyances to one or more waterways.

62 "Stormwater management plan" or "plan" means a document containing material for describing how
63 existing runoff characteristics will be maintained by a land development project.

64 "Permit" means an approval issued by the permit issuing authority for the initiation of a
65 land-disturbing activity, or for stormwater discharges from an MS4.

66 "Permit issuing authority" means the Board, the Department, or a locality that is delegated authority
67 by the Board to issue, deny, revoke, terminate, or amend stormwater permits under the provisions of this
68 article.

69 "Permittee" means the person or locality to whom the permit is issued.

70 "Stormwater" means precipitation that is discharged across the land surface or through conveyances
71 to one or more waterways and that may include storm water runoff, snow melt runoff, and surface
72 runoff and drainage.

73 "Stormwater Management Program" means a program established by a locality that is consistent
74 with the requirements of this article and associated regulations and guidance documents.

75 "Subdivision" means the same as defined in § 15.2-2201.

76 "Virginia Stormwater Management Program (VSMP)" means the Virginia program for issuing,
77 modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and
78 enforcing requirements pursuant to the federal Clean Water Act and this article.

79 "Watershed" means a defined land area drained by a river or stream or system of connecting rivers
80 or streams such that all surface water within the area flows through a single outlet.

81 § 10.1-603.2:1. Powers and duties of the Virginia Soil and Water Conservation Board.

82 In addition to other powers and duties conferred upon the Board, it shall permit, regulate, and
83 control stormwater runoff in the Commonwealth. In accordance with the VSMP, the Board may issue,
84 deny, revoke, terminate, or amend stormwater permits; adopt regulations; approve and periodically
85 review local stormwater management programs and management programs developed in conjunction
86 with a municipal separate storm sewer permit; enforce the provisions of this article; and otherwise act
87 to ensure the general health, safety and welfare of the citizens of the Commonwealth as well as protect
88 the quality and quantity of state waters from the potential harm of unmanaged stormwater. The Board
89 may:

90 1. Issue, deny, amend, revoke, terminate, and enforce permits for the control of stormwater
91 discharges from Municipal Separate Storm Sewer Systems and land disturbing activities.

92 2. Delegate to the Department or to an approved locality any of the powers and duties vested in it
93 by this article except the adoption and promulgation of regulations. Delegation shall not remove from
94 the Board authority to enforce the provisions of this article.

95 3. Take administrative and legal actions to ensure compliance by permittees and those localities with
96 an approved local stormwater management program and management programs developed in
97 conjunction with a municipal separate storm sewer system permit with the provisions of this article
98 including the proper enforcement and implementation of, and continual compliance with, this article.

99 4. After notice and opportunity for a hearing by the Board, amend or revoke any permit issued by
100 the permit issuing authority under this article on the following grounds or for good cause as may be
101 provided by the regulations of the Board:

102 a. The permittee has violated any order or regulation of the Board, any condition of a permit, any
103 provision of this article, any order of a court, or any order of the permit issuing authority, where such
104 violation results in the unreasonable degradation of properties, water quality, stream channels, and
105 other natural resources, or the violation is representative of a pattern of serious or repeated violations
106 including the disregard for or inability to comply with applicable laws, regulations, permit conditions,
107 orders, rules, or requirements;

108 b. The permittee has failed to disclose fully all relevant material facts or has misrepresented a
109 material fact in applying for a permit, or in any other report or document required under this law or
110 under the regulations of the Board;

111 c. The activity for which the permit was issued causes unreasonable degradation of properties, water
112 quality, stream channels, and other natural resources; or

113 d. There exists a material change in the basis on which the permit was issued that requires either a
114 temporary or a permanent reduction or elimination of any discharge or land disturbing activity
115 controlled by the permit necessary to prevent unreasonable degradation of properties, water quality,
116 stream channels, and other natural resources.

117 5. Cause investigations and inspections, or delegate authority to do so, to ensure compliance with
118 any permits, conditions, policies, rules, regulations, rulings and orders which it may adopt, issue or
119 establish and to furnish advice, recommendations, or instructions for the purpose of obtaining such
120 compliance.

121 6. Adopt rules governing the procedure of the permit issuing authority with respect to: (i) hearings;

(ii) the filing of reports; (iii) the issuance of permits and special orders; and (iv) all other matters relating to procedure; and to amend or cancel any rule adopted. Public notice of every rule adopted under this section shall be by such means as the permit issuing authority may prescribe but must be consistent with the Administrative Process Act (§ 2.2-4000 et seq.).

7. Issue special orders to a permittee (i) who is permitting or causing the unreasonable degradation of properties, water quality, stream channels, and other natural resources to cease and desist from such activities, (ii) who has failed to construct facilities in accordance with final approved plans and specifications to construct such facilities, (iii) who has violated the terms and provisions of a permit issued by the permit issuing authority; to comply with the provisions of the permit, this article and any decision of the permit issuing authority or the Board, or (iv) who has violated the terms of an order issued by the court, the permit issuing authority, or the Board to comply with the terms of such order, and also to issue orders to require any order to comply with the provisions of this article and any decision of the Board.

Such special orders are to be issued only after a hearing with at least 30 days' notice to the affected owners, of the time, place, and purpose thereof, and they shall become effective not less than 15 days after the date of mailing by certified mail of the notice to the last known address of the owner; provided that if the Board finds that any such owner is grossly affecting or presents an imminent and substantial danger to (i) the public health, safety or welfare, or the health of animals, fish or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, it may issue, without advance notice or hearing, an emergency special order directing the owner to cease such pollution or discharge immediately, and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof to the owner, to affirm, modify, amend, or cancel such emergency special order. If an owner who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board may proceed in accordance with § 10.1-603.14, and where the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires cessation of a discharge, the Board shall provide an opportunity for a hearing within 48 hours of the issuance of the injunction.

The provisions of this section notwithstanding, the Board may proceed directly under § 10.1-603.14 for any past violation or violations of any provision of this article or any regulation duly adopted hereunder.

With the consent of any owner who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any condition of a permit or any provision of this article, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for violations in specific sums not to exceed the limit specified in subsection A of § 10.1-603.14. Such civil charges shall be collected in lieu of any appropriate civil penalty that could be imposed pursuant to subsection A of § 10.1-603.14 and shall not be subject to the provisions of § 2.2-514. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to § 10.1-603.4:1.

§ 10.1-603.2:2. Permits.

A. It shall be unlawful to cause a stormwater discharge from an MS4 or a land disturbing activity without a permit from a permit issuing authority.

B. All permits issued by the permit issuing authority under this article shall have fixed terms. The term of a permit shall be based upon the projected duration of the project, the length of any required monitoring, or other project operations or permit conditions; however, the term shall not exceed five years. The term of a permit issued by the permit issuing authority shall not be extended by modification beyond the maximum duration and the permit shall expire at the end of the term unless an application for a new permit has been filed in a timely manner as required by the regulations of the Board, and the permit issuing authority is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit.

§ 10.1-603.3. Establishment of stormwater management programs by localities.

A. Any locality located within Tidewater Virginia as defined by the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.), or any locality designated as an MS4 under the provisions of the federal Clean Water Act, shall be required to adopt a local stormwater management program for land disturbing activities consistent with the provisions of this article by July 1, 2006.

B. Any locality not specified in subsection A may elect to adopt and administer a local stormwater management program for land disturbing activities pursuant to this article. Such localities shall inform the Board and the Department of their initial intention to seek delegation for the stormwater management program for land disturbing permits no later than July 1, 2005. Thereafter, the Department shall provide an annual schedule by which localities can submit applications for delegation.

C. In the absence of the delegation of a stormwater management program to a locality, the

183 Department will administer the responsibilities of this article within the given jurisdiction.

184 D. The Department shall develop a model ordinance for establishing a local stormwater management
185 program consistent with this article.

186 E. Each locality ~~may~~that is required to or that elects to adopt and administer an approved local
187 stormwater management program shall, by ordinance, ~~to be effective on or after July 1, 1990,~~ establish
188 a local stormwater management program that may be administered in conjunction with a local MS4
189 program and a local erosion and sediment control program, which shall include, but is not limited to,
190 the following:

191 1. Consistency with regulations ~~promulgated~~adopted in accordance with provisions of this article;

192 2. Provisions for long-term responsibility for and maintenance of stormwater management control
193 devices and other techniques specified to manage the quality and quantity of runoff; and

194 3. Provisions for the integration of locally adopted stormwater management programs with local
195 erosion and sediment control, flood insurance, flood plain management, and other programs requiring
196 compliance prior to authorizing construction in order to make the submission and approval of plans,
197 issuance of permits, payment of fees, and coordination of inspection and enforcement activities more
198 convenient and efficient both for the local governments and those responsible for compliance with the
199 programs.

200 F. The Board shall delegate a local stormwater management program to a locality when it deems a
201 program consistent with the model ordinance and this article.

202 G. Delegated localities may enter into agreements with soil and water conservation districts,
203 adjacent localities, or other entities to carry out the responsibilities of this article.

204 H. Localities shall have the authority to issue a consolidated stormwater management and erosion
205 and sediment control permit that is consistent with the provisions of the Erosion and Sediment Control
206 Law (§ 10.1-560 et seq.).

207 § 10.1-603.4. Development of regulations.

208 The Board is authorized to ~~promulgate~~ adopt regulations ~~which that~~ specify minimum technical
209 criteria and administrative procedures for stormwater management programs in Virginia. ~~In order to~~
210 ~~inhibit the deterioration of existing waters and waterways, the~~ The regulations shall:

211 1. ~~Require that state and local programs maintain after-development runoff rate of flow, as nearly as~~
212 ~~practicable, as the pre-development runoff characteristics~~ Establish standards and procedures for
213 ~~delegating the authority for administering a stormwater management program to localities;~~

214 2. Establish minimum design criteria for measures to control nonpoint source pollution and localized
215 flooding, and incorporate the stormwater management regulations ~~promulgated~~ adopted pursuant to the
216 Virginia Erosion and Sediment Control Law; ~~Article 4 (§ 10.1-560 et seq.) of Chapter 5 of this title,~~ as
217 they relate to the prevention of stream channel erosion. These criteria shall be periodically modified as
218 required in order to reflect current engineering methods;

219 3. Require the provision of long-term responsibility for and maintenance of stormwater management
220 control devices and other techniques specified to manage the quality and quantity of runoff; ~~and~~

221 4. Require as a minimum the inclusion in local programs of certain administrative procedures which
222 include, but are not limited to, specifying the time period within which a local government ~~which that~~
223 has adopted a stormwater management program must grant ~~written permit~~ approval of a plan, the
224 conditions under which approval shall be granted, the procedures for communicating disapproval, the
225 conditions under which an approved plan permit may be changed and requirements for inspection of
226 approved projects;

227 5. Establish, with the concurrence of the Director, a statewide permit fee schedule for stormwater
228 management related to land disturbing activities of one acre or greater. The fee schedule may also
229 include a provision for a reduced fee for land disturbing activities between 2,500 square feet and up to
230 1 acre in Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) localities. The regulations shall be
231 governed by the following:

232 a. The revenue generated from the statewide stormwater permit fee shall be collected and remitted to
233 the State Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to
234 § 10.1-603.4:1. However, whenever the Board has delegated a stormwater management program to a
235 locality or is required to do so under this article, no more than 30 percent of the total revenue
236 generated by the statewide stormwater permit fees collected within the locality shall be remitted to the
237 State Treasurer, for deposit in the Virginia Stormwater Management Fund.

238 b. Fees collected pursuant to this section shall be in addition to any general fund appropriation
239 made to the Department; however, the fees shall be set at a level sufficient for the Department to carry
240 out its responsibilities under this article;

241 6. Establish statewide standards for stormwater management from land disturbing activities of one
242 acre or greater, except as specified otherwise within this article, and allow for the consolidation in the
243 permit of a comprehensive approach to addressing stormwater management and erosion and sediment
244 control, consistent with the provisions of the Erosion and Sediment Control Law (§ 10.1-560 et seq.) and

this article. However, such standards shall also apply to land disturbing activity exceeding an area of 2500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20 et seq.) adopted pursuant to the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.);

7. Require that stormwater management programs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition.

8. Encourage low impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater.

§ 10.1-603.4:1. Virginia Stormwater Management Fund established.

There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Stormwater Management Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys collected pursuant to § 10.1-603.4 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of carrying out the Department's responsibilities under this article. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

An accounting of moneys received by and distributed from the Fund shall be kept by the State Comptroller.

§ 10.1-603.5. State agency projects.

A. After January 1, 1991, a state agency may not undertake any land clearing, soil movement, or construction activity involving soil movement or land development disturbance unless the agency has submitted and obtained approval of a stormwater management plan from the Department a permit application for the land-disturbing activity and the application has been reviewed and approved and a stormwater permit issued by the Department. In lieu of such a plan, the agency may annually submit stormwater management standards and specifications. State agencies may submit a single permit application containing stormwater management standards and specifications for all land disturbing activities conducted under the requirements of this Act. State agency stormwater management standards and specifications shall include, but are not limited to:

1. Technical criteria to meet the requirements of this Act and regulations developed under this Act;
2. Provisions for the long-term responsibility and maintenance of stormwater management control devices and other techniques specified to manage the quantity and quality of runoff;
3. Provisions for erosion and sediment control and stormwater management program administration, plan design, review and approval, and construction inspection and enforcement;
4. Provisions for ensuring that responsible personnel and contractors obtain certifications or qualifications for erosion and sediment control and stormwater management comparable to those required for local government;
5. Implementation of a project tracking and notification system to the Department of all land disturbing activities covered under this Act; and
6. Requirements for documenting on-site changes as they occur to ensure compliance with the requirements of the Act.

B. Notwithstanding the provisions of this article, all state agencies shall comply with the provisions of this article and the stormwater management provisions of the Erosion and Sediment Control Law, Article 4 (§ 10.1-560 et seq.) of Chapter 5 of this title, and related regulations. The state agency responsible for the land-disturbing activity shall ensure compliance with the issued permit, permit conditions, and plan specifications. The Department shall perform random site inspections to assure compliance with this article, the Erosion and Sediment Control Law and regulations promulgated adopted thereunder.

C. The Department shall have thirty 30 days in which to comment on the stormwater management plan review the permit application and to issue its permit decision, and its recommendations which shall be binding on the state agency or the private business hired by the state agency. Individual approval of separate projects is not necessary when annually approved standards and specifications have been approved.

As on-site changes occur, the state agency shall submit changes in the stormwater management plan permit application to the Department.

The state agency responsible for the land-disturbing activity shall ensure compliance with the approved plan or specifications.

306 *D. The Department may assess an administrative charge to cover a portion of the costs of services*
307 *rendered associated with its responsibilities pursuant to this section.*

308 § 10.1-603.6. Duties of the Department.

309 A. The Department shall provide technical assistance, training, research, and coordination in
310 stormwater management technology to the local governments consistent with the purposes of this article.

311 B. The Department is authorized to review the ~~plan~~ *permit application* for any project with real or
312 potential interjurisdictional impacts upon the request of one of the involved localities to determine that
313 the plan is consistent with the provisions of this article. Any such review shall be completed and a
314 report submitted to each locality involved within ~~ninety~~ 90 days of such request *being accepted*.

315 *C. The Department shall be responsible for the implementation of this article.*

316 § 10.1-603.7. Authorization for more stringent ordinances.

317 A. Localities are authorized to adopt more stringent stormwater management ~~regulations~~ *ordinances*
318 than those necessary to ensure compliance with the Board's minimum regulations, ~~with the exception of~~
319 ~~regulations related to plan approval~~, provided that the more stringent ~~regulations~~ *ordinances* are based
320 upon ~~the factual findings of local or regional comprehensive watershed management studies or findings~~
321 ~~developed through the implementation of a MS4 permit or a locally adopted watershed management~~
322 ~~study and are determined by the locality to be necessary to prevent any further degradation to water~~
323 ~~resources or to address specific existing water pollution including nutrient and sediment reductions,~~
324 ~~stream channel erosion, depleted groundwater resources, or excessive localized flooding within the~~
325 ~~watershed and that prior to adopting more stringent regulations ordinances a public hearing is held after~~
326 ~~giving due notice.~~

327 *B. Any local stormwater management program in existence before January 1, 2005 that contains*
328 *more stringent provisions than this article shall be exempt from the requirements of subsection A.*

329 § 10.1-603.8. Regulated activities; submission and approval of a permit application; security for
330 performance; exemptions.

331 A. ~~Except as provided in § 10.1-603.5, after the adoption of a local ordinance, a~~ A person shall not
332 develop any land for residential, commercial, industrial, or institutional use ~~in that locality~~ until he has
333 submitted a stormwater management ~~plan~~ *permit application* to the locality that has jurisdiction ~~permit~~
334 ~~issuing authority~~ and has obtained approval of the plan from that locality ~~a permit~~. The plan may
335 include appropriate maps, mathematical calculations, detail drawings and a listing of all major decisions
336 to assure that the entire unit or units of land will be so treated to achieve the objectives of the local
337 ~~program~~. The permit issuing authority shall act on any permit application within 60 days after it has
338 been determined by the permit issuing authority to be a complete application. The permit issuing
339 authority may either issue the permit or deny the permit and shall provide written rational for the
340 denial. The permit issuing authority shall act on any permit application that has been previously
341 disapproved within 45 days after the application has been revised, resubmitted for approval, and
342 deemed complete. Prior to issuance of any permit, the ~~locality~~ permit issuing authority may also require
343 an applicant to submit a reasonable performance bond with surety, cash escrow, letter of credit, any
344 combination thereof, or such other legal arrangement acceptable to the ~~locality~~ permit issuing authority,
345 to ensure that measures could be taken by the ~~locality~~ permit issuing authority at the applicant's expense
346 should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions
347 which may be required of him by the ~~approved stormwater management plan~~ permit conditions as a
348 result of his land-development project ~~disturbing activity~~. If the ~~locality~~ permit issuing authority takes
349 such action upon such failure by the applicant, the ~~agency~~ permit issuing authority may collect from the
350 applicant for the difference should the amount of the reasonable cost of such action exceed the amount
351 of the security held. Within ~~sixty~~ 60 days of the completion of the requirements of the ~~approved~~
352 ~~stormwater management plan~~ permit conditions, such bond, cash escrow, letter of credit or other legal
353 arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or
354 terminated. These requirements are in addition to all other provisions of law relating to the issuance of
355 ~~such plans permits~~ and are not intended to otherwise affect the requirements for such ~~plans permits~~.

356 B. Notwithstanding any other provisions of this article, the following activities are exempt:

357 1. Permitted surface or deep mining operations and projects, or oil and gas operations and projects
358 conducted under the provisions of Title 45.1;

359 2. ~~Tilling~~ *Clearing of lands specifically for agricultural purposes and the management, tilling,*
360 *planting or harvesting of agricultural, horticultural, or forest crops;*

361 3. Single-family residences separately built ~~and disturbing less than one acre~~ and not part of a
362 ~~subdivision larger common plan of development or sale~~, including additions or modifications to existing
363 single-family detached residential structures. *However, localities subject to the Chesapeake Bay*
364 *Preservation Act (§ 10.1-2100 et seq.) may regulate these single family residences where land*
365 *disturbance exceeds 2,500 square feet;*

366 4. Land development projects ~~disturbing activities~~ that disturb less than one acre of land area ~~except~~
367 *for land disturbing activity exceeding an area of 2,500 square feet in all areas of the jurisdictions*

designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20 et seq.) adopted pursuant to the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) or activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance; however, the governing body of a locality which has adopted a stormwater management program may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply; and

5. Linear development projects, provided that (i) less than one acre of land will be disturbed per outfall or watershed, (ii) there will be insignificant increases in peak flow rates, and (iii) there are no existing or anticipated flooding or erosion problems downstream of the discharge point;

6. Discharges to a sanitary sewer or a combined sewer system;

7. Activities under a State or federal reclamation program to return an abandoned property to an agricultural or open land use; and

8. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project and that disturbs less than five acres of land.

C. Electric, natural gas, and communication utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies may not undertake any land clearing, soil movement, or construction activity involving soil movement or land disturbance one acre or greater unless the company has submitted a permit application for the land-disturbing activity and the application has been reviewed and approved and a stormwater permit issued by the Department. Companies may submit a single permit application containing stormwater management standards and specifications for all land disturbing activities conducted under the requirements of this article.

§ 10.1-603.9. Permit application required for issuance of grading, building, or other permits.

Upon the adoption of a local ordinance no grading, building or other permit shall be issued for a property unless a stormwater management plan permit application has been approved that is consistent with the local stormwater program and this article and unless the applicant has certified that all land clearing, construction, disturbance, land development and drainage will be done according to the approved plan permit conditions.

§ 10.1-603.11. Monitoring, reports, investigations, and inspections.

A. The plan-approving authority or, if a permit is issued in connection with land-disturbing activities which involve the issuance of a grading, building, or other permit, the permit-issuing authority (i) shall provide for periodic inspections of the installation of stormwater management measures and (ii) may require monitoring and reports from the person responsible for carrying out the plan, meeting the permit conditions to ensure compliance with the approved plan permit and to determine whether the measures required in the plan permit provide effective stormwater management, and (iii) conduct such investigations and perform such other actions as are necessary to carry out the provisions of this article. The owner, occupier or operator shall be given notice of the inspection and an opportunity to accompany the inspectors. If the permit-issuing authority or plan-approving authority determines that there is a failure to comply with the plan permit conditions, notice shall be served upon the permittee or person responsible for carrying out the plan permit conditions by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the development activities to the agent or employee supervising such activities. Where the plan-approving authority serves notice, a copy of the notice shall also be sent to the issuer of the permit. The notice shall specify the measures needed to comply with the plan permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, the permit may be revoked by the permit issuing authority or the Board and the permittee or person responsible for carrying out the plan permit conditions shall be deemed to be in violation of this article and upon conviction shall be subject to the penalties provided by § 10.1-603.14.

B. Notwithstanding subsection A of this section, the following may be applied:

1. Where a county, city, or town administers the local control program and the permit-issuing authority and the plan-approving authority are not within the same local government department, the locality may designate one department to inspect, monitor, report and ensure compliance.

2. Where a permit-issuing authority has been established, and such authority is not vested in an employee or officer of local government but in the commissioner of revenue or some other person, the locality shall exercise the responsibilities of the permit-issuing authority with respect to monitoring, reports, inspections, and enforcement unless such responsibilities are transferred as provided for in this section.

§ 10.1-603.12. Department to review local and state agency programs.

A. The Department shall periodically conduct a comprehensive develop and implement a review and evaluation of schedule so that the effectiveness of each local government's and state agency's stormwater management program, Municipal Separate Storm Sewer Management Program, and other MS4 permit requirements is evaluated no less than every five years. The review shall include an assessment of the

429 extent to which the program has reduced nonpoint source pollution and mitigated the detrimental effects
430 of localized flooding. A summary of these reviews and evaluations shall be submitted annually to the
431 General Assembly.

432 B. If, after such a review and evaluation, a local government is found to have a program which does
433 not comply with the provisions of this article or regulations promulgated adopted thereunder, the
434 Department Board may issue an order requiring that necessary corrective action be taken within a
435 reasonably prescribed time. If the local government has not implemented the corrective action identified
436 by the Board within 30 days following receipt of the notice, or such additional period as is necessary to
437 complete the implementation of the corrective action, then the Board shall take administrative and legal
438 actions to ensure compliance with the provisions of this article. If the program is delegated to the
439 locality by the Board, the Board may revoke such delegation and have the Department administer the
440 program.

441 § 10.1-603.12:1. Right of entry.

442 The Department, the permit issuing authority, or any duly authorized agent of the Department or
443 permit issuing authority may, at reasonable times and under reasonable circumstances, enter any
444 establishment or upon any property, public or private, for the purpose of obtaining information or
445 conducting surveys or investigations necessary in the enforcement of the provisions of this article.

446 § 10.1-603.12:2. Information to be furnished.

447 The Board, the Department, or the permit issuing authority may require every permit applicant or
448 permittee to furnish when requested such application materials, plans, specifications, and other pertinent
449 information as may be necessary to determine the effect of his discharge on the quality of state waters,
450 or such other information as may be necessary to accomplish the purposes of this article. Any personal
451 information shall not be disclosed except to an appropriate official of the Board, Department, or permit
452 issuing authority or as may be authorized pursuant to the Virginia Freedom of Information Act
453 (§ 2.2-3700 et seq.) However, disclosure of records of the Department, the Board, or the permit issuing
454 authority relating to (i) active federal environmental enforcement actions that are considered
455 confidential under federal law and (ii) enforcement strategies, including proposed sanctions for
456 enforcement actions is prohibited. Upon request, such records shall be disclosed after a proposed
457 sanction resulting from the investigation has been determined by the Department, the Board, or the
458 permit issuing authority. This section shall not be construed to prohibit the disclosure of records related
459 to inspection reports, notices of violation, and documents detailing the nature of any land disturbing
460 activity that may have occurred, or similar documents.

461 § 10.1-603.12:3. Private rights not affected.

462 The fact that any permittee holds or has held a permit issued under this article shall not constitute a
463 defense in any civil action involving private rights.

464 § 10.1-603.12:4. Enforcement by injunction, etc.

465 It shall be unlawful for any person to fail to comply with any special order or emergency special
466 order adopted by the Board, which has become final under the provisions of this article. Any person
467 violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, or any permit
468 condition issued by the Board, Department, or permit issuing authority as authorized to do such, or any
469 provisions of this article may be compelled in a proceeding instituted in any appropriate court by the
470 Board or locality to obey same and to comply therewith by injunction, mandamus or other appropriate
471 remedy.

472 § 10.1-603.12:5. Testing validity of regulations; judicial review.

473 A. The validity of any regulation adopted by the Board pursuant to this article may be determined
474 through judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000
475 et seq.).

476 B. An appeal may be taken from the decision of the court to the Court of Appeals as provided by
477 law.

478 § 10.1-603.12:6. Right to hearing.

479 Any permit applicant or permittee under this article aggrieved by any action of the permit issuing
480 authority or Board taken without a formal hearing, or by inaction of the permit issuing authority or
481 Board, may demand in writing a formal hearing by the Board of such owner's grievance, provided a
482 petition requesting such hearing is filed with the Board. In cases involving actions of the Board, such
483 petition must be filed within 30 days after notice of such action is mailed to such owner by certified
484 mail.

485 § 10.1-603.12:7. Hearings.

486 A. The hearings held under this article may be conducted by the Board itself at a regular or special
487 meeting of the Board, or by at least one member of the Board designated by the chairman to conduct
488 such hearings on behalf of the Board at any other time and place authorized by the Board.

489 B. A verbatim record of the proceedings of such hearings shall be taken and filed with the Board.
490 Depositions may be taken and read as in actions at law.

C. The Board shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the Board in the manner prescribed in § 2.2-4022. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

§ 10.1-603.13. Appeals of decisions of counties, cities or towns.

A. An appeal from a decision of a locality concerning an application for approval or disapproval of a stormwater management plan may be taken by the applicant, or any aggrieved party authorized by law, within thirty days after the rendering of such a decision of the locality, to the circuit court of the jurisdiction in which the land development project is located.

B. Judicial review shall be on the record previously established and shall otherwise be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

Any permittee or party aggrieved by a permit or enforcement decision of the permit issuing authority, or any person who has participated, in person or by submittal of written comments, in the public comment process related to a final decision of the Board under this article, whether such decision is affirmative or negative, is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) within 30 days after the rendering of such a decision if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the United States Constitution. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury that is an invasion of a legally protected interest and that is concrete and particularized; (ii) such injury is fairly traceable to the decision of the permit issuing authority or the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court.

§ 10.1-603.13:1. Appeal to Court of Appeals.

From the final decision of the circuit court an appeal may be taken to the Court of Appeals as provided in § 17.1-405.

§ 10.1-603.14. Penalties, injunctions and other legal actions.

A. Any person who violates any provision of a local ordinance or program adopted pursuant to the authority of this article shall be guilty of a misdemeanor and shall be subject to a fine not exceeding \$1,000 or up to thirty days imprisonment for each violation or both. This article, or of any regulations or ordinances adopted hereunder, or who fails, neglects or refuses to comply with any order of the permit issuing authority, Board, or court, issued as herein provided, shall be subject to a civil penalty not to exceed \$25,000 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. The Board shall adopt a regulation establishing a schedule of civil penalties to be utilized by the permit issuing authority in enforcing the provisions of this article. The Board, Department, or permit issuing authority for the locality wherein the land lies may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate circuit court. Any civil penalties assessed by a court as a result of a summons issued by a locality shall be paid into the treasury of the locality wherein the land lies, except where the violator is the locality itself, or its agent. When the penalties are assessed by the court as a result of a summons issued by the Board or Department, or where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to § 10.1-603.4.1. Such civil penalties paid into the treasury of the locality in which the violation occurred are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

B. Any person who willfully or negligently violates any provision of this article, any regulation or order of the Board, order of the permit issuing authority, ordinance of any locality, any condition of a permit, or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not less than \$2,500 nor more than \$25,000, either or both. Any person who knowingly violates any provision of this article, any regulation or order of the Board, order of the permit issuing authority, ordinance of any locality, any condition of a permit or any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this article or knowingly renders inaccurate any monitoring device or method required to be maintained under this article, shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate offense.

C. Any person who knowingly violates any provision of this article, and who knows at that time that

552 *he thereby places another person in imminent danger of death or serious bodily harm, shall, upon*
553 *conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor*
554 *more than 15 years and a fine of not more than \$250,000, either or both. A defendant that is not an*
555 *individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not*
556 *exceeding the greater of \$1 million or an amount that is three times the economic benefit realized by*
557 *the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine*
558 *and imprisonment for any subsequent conviction of the same person under this subsection.*

559 *D. Such a local ordinance* Violation of any provision of this article may also include the following
560 sanctions:

561 1. A locality operating its own program *The Board, Department, or the permit-issuing authority* may
562 apply to the circuit court in any jurisdiction wherein the land lies to enjoin a violation or a threatened
563 violation of the provisions of this article or of the local ordinance without the necessity of showing that
564 an adequate remedy at law does not exist.

565 2. ~~Without limiting the remedies which may be obtained in this section, a locality operating its own~~
566 ~~program may bring a civil action against any person for violation of any ordinance or any condition of a~~
567 ~~permit, or any provision of a local program adopted pursuant to this article. The action may seek the~~
568 ~~imposition of a civil penalty of not more than \$2,000 against the person for each violation.~~

569 3. With the consent of any person who has violated or failed, neglected or refused to obey any
570 ordinance ~~or, any condition of a permit, any regulation or order of the Board, any order of the permit~~
571 ~~issuing authority, or any provision of a local program adopted pursuant to~~ of this article, the
572 ~~administrator of the local program~~ Board, Department, or permit issuing authority may provide, in an
573 order issued by the administrator against such person, for the payment of civil charges for violations in
574 specific sums, not to exceed the limit specified in ~~subdivision 2~~ of this section. Such civil charges shall
575 be instead of any appropriate civil penalty ~~which that~~ could be imposed under ~~subdivision 2~~ this section.
576 *Any civil charges collected shall be paid to the locality or state treasury pursuant to subsection A*

577 § 10.1-603.15. Cooperation with federal and state agencies.

578 Localities operating their own programs and the Department are authorized to cooperate and enter
579 into agreements with any federal or state agency in connection with ~~plans~~ *permits for land disturbing*
580 *activities* for stormwater management.

581 § 62.1-44.5. Prohibition of waste discharges or other quality alterations of state waters except as
582 authorized by permit; notification required.

583 A. Except in compliance with a certificate issued by the Board, *or a permit issued pursuant to*
584 *§ 10.1-603.2:1*, it shall be unlawful for any person to:

585 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious
586 substances;

587 2. Excavate in a wetland;

588 3. Otherwise alter the physical, chemical or biological properties of state waters and make them
589 detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic
590 or industrial consumption, or for recreation, or for other uses; or

591 4. On and after October 1, 2001, conduct the following activities in a wetland:

592 a. New activities to cause draining that significantly alters or degrades existing wetland acreage or
593 functions;

594 b. Filling or dumping;

595 c. Permanent flooding or impounding; or

596 d. New activities that cause significant alteration or degradation of existing wetland acreage or
597 functions.

598 B. Any person in violation of the provisions of subsection A who discharges or causes or allows (i)
599 a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or
600 upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon
601 learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the Director of
602 the Department of Environmental Quality, or the coordinator of emergency services appointed pursuant
603 to § 44-146.19 for the political subdivision reasonably expected to be affected by the discharge. Written
604 notice to the Director of the Department of Environmental Quality shall follow initial notice within the
605 time frame specified by the federal Clean Water Act.

606 2. That § 10.1-603.10 of the Code of Virginia shall be repealed upon the Virginia Soil and Water
607 Conservation Board adopting a statewide permit fee schedule pursuant to this act.

608 3. That the provisions of the first enactment clause including the provisions that transfer the
609 responsibility for administering the issuance of national pollutant discharge elimination system
610 permits for the control of stormwater discharges from MS4 and construction activities shall
611 become effective on January 1, 2005, or upon the U.S. Environmental Protection Agency's
612 authorization for delegation of program authority to the Virginia Soil and Water Conservation
613 Board, whichever is the latter.

614 4. That the Department of Conservation and Recreation shall on or after July 1, 2004, seek
615 authorization for delegation of program authority for the Virginia Soil and Water Conservation
616 Board for the issuance of national pollutant discharge elimination system permits for the control
617 of stormwater discharges from MS4 and construction activities from the U.S. Environmental
618 Protection Agency under the federal Clean Water Act. Such permits issued by the State Water
619 Control Board that have not expired or been revoked or terminated before or on the program
620 transfer date shall continue to remain in effect until their specified expiration dates.

621 5. That the Virginia Stormwater Management Act regulations (4 VAC 3-20 et. seq.) shall be
622 transferred from the Board of Conservation and Recreation to the Virginia Soil and Water
623 Conservation Board on July 1, 2004 and the Virginia Soil and Water Conservation Board may
624 amend, modify, or delete provisions in the these regulations in order to implement this Act. Such
625 regulations that are in effect shall remain in full force and effect until altered, amended, or
626 rescinded by the Virginia Soil and Water Conservation Board.

627 6. That the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation
628 For Discharges of Storm Water From Construction Activities, 9 VAC 25-180-10 et seq., and the
629 General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation For
630 Discharges Of Storm Water From Small Municipal Separate Storm Sewer Systems, 9 VAC
631 25-750-10 et seq., are hereby transferred from the State Water Control Board to the Virginia Soil
632 and Water Conservation Board as set forth in the third enactment clause and shall remain in full
633 force and effect until amended, modified, or repealed by the Virginia Soil and Water Conservation
634 Board. Those amendments to the regulations necessitated by this act shall be exempt from Article
635 2 (§ 2.2-4006 et seq.) of the Administrative Process Act. Any future amendments shall be adopted
636 in accordance with the provisions of the Administrative Process Act.

637 7. That the relevant provisions of Fees For Permits And Certificates Regulations, 9 VAC 25-20-10
638 et seq., and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulations, 9
639 VAC 25-31-10 et seq., and other necessary regulations pertaining to the administration and
640 implementation of an NPDES permit program associated with MS4 or construction activity
641 stormwater discharge programs as adopted by the State Water Control Board shall be vested with
642 and remain in full force and effect for the State Water Control Board and also shall be hereby
643 transferred to and be in full force and effect for the Virginia Soil and Water Conservation Board
644 on the effective date as set forth in the third enactment clause, as identical regulations until
645 amended, modified, or repealed by the individual actions of the Virginia Water Control Board or
646 the Virginia Soil and Water Conservation Board to reflect each board's authorities as authorized
647 by this act. Those amendments necessitated by this act shall be exempt from Article 2 (§ 2.2-4006
648 et seq.) of the Administrative Process Act.

649 8. That the Virginia Soil and Water Conservation Board, on or after July 1, 2004, shall have
650 authority to transfer relevant provisions in the existing regulations of the State Water Control
651 Board and program administration provisions that may be required by the U.S. Environmental
652 Protection Agency into the Virginia Stormwater Management Act regulations (4 VAC 3-20 et.
653 seq.). These actions shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative
654 Process Act. Such amendments shall be effective no earlier than the effective date as set forth in
655 the third enactment clause.

656 9. That on or after July 1, 2004, the Virginia Soil and Water Conservation Board may amend,
657 modify, or delete provisions in the existing Virginia Stormwater Management Act regulations (4
658 VAC 3-20 et. seq.) including but not limited to those pertaining to the standards and procedures
659 for delegating authority for administering a stormwater management program to localities. Such
660 amendments shall be effective no earlier than the effective date as set forth in the third enactment
661 clause.

662 10. That the provisions of this act may result in a net increase in periods of imprisonment or
663 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot
664 be determined for periods of imprisonment in state adult correctional facilities and is \$0 for
665 periods of commitment to the custody of the Department of Juvenile Justice.