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## HOUSE BILL NO. 1177

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation, and Natural Resources  
on February 23, 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 which 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, the Department, or the Board, or (iv) who has violated the terms of an order issued by the court, the permit issuing authority, the Department, 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 permittee, 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 permittee; provided that if the Board finds that any such permittee 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 permittee 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 permittee, to affirm, modify, amend, or cancel such emergency special order. If the permittee 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 permittee 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 that is partially or wholly 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 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 that adopt a local stormwater management program shall have the authority to issue a  
205 consolidated stormwater management and erosion and sediment control permit that is consistent with  
206 the provisions of the Erosion and Sediment Control Law (§ 10.1-560 et seq.).

207 I. Any local stormwater management program adopted pursuant to and consistent with this article  
208 shall be considered to meet the stormwater management requirements under the Chesapeake Bay  
209 Preservation Act (§ 10.1-2100 et seq.) and attendant regulations.

210 § 10.1-603.4. Development of regulations.

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

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

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

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

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

230 5. Establish, with the concurrence of the Director, a statewide permit fee schedule for stormwater  
231 management related to land disturbing activities of one acre or greater. The fee schedule may also  
232 include a provision for a reduced fee for land disturbing activities between 2,500 square feet and up to  
233 1 acre in Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) localities. The regulations shall be  
234 governed by the following:

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

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

244 6. Establish statewide standards for stormwater management from land disturbing activities of one

acre or greater, except as specified otherwise within this article, and allow for the consolidation in the permit of a comprehensive approach to addressing stormwater management and erosion and sediment 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

306 permit application to the Department.

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

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

311 § 10.1-603.6. Duties of the Department.

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

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

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

319 § 10.1-603.7. Authorization for more stringent ordinances.

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

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

332 § 10.1-603.8. Regulated activities; submission and approval of a permit application; security for  
333 performance; exemptions.

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

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

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

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

365 3. Single-family residences separately built and disturbing less than one acre and not part of a  
366 subdivision larger common plan of development or sale, including additions or modifications to existing  
367 single-family detached residential structures. However, localities subject to the Chesapeake Bay

Preservation Act (§ 10.1-2100 et seq.) may regulate these single family residences where land disturbance exceeds 2,500 square feet;

4. Land development projects disturbing activities that disturb less than one acre of land area except 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 Board. 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 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 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 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.



429 A. The Department shall ~~periodically conduct a comprehensive~~ *develop and implement a* review and  
430 ~~evaluation of~~ *schedule so that* the effectiveness of each local government's and state agency's stormwater  
431 management program, *Municipal Separate Storm Sewer Management Program, and other MS4 permit*  
432 *requirements is evaluated no less than every five years.* The review shall include an assessment of the  
433 extent to which the program has reduced nonpoint source pollution and mitigated the detrimental effects  
434 of localized flooding. ~~A summary of these reviews and evaluations shall be submitted annually to the~~  
435 ~~General Assembly.~~

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

445 § 10.1-603.12:1. Right of entry.

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

450 § 10.1-603.12:2. Information to be furnished.

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

465 § 10.1-603.12:3. Private rights not affected.

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

468 § 10.1-603.12:4. Enforcement by injunction, etc.

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

476 § 10.1-603.12:5. Testing validity of regulations; judicial review.

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

480 B. *An appeal may be taken from the decision of the court to the Court of Appeals as provided by*  
481 *law.*

482 § 10.1-603.12:6. Right to hearing.

483 *Any permit applicant or permittee under this article aggrieved by any action of the permit issuing*  
484 *authority or Board taken without a formal hearing, or by inaction of the permit issuing authority or*  
485 *Board, may demand in writing a formal hearing by the Board or locality causing such permit*  
486 *applicant's or permittee's grievance, provided a petition requesting such hearing is filed with the Board*  
487 *or the locality within 30 days after notice of such action.*

488 § 10.1-603.12:7. Hearings.

489 A. *The hearings held under this article pertaining to the responsibilities or actions of the Board may*  
490 *be conducted by the Board itself at a regular or special meeting of the Board, or by at least one*



member of the Board designated by the chairman to conduct such hearings on behalf of the Board at any other time and place authorized by the Board.

B. A verbatim record of the proceedings of such hearings shall be taken and filed with the Board. 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.

D. Localities holding hearings under this article shall do so in a manner consistent with this section. § 10.1-603.13. Appeals.

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 Board, 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 permit issuing authority or 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.) 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.

The provisions of § 2.2-4030 shall not apply to decisions rendered by localities.

§ 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, the Department, 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 or the Department, 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 or the Department, 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

552 of a felony punishable by a term of imprisonment of not less than one year nor more than three years,  
553 or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not  
554 more than 12 months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any  
555 defendant that is not an individual shall, upon conviction of a violation under this subsection, be  
556 sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall  
557 constitute a separate offense.

558 C. Any person who knowingly violates any provision of this article, and who knows at that time that  
559 he thereby places another person in imminent danger of death or serious bodily harm, shall, upon  
560 conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor  
561 more than 15 years and a fine of not more than \$250,000, either or both. A defendant that is not an  
562 individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not  
563 exceeding the greater of \$1 million or an amount that is three times the economic benefit realized by  
564 the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine  
565 and imprisonment for any subsequent conviction of the same person under this subsection.

566 D. ~~Such a local ordinance~~ Violation of any provision of this article may also include the following  
567 sanctions:

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

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

576 3. With the consent of any person who has violated or failed, neglected or refused to obey any  
577 ordinance ~~or~~, any condition of a permit, ~~any regulation or order of the Board, any order of the permit~~  
578 ~~issuing authority or the Department, or any provision of a local program adopted pursuant to~~ of this  
579 article, the ~~administrator of the local program~~ Board, Department, or permit issuing authority may  
580 provide, in an order issued by the ~~administrator~~ against such person, for the payment of civil charges for  
581 violations in specific sums, not to exceed the limit specified in ~~subdivision 2~~ of this section. Such civil  
582 charges shall be instead of any appropriate civil penalty ~~which that~~ could be imposed under ~~subdivision~~  
583 ~~2~~ this section. Any civil charges collected shall be paid to the locality or state treasury pursuant to  
584 subsection A

585 § 10.1-603.15. Cooperation with federal and state agencies.

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

589 § 62.1-44.5. Prohibition of waste discharges or other quality alterations of state waters except as  
590 authorized by permit; notification required.

591 A. Except in compliance with a certificate issued by the Board, it shall be unlawful for any person  
592 to:

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

595 2. Excavate in a wetland;

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

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

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

602 b. Filling or dumping;

603 c. Permanent flooding or impounding; or

604 d. New activities that cause significant alteration or degradation of existing wetland acreage or  
605 functions.

606 5. *Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land*  
607 *disturbing activities unless in compliance with a permit issued pursuant to Article 1.1 (§ 10.1-603.1 et*  
608 *seq.) of Chapter 6 of this title.*

609 B. Any person in violation of the provisions of subsection A who discharges or causes or allows (i)  
610 a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or  
611 upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon  
612 learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the Director of  
613 the Department of Environmental Quality, or the coordinator of emergency services appointed pursuant

to § 44-146.19 for the political subdivision reasonably expected to be affected by the discharge. Written notice to the Director of the Department of Environmental Quality shall follow initial notice within the time frame specified by the federal Clean Water Act.

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

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

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

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

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

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

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

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

10. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot

675 be determined for periods of imprisonment in state adult correctional facilities and is \$0 for  
676 periods of commitment to the custody of the Department of Juvenile Justice.