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HOUSE BILL NO. 684

Offered January 11, 2006

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A BILL to amend and reenact §§ 10.1-560, 10.1-561, 10.1-603.2, and 10.1-603.4 of the Code of Virginia, relating to new definitions in the Erosion and Sediment Control Act and the Stormwater Management Act.

Patrons—Rust, Plum and Shannon

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-560, 10.1-561, 10.1-603.2, and 10.1-603.4 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-560. Definitions.

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

"Agreement in lieu of a plan" means a contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

"Applicant" means any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

"Certified inspector" means an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment.

"Certified plan reviewer" means an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1.

"Certified program administrator" means an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment.

"Conservation plan," "erosion and sediment control plan," or "plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"District" or "soil and water conservation district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of this chapter.

"Erosion impact area" means an area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

"Land-disturbing activity" means any land change that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:

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

2. Individual service connections;

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

4. Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity

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59 relating to construction of the building to be served by the septic tank system;

60 5. Surface or deep mining activities authorized under a permit issued by the Department of Mines,
61 Minerals and Energy;

62 6. Exploration or drilling for oil and gas including the well site, roads, feeder lines and off-site
63 disposal areas;

64 7. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot
65 operations; including engineering operations as follows: construction of terraces, terrace outlets, check
66 dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour
67 furrowing, land drainage and land irrigation; however, this exception shall not apply to harvesting of
68 forest crops unless the area on which harvesting occurs is reforested artificially or naturally in
69 accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of this title or is converted to bona
70 fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

71 8. Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related
72 structures and facilities of a railroad company;

73 9. Agricultural engineering operations including but not limited to the construction of terraces, terrace
74 outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the
75 Dam Safety Act, Article 2 (§ 10.1-604 et seq.) of Chapter 6 of this title, ditches, strip cropping, lister
76 furrowing, contour cultivating, contour furrowing, land drainage and land irrigation;

77 10. Disturbed land areas of less than 10,000 square feet in size; however, the governing body of the
78 program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions
79 under which this exception shall apply;

80 11. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or
81 poles;

82 12. Shoreline erosion control projects on tidal waters when all of the land disturbing activities are
83 within the regulatory authority of and approved by local wetlands boards, the Marine Resources
84 Commission or the United States Army Corps of Engineers; however, any associated land that is
85 disturbed outside of this exempted area shall remain subject to this article and the regulations adopted
86 pursuant thereto; and

87 13. Emergency work to protect life, limb or property, and emergency repairs; however, if the
88 land-disturbing activity would have required an approved erosion and sediment control plan, if the
89 activity were not an emergency, then the land area disturbed shall be shaped and stabilized in
90 accordance with the requirements of the plan-approving authority.

91 "Local erosion and sediment control program" or "local control program" means an outline of the
92 various methods employed by a program authority to regulate land-disturbing activities and thereby
93 minimize erosion and sedimentation in compliance with the state program and may include such items
94 as local ordinances, policies and guidelines, technical materials, inspection, enforcement and evaluation.

95 "Natural channel design concepts" means the utilization of engineering analysis and fluvial
96 geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the
97 purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and
98 allows larger flows to access its bankfull bench and its floodplain.

99 "Owner" means the owner or owners of the freehold of the premises or lesser estate therein, a
100 mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person,
101 firm or corporation in control of a property.

102 "*Peak flow rate*" means the maximum instantaneous flow from a given storm condition at a
103 particular location.

104 "Permittee" means the person to whom the permit authorizing land-disturbing activities is issued or
105 the person who certifies that the approved erosion and sediment control plan will be followed.

106 "Person" means any individual, partnership, firm, association, joint venture, public or private
107 corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county,
108 city, town, or other political subdivision of the Commonwealth, any interstate body, or any other legal
109 entity.

110 "Plan-approving authority" means the Board, the program authority, or a department of a program
111 authority, responsible for determining the adequacy of a conservation plan submitted for land-disturbing
112 activities on a unit or units of lands and for approving plans.

113 "Program authority" means a district, county, city, or town that has adopted a soil erosion and
114 sediment control program that has been approved by the Board.

115 "*Runoff volume*" means the volume of water that runs off the land development project from a
116 prescribed storm event.

117 "State erosion and sediment control program" or "state program" means the program administered by
118 the Board pursuant to this article, including regulations designed to minimize erosion and sedimentation.

119 "State waters" means all waters on the surface and under the ground wholly or partially within or
120 bordering the Commonwealth or within its jurisdiction.

"Town" means an incorporated town.

"Water quality volume" means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

§ 10.1-561. State erosion and sediment control program.

A. The Board shall develop a program and promulgate regulations for the effective control of soil erosion, sediment deposition, and nonagricultural runoff that must be met in any control program to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). Stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section, § 10.1-562, or 10.1-570. *Any land-disturbing activity that provides for stormwater management shall satisfy the conditions of this subsection if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, two, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels as defined in any regulations promulgated pursuant to this section, § 10.1-562 or 10.1-570.*

The regulations shall:

1. Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the Commonwealth, including, but not limited to, data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;

2. Include such survey of lands and waters as may be deemed appropriate by the Board or required by any applicable law to identify areas, including multijurisdictional and watershed areas, with critical erosion and sediment problems; and

3. Contain conservation standards for various types of soils and land uses, which shall include criteria, techniques, and methods for the control of erosion and sediment resulting from land-disturbing activities.

B. The Board shall provide technical assistance and advice to, and conduct and supervise educational programs for, districts and localities that have adopted local control programs.

C. The program and regulations shall be available for public inspection at the Department.

D. The Board shall promulgate regulations establishing minimum standards of effectiveness of erosion and sediment control programs, and criteria and procedures for reviewing and evaluating the effectiveness of erosion and sediment control programs. In developing minimum standards for program effectiveness, the Board shall consider information and standards on which the regulations promulgated pursuant to subsection A of this section are based.

E. The Board shall periodically conduct a comprehensive review and evaluation to ensure that all erosion and sediment control programs operating under the jurisdiction of this article meet minimum standards of effectiveness in controlling soil erosion, sediment deposition and nonagricultural runoff. The Board shall develop a schedule for conducting periodic reviews and evaluations of the effectiveness of erosion and sediment control programs.

F. The Board shall issue certificates of competence concerning the content, application and intent of specified subject areas of this chapter and accompanying regulations, including program administration, plan review, and project inspection, to personnel of program authorities and to any other persons who have completed training programs or in other ways demonstrated adequate knowledge. The Department shall administer education and training programs for specified subject areas of this chapter and accompanying regulations, and is authorized to charge persons attending such programs reasonable fees to cover the costs of administering the programs.

G. As of December 31, 2004, any Department personnel conducting inspections pursuant to this chapter shall hold a certificate of competence as provided in subsection F.

§ 10.1-603.2. Definitions.

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

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

"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.

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

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

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

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

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

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

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

201 1. Owned or operated by a federal, state, city, town, county, district, association, or other public
202 body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and
203 sediment control and stormwater management, or a designated and approved management agency under
204 § 208 of the CWA that discharges to surface waters;

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

206 3. That is not a combined sewer; and

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

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

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

216 *"Peak flow rate" means the maximum instantaneous flow from a given storm condition at a
217 particular location.*

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

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

223 "Permittee" means the person or locality to which the permit is issued.

224 *"Runoff volume" means the volume of water that runs off the land development project from a
225 prescribed storm event.*

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

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

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

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

235 *"Water quality volume" means the volume equal to the first one-half inch of runoff multiplied by the
236 impervious surface of the land development project.*

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

239 § 10.1-603.4. Development of regulations.

240 The Board is authorized to adopt regulations that specify minimum technical criteria and
241 administrative procedures for stormwater management programs in Virginia. The regulations shall:

242 1. Establish standards and procedures for delegating the authority for administering a stormwater
243 management program to localities;

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

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

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

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

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

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

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. *Any land-disturbing activity that provides for stormwater management shall satisfy the conditions of this subsection if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, two, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels as defined in any regulations promulgated pursuant to this section, or any ordinances adopted pursuant to § 10.1-603.3 or 10.1-603.7;*

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

9. Establish, with the concurrence of the Director, a statewide permit fee schedule for stormwater management related to municipal separate storm sewer system permits.