

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 An Act to amend and reenact §§ 10.1-603.2, 10.1-603.2:1, 10.1-603.2:2, 10.1-603.3, and 10.1-603.14 of
3 the Code of Virginia, relating to stormwater management.

4 [S 274]
5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That §§ 10.1-603.2, 10.1-603.2:1, 10.1-603.2:2, 10.1-603.3, and 10.1-603.14 of the Code of**
8 **Virginia are amended and reenacted as follows:**

9 § 10.1-603.2. Definitions.

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

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

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

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

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

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

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

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

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

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

35 1. Owned or operated by a federal, state, city, town, county, district, association, or other public
36 body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and
37 sediment control and stormwater management, or a designated and approved management agency under
38 § 208 of the CWA that discharges to surface waters;

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

40 3. That is not a combined sewer; and

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

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

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

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

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

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

56 "Person" means an individual, corporation, partnership, association, state, municipality, commission,

57 *or political subdivision of a state, governmental body, any interstate body, or any other legal entity.*

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

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

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

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

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

69 § 10.1-603.2:1. Powers and duties of the Virginia Soil and Water Conservation Board.

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

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

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

82 3. Take administrative and legal actions to ensure compliance by permittees, *any person subject to*
83 *permit requirements under this article*, and those localities with an approved local stormwater
84 management program and management programs developed in conjunction with a municipal separate
85 storm sewer system permit with the provisions of this article including the proper enforcement and
86 implementation of, and continual compliance with, this article.

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

90 a. The permittee *or any person subject to permit requirements under this article* has violated any
91 order or regulation of the Board, any condition of a permit, any provision of this article, any order of a
92 court, or any order of the permit issuing authority, where such violation results in the unreasonable
93 degradation of properties, water quality, stream channels, and other natural resources, or the violation is
94 representative of a pattern of serious or repeated violations including the disregard for or inability to
95 comply with applicable laws, regulations, permit conditions, orders, rules, or requirements;

96 b. The permittee *or any person subject to permit requirements under this article* has failed to
97 disclose fully all relevant material facts or has misrepresented a material fact in applying for a permit, or
98 in any other report or document required under this law or under the regulations of the Board;

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

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

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

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

113 7. Issue special orders to a permittee *or any person subject to permit requirements under this article*
114 (i) who is permitting or causing the unreasonable degradation of properties, water quality, stream
115 channels, and other natural resources to cease and desist from such activities, (ii) who has failed to
116 construct facilities in accordance with final approved plans and specifications to construct such facilities,
117 (iii) who has violated the terms and provisions of a permit issued by the permit issuing authority; to

118 comply with the provisions of the permit, this article and any decision of the permit issuing authority,
 119 the Department, or the Board, or (iv) who has violated the terms of an order issued by the court, the
 120 permit issuing authority, the Department, or the Board: to comply with the terms of such order, and also
 121 to issue orders to require any ~~order~~ *permittee or any person subject to permit requirements under this*
 122 *article* to comply with the provisions of this article and any decision of the Board.

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

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

145 With the consent of any *permittee or any person subject to permit requirements under this article*
 146 who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any
 147 condition of a permit or any provision of this article, the Board may provide, in an order issued by the
 148 Board against such person, for the payment of civil charges for violations in specific sums not to exceed
 149 the limit specified in subsection A of § 10.1-603.14. Such civil charges shall be collected in lieu of any
 150 appropriate civil penalty that could be imposed pursuant to subsection A of § 10.1-603.14 and shall not
 151 be subject to the provisions of § 2.2-514. Such civil charges shall be paid into the state treasury and
 152 deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to
 153 § 10.1-603.4:1.

154 § 10.1-603.2:2. Permits.

155 A. It shall be unlawful to cause a stormwater discharge from an MS4 or a land disturbing activity
 156 ~~without~~ *except in compliance with a permit from issued by* a permit issuing authority.

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

165 § 10.1-603.3. Establishment of stormwater management programs by localities.

166 A. Any locality located within Tidewater Virginia as defined by the Chesapeake Bay Preservation
 167 Act (§ 10.1-2100 et seq.), or any locality that is partially or wholly designated as an MS4 under the
 168 provisions of the federal Clean Water Act, shall be required to adopt a local stormwater management
 169 program for land disturbing activities consistent with the provisions of this article ~~by July 1, 2006~~
 170 *according to a schedule set by the Board but no sooner than 12 months and not more than 18 months*
 171 *following the effective date of the regulation that establishes local program criteria and delegation*
 172 *procedures.*

173 B. Any locality not specified in subsection A may elect to adopt and administer a local stormwater
 174 management program for land disturbing activities pursuant to this article. Such localities shall inform
 175 the Board and the Department of their initial intention to seek delegation for the stormwater
 176 management program for land disturbing permits ~~no later than July 1, 2005~~ *within six months following*
 177 *the effective date of the regulation that establishes local program criteria and delegation procedures.*
 178 Thereafter, the Department shall provide an annual schedule by which localities can submit applications

179 for delegation.

180 C. In the absence of the delegation of a stormwater management program to a locality, the
181 Department will administer the responsibilities of this article within the given jurisdiction.

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

184 E. Each locality that is required to or that elects to adopt and administer an approved local
185 stormwater management program shall, by ordinance, establish a local stormwater management program
186 that may be administered in conjunction with a local MS4 program and a local erosion and sediment
187 control program, which shall include, but is not limited to, the following:

188 1. Consistency with regulations adopted in accordance with provisions of this article;

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

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

197 F. The Board shall delegate a local stormwater management program to a locality when it deems a
198 program consistent with this article.

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

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

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

207 § 10.1-603.14. Penalties, injunctions, and other legal actions.

208 A. Any person who violates any provision of this article, or of any regulations or ordinances adopted
209 hereunder, *including those adopted pursuant to the conditions of an MS4 permit* or who fails, neglects
210 or refuses to comply with any order of the permit issuing authority, the Department, Board, or court,
211 issued as herein provided, shall be subject to a civil penalty not to exceed ~~\$25,000~~ \$32,500 for each
212 violation within the discretion of the court. Each day of violation of each requirement shall constitute a
213 separate offense. The Board shall adopt a regulation establishing a schedule of civil penalties to be
214 utilized by the permit issuing authority in enforcing the provisions of this article. The Board,
215 Department, or permit issuing authority for the locality wherein the land lies may issue a summons for
216 collection of the civil penalty and the action may be prosecuted in the appropriate circuit court. Any
217 civil penalties assessed by a court as a result of a summons issued by a locality shall be paid into the
218 treasury of the locality wherein the land lies, except where the violator is the locality itself, or its agent.
219 When the penalties are assessed by the court as a result of a summons issued by the Board or
220 Department, or where the violator is the locality itself, or its agent, the court shall direct the penalty to
221 be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater
222 Management Fund established pursuant to § 10.1-603.4:1. Such civil penalties paid into the treasury of
223 the locality in which the violation occurred are to be used for the purpose of minimizing, preventing,
224 managing, or mitigating pollution of the waters of the locality and abating environmental pollution
225 therein in such manner as the court may, by order, direct.

226 B. Any person who willfully or negligently violates any provision of this article, any regulation or
227 order of the Board, order of the permit issuing authority or the Department, ordinance of any locality,
228 any condition of a permit, or any order of a court shall be guilty of a misdemeanor punishable by
229 confinement in jail for not more than 12 months and a fine of not less than \$2,500 nor more than
230 ~~\$25,000~~ 32,500, either or both. Any person who knowingly violates any provision of this article, any
231 regulation or order of the Board, order of the permit issuing authority or the Department, ordinance of
232 any locality, any condition of a permit or any order of a court issued as herein provided, or who
233 knowingly makes any false statement in any form required to be submitted under this article or
234 knowingly renders inaccurate any monitoring device or method required to be maintained under this
235 article, shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor
236 more than three years, or in the discretion of the jury or the court trying the case without a jury,
237 confinement in jail for not more than 12 months and a fine of not less than \$5,000 nor more than
238 \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation
239 under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each

240 requirement shall constitute a separate offense.

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

249 D. Violation of any provision of this article may also include the following sanctions:

250 1. The Board, Department, or the permit issuing authority may apply to the circuit court in any
251 jurisdiction wherein the land lies to enjoin a violation or a threatened violation of the provisions of this
252 article or of the local ordinance without the necessity of showing that an adequate remedy at law does
253 not exist.

254 2. With the consent of any person who has violated or failed, neglected or refused to obey any
255 ordinance, any condition of a permit, any regulation or order of the Board, any order of the permit
256 issuing authority or the Department, or any provision of this article, the Board, Department, or permit
257 issuing authority may provide, in an order issued against such person, for the payment of civil charges
258 for violations in specific sums, not to exceed the limit specified in this section. Such civil charges shall
259 be instead of any appropriate civil penalty that could be imposed under this section. Any civil charges
260 collected shall be paid to the locality or state treasury pursuant to subsection A.