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SENATE BILL NO. 407

Offered January 11, 2012

Prefiled January 11, 2012

A *BILL to amend and reenact §§ 10.1-560 through 10.1-571, 10.1-603.2, 10.1-603.2:1 through 10.1-603.8:1, 10.1-603.11 through 10.1-603.12:4, 10.1-603.12:6, 10.1-603.12:7, 10.1-603.13, 10.1-603.14, 10.1-603.14:1, 10.1-603.15, 10.1-659, 10.1-2101, 10.1-2106, 10.1-2107, 10.1-2129, and 62.1-195.1 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 10.1-566.2, 10.1-603.4:2, and 10.1-2104.1, and to repeal §§ 10.1-572, 10.1-573, 10.1-603.9, 10.1-2102, and 10.1-2112 of the Code of Virginia, relating to integrating the Erosion and Sediment Control Act, the Stormwater Management Act, and the Chesapeake Bay Preservation Act.*

Patrons—Hanger and Stuart

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-560 through 10.1-571, 10.1-603.2, 10.1-603.2:1 through 10.1-603.8:1, 10.1-603.11 through 10.1-603.12:4, 10.1-603.12:6, 10.1-603.12:7, 10.1-603.13, 10.1-603.14, 10.1-603.14.1, 10.1-603.15, 10.1-659, 10.1-2101, 10.1-2106, 10.1-2107, 10.1-2129, and 62.1-195.1 of the Code of Virginia and that the Code of Virginia is amended by adding sections numbered 10.1-566.2, 10.1-603.4:2, and 10.1-2104.1 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, 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 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 ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"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

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59 used for residential purposes or to shorelines where the erosion results from wave action or other coastal
60 processes.

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

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

67 2. Individual service connections;

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

71 4. Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity
72 relating to construction of the building to be served by the septic tank system;

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

75 6. ~~Exploration or drilling for oil and gas including the well site, roads, feeder lines and off-site~~
76 ~~disposal areas Permitted surface or deep mining operations and projects, or oil and gas operations and~~
77 ~~projects conducted pursuant to Title 45.1;~~

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

85 87. Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other
86 related structures and facilities of a railroad company;

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

91 109. Disturbed land areas of less than 10,000 square feet in size *or 2,500 square feet in all areas of*
92 *the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and*
93 *Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act (§ 10.1-2100 et*
94 *seq.);* however, the governing body of the program authority may reduce this exception to a smaller area
95 of disturbed land or qualify the conditions under which this exception shall apply;

96 110. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or
97 poles;

98 1211. Shoreline erosion control projects on tidal waters when all of the ~~land disturbing~~
99 ~~land-disturbing~~ activities are within the regulatory authority of and approved by local wetlands boards,
100 the Marine Resources Commission or the United States Army Corps of Engineers; however, any
101 associated land that is disturbed outside of this exempted area shall remain subject to this article and the
102 regulations adopted pursuant thereto; and

103 1312. Emergency work to protect life, limb or property, and emergency repairs; however, if the
104 land-disturbing activity would have required an approved erosion and sediment control plan, if the
105 activity were not an emergency, then the land area disturbed shall be shaped and stabilized in
106 accordance with the requirements of the ~~plan-approving~~ VESCP authority.

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

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

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

118 "Peak flow rate" means the maximum instantaneous flow from a given storm condition at a particular
119 location.

120 "Permittee" means the person to whom the *local* permit authorizing land-disturbing activities is

issued or the person who certifies that the approved erosion and sediment control plan will be followed.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, *governmental body, including a federal or state entity as applicable*, any interstate body, or any other legal entity.

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

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

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

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

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

"Town" means an incorporated town.

"Virginia Erosion and Sediment Control Program," or "VESCP," means a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in this article, and evaluation consistent with the requirements of this article and its associated regulations.

"Virginia Erosion and Sediment Control Program authority," or "VESCP authority," means an authority approved by the Board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the Department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102.

"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. Virginia erosion and sediment control program.

A. The Board shall develop a program and ~~promulgate~~ *adopt regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.)* 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 plan approved prior to July 1, 2014, that provides for stormwater management intended to address that addresses~~ any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels 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, 2, 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 man-made channels as defined in any regulations promulgated pursuant to § 10.1-562 or 10.1-570. *For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of this subsection shall be satisfied by compliance with water quantity requirements in the Stormwater Management Act (§ 10.1-603.2 et seq.) and attendant regulations.*

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~~ *VESCP authorities*.

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

~~D.~~ The Board shall ~~promulgate~~ *adopt* 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~~ *VESCPs*. 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.~~ *D.* The Board shall *approve VESCP authorities and shall* periodically conduct a comprehensive *program compliance* review and evaluation to ensure that all ~~erosion and sediment control programs~~ *VESCPs* operating under the jurisdiction of this article meet minimum standards of effectiveness in controlling soil erosion, sediment deposition and nonagricultural runoff. The ~~Board~~ *Department* shall develop a schedule for conducting periodic reviews and evaluations of the effectiveness of ~~erosion and sediment control programs~~ *VESCPs*. *Such reviews where applicable shall be coordinated with those being implemented in accordance with the Stormwater Management Act (§ 10.1-603.2 et seq.) and associated regulations and the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) and associated regulations. The Department may also conduct a comprehensive or partial program compliance review and evaluation of a VESCP at a greater frequency than the standard schedule.*

~~F.~~ *E.* 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. *Such education and training programs shall also contain expanded components to address plan review and project inspection elements of the Virginia Stormwater Act and attendant regulations in accordance with § 10.1-603.4:2.*

~~G.~~ *F.* ~~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~~ *E*.

G. ~~The Board may delegate to the Department any of the powers and duties vested in it by this article except the adoption of regulations. Delegation shall not remove the Board's authority to enforce the provisions of this article.~~

§ 10.1-561.1. Certification of program personnel.

A. The minimum standards of ~~local program~~ *VESCP* effectiveness established by the Board pursuant to subsection ~~D~~ *C* of § 10.1-561 shall provide that ~~within one year following the adoption of amendments to the local program adding the provisions of this section,~~ (i) a ~~conservation an erosion and sediment control~~ plan shall not be approved until it is reviewed by a certified plan reviewer; (ii) inspections of land-disturbing activities ~~are~~ *shall be* conducted by a certified inspector; and (iii) a ~~local program~~ *VESCP* shall contain a certified program administrator, a certified plan reviewer, and a certified project inspector, who may be the same person.

B. Any person who holds a certificate of competence from the Board in the areas of plan review, project inspection, or program administration which was attained prior to the adoption of the mandatory certification provisions of subsection A of this section shall be deemed to satisfy the requirements of that area of certification.

C. Professionals registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 shall be deemed to satisfy the certification requirements.

§ 10.1-562. Establishment of Virginia erosion and sediment control programs.

A. Each district in the Commonwealth shall ~~adopt and administer an erosion and sediment control program for any area within the district for which a county, city, or town does not have an approved erosion and sediment control program.~~

To carry out its program the district shall adopt regulations consistent with the state program. The regulations may be revised from time to time as necessary. Before adopting or revising regulations, the district shall give due notice and conduct a public hearing on the proposed or revised regulations except that a public hearing shall not be required when the district is amending its program to conform to revisions in the state program. However, a public hearing shall be held if a district proposes or revises

regulations that are more stringent than the state program. The program and regulations shall be available for public inspection at the principal office of the district.

B. In areas where there is no district, a county, city, or town shall adopt and administer an erosion and sediment control program.

C. Any county, city, or town within a district may *Counties and cities shall* adopt and administer an erosion and sediment control program *a VESCP*.

Any town, lying within a county which has adopted its own erosion and sediment control program *VESCP*, may adopt its own program or *shall* become subject to the county program. If a town lies within the boundaries of more than one county, the town shall be considered for the purposes of this article to be wholly within the county in which the larger portion of the town lies. ~~Any county, city, or town with an erosion and sediment control program may designate its department of public works or a similar local government department as the plan-approving authority or may designate the district as the plan-approving authority for all or some of the conservation plans.~~

B. A VESCP authority may enter into agreements or contracts with soil and water conservation districts, adjacent localities, or other entities to assist with carrying out the provisions of this article, including the review and determination of adequacy of erosion and sediment control plans submitted for land-disturbing activities on a unit or units of land as well as for monitoring, reports, inspections, and enforcement where authorized in this article, of such land-disturbing activities.

~~DC.~~ Any erosion and sediment control program VESCP adopted by a district, county, city, or town shall be approved by the Board if it *establishes by ordinance requirements that are* consistent with the state program and regulations for erosion and sediment control *this article and associated regulations.*

D. Each approved VESCP operated by a county, city, or town shall include provisions for the integration of the VESCP with Virginia stormwater management, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

E. The Board may approve a state entity, federal entity, or, for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 to operate a Virginia Erosion and Sediment Control Program consistent with the requirements of this article and its associated regulations and the VESCP authority's Board-approved annual standards and specifications. For these programs, enforcement shall be administered by the Department and the Board where applicable in accordance with the provisions of this article.

~~EF.~~ Following completion of a compliance review of a VESCP in accordance with subsection D of § 10.1-561, the Department shall provide results and compliance recommendations to the Board in the form of a corrective action agreement if deficiencies are found; otherwise, the Board may find the program compliant. If a comprehensive or partial program compliance review conducted by the Board Department of a local control program VESCP indicates that the program VESCP authority has not administered, enforced where authorized to do so, or conducted its program VESCP in a manner that satisfies the minimum standards of effectiveness established pursuant to subsection ~~D~~ C of § 10.1-561, the Board shall notify the program authority in writing, which notice shall identify corrective action establish a schedule for the VESCP authority to come into compliance. The Board shall provide a copy of its decision to the VESCP authority that specifies the deficiencies, actions needed to be taken, and the approved compliance schedule required to attain the minimum standard of effectiveness and shall include an offer to provide technical assistance to implement the corrective action. If the program VESCP authority has not implemented the ~~corrective action~~ necessary compliance actions identified by the Board within 30 days following receipt of the ~~notice~~ corrective action agreement, or such additional period as is necessary granted to complete the implementation of the corrective action, then the Board shall have the authority to (i) issue a special order to any locality that has failed to enter into a corrective action agreement or, where such corrective action agreement exists, has failed to initiate or has not made substantial and consistent progress towards implementing an approved corrective action agreement within the deadline established by the Board to pay VESCP, imposing a civil penalty not to exceed \$5,000 per day with the maximum amount not to exceed \$20,000 per violation for noncompliance with the state program, to be paid into the state treasury and deposited in the Virginia Stormwater Management Fund established by § 10.1-603.4:1 or (ii) revoke its approval of the program. Prior to issuing a special order or revoking its approval of any local control program, the Board shall conduct a formal hearing pursuant to § 2.2-4020 of the Administrative Process Act. Judicial review of any order of the Board issuing a civil penalty pursuant to this section or revoking its approval of a local control program shall be made in accordance with Article 5 (~~§ 2.2-4025 et seq.~~) of the VESCP. The

305 Administrative Process Act (§ 2.2-4000 *et seq.*) shall govern the activities and proceedings of the Board
306 and the judicial review thereof.

307 In lieu of issuing a special order or revoking the program, the Board is authorized to take legal
308 action against a VESCP to ensure compliance.

309 FG. If the Board revokes its approval of a ~~local control program~~ the VESCP of a county, city, or
310 town, and the locality is in a district, the district, *upon approval of the Board*, shall adopt and
311 administer ~~an erosion and sediment control program~~ a VESCP for the locality. *To carry out its program,*
312 *the district shall adopt* regulations in accordance with the Administrative Process Act (§ 2.2-4000 *et*
313 *seq.*) consistent with this article and associated regulations. The regulations may be revised from time to
314 time as necessary. The program and regulations shall be available for public inspection at the principal
315 office of the district.

316 GH. If the Board (i) revokes its approval of a ~~local control program~~ VESCP of a district, or of a
317 county, city, or town not in a district, or (ii) finds that a local program consistent with the state program
318 *this article* and associated regulations has not been adopted by a district or a county, city, or town
319 which is required to adopt and administer a ~~local program~~ VESCP, the Board shall, *after such hearings*
320 *or consultations as it deems appropriate with the various local interests involved,* develop, adopt, and
321 administer an appropriate program to be carried out within such district, county, city, or town, as
322 applicable, by the Board *find the VESCP authority provisional, and have the Department assist with the*
323 *administration of the program until the Board finds the VESCP authority compliant with the*
324 *requirements of this article and associated regulations. Assisting with administration includes but is not*
325 *limited to the ability to review and comment on plans to the VESCP authority, to conduct inspections*
326 *with the VESCP authority, and to conduct enforcement in accordance with this article and associated*
327 *regulations.*

328 H. If the Board has revoked its approval of any local control program, the program authority may
329 request that the Board approve a replacement program, and the Board shall approve the replacement
330 program if it finds that (i) the program authority is capable of administering the program in accordance
331 with the minimum standards of effectiveness and (ii) the replacement program otherwise meets the
332 requirements of the state program and regulations. The Board shall conduct a formal hearing pursuant to
333 § 2.2-4020 of the Administrative Process Act on any request for approval of a replacement program.

334 I. If the Board revokes its approval of a state entity, federal entity, or, for linear projects subject to
335 annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and
336 intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to
337 § 15.2-5102, the Board shall find the VESCP authority provisional, and have the Department assist with
338 the administration of the program until the Board finds the VESCP authority compliant with the
339 requirements of this article and associated regulations. Assisting with administration includes the ability
340 to review and comment on plans to the VESCP authority and to conduct inspections with the VESCP
341 authority in accordance with this article and associated regulations.

342 J. Any ~~program~~ VESCP authority which administers an erosion and sediment control program may
343 charge applicants a reasonable fee to defray the cost of program administration. *Such fee may be in*
344 *addition to any fee charged for administration of a Virginia stormwater management program, although*
345 *payment of fees may be consolidated in order to provide greater convenience and efficiency for those*
346 *responsible for compliance with the programs. A program VESCP authority shall hold a public hearing*
347 *prior to enacting an ordinance establishing a schedule of fees. The fee shall not exceed an amount*
348 *commensurate with the services rendered, taking into consideration the time, skill, and administrators'*
349 *the VESCP authority's expense involved.*

350 JK. The governing body of any county, city, or town, *or a district board which* (i) *is in a district*
351 *which has adopted a local control program,* (ii) *has adopted its own local control program,* (iii) *is*
352 *subject to a local control program adopted by the Board, or* (iv) *administers a local control program is*
353 *authorized to administer a VESCP,* may adopt an ordinance or regulation where applicable providing
354 that violations of any regulation or order of the Board, any provision of its program, any condition of a
355 permit, or any provision of this article shall be subject to a civil penalty. The civil penalty for any one
356 violation shall be not less than \$100 nor more than \$1,000. Each day during which the violation is
357 found to have existed shall constitute a separate offense. In no event shall a series of specified violations
358 arising from the same operative set of facts result in civil penalties which exceed a total of \$10,000,
359 except that a series of violations arising from the commencement of land-disturbing activities without an
360 approved plan for any site shall not result in civil penalties which exceed a total of \$10,000. Adoption
361 of such an ordinance providing that violations are subject to a civil penalty shall be in lieu of criminal
362 sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection A of
363 § 10.1-569. *The penalties set out in this subsection are also available to the Department in its*
364 *enforcement actions.*

365 § 10.1-563. Regulated land-disturbing activities; submission and approval of erosion and sediment
366 control plan.

A. Except as provided in § 10.1-564 for state agency and federal entity land-disturbing activities, no person may engage in any land-disturbing activity until he has submitted to the ~~district or locality~~ VESCP authority an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved by the plan-approving authority. Upon the development of an online reporting system by the Department, but no later than July 1, 2014, a VESCP authority shall then be required to obtain evidence of state Virginia Stormwater Management Program permit coverage where it is required prior to providing approval to begin land disturbance. Where land-disturbing activities involve lands under the jurisdiction of more than one ~~local control program~~ VESCP, an erosion and sediment control plan may, at the ~~option of the applicant~~ joint request of the VESCP authorities, be submitted to the ~~Board~~ Department for review and approval rather than to each jurisdiction concerned. The Department may charge the jurisdictions a fee sufficient to cover the cost associated with conducting the review. A VESCP may enter into an agreement with an adjacent VESCP regarding the administration of multi-jurisdictional projects whereby the jurisdiction that contains the greater portion of the project shall be responsible for all or part of the administrative procedures. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the plan-approving authority.

B. The ~~plan-approving~~ VESCP authority shall review ~~conservation~~ erosion and sediment control plans submitted to it and grant written approval within ~~45~~ 60 days of the receipt of the plan if it determines that the plan meets the requirements of *this article* and the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the ~~conservation~~ erosion and sediment control measures included in the plan and ~~will conform to~~ shall comply with the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence to the program authority, as provided by § 10.1-561, who will be in charge of and responsible for carrying out the land-disturbing activity. However, any ~~plan-approving~~ VESCP authority may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by § 10.1-561. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this article.

When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify the modifications, terms and conditions that will permit approval of the plan. If no action is taken by the ~~plan-approving~~ VESCP authority within the time specified above, the plan shall be deemed approved and the person authorized to proceed with the proposed activity. *The VESCP authority shall act on any erosion and sediment control plan that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.*

C. ~~An approved plan may be changed by the authority that approved the plan~~ The VESCP authority may require changes to an approved plan in the following cases:

1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or
2. Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article *and associated regulations*, are agreed to by the ~~plan-approving~~ VESCP authority and the person responsible for carrying out the plan.

D. Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies shall, and authorities created pursuant to § 15.2-5102 may, file general erosion and sediment control *standards and specifications* annually with the ~~Board~~ Department for review and approval. *Such standards and specifications shall be consistent with the requirements of this article and associated regulations and the Stormwater Management Act (§ 10.1-603.2 et seq.) and associated regulations where applicable.* The specifications shall apply to:

1. Construction, installation or maintenance of electric transmission, natural gas and telephone utility lines and pipelines, and water and sewer lines; and
2. Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.

The ~~Board~~ Department shall have 60 days in which to approve the *standards and specifications*. If no action is taken by the ~~Board~~ Department within 60 days, the *standards and specifications* shall be deemed approved. Individual approval of separate projects within subdivisions 1 and 2 of this subsection is not necessary when approved specifications are followed. Projects not included in subdivisions 1 and

2 of this subsection shall comply with the requirements of the appropriate local erosion and sediment control program VESCP. The Board shall have the authority to enforce approved specifications and charge fees equal to the lower of (i) \$1,000 or (ii) an amount sufficient to cover the costs associated with standard and specification review and approval, project inspections, and compliance.

E. Any person engaging, in more than one jurisdiction, in the creation and operation of a wetland mitigation or stream restoration bank or banks, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of wetlands mitigation or stream restoration banks, pursuant to a mitigation banking instrument signed by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control standards and specifications for wetland mitigation or stream restoration banks annually with the Board Department for review and approval consistent with guidelines established by the Board.

The Board Department shall have 60 days in which to approve the specifications. If no action is taken by the Board Department within 60 days, the specifications shall be deemed approved. Individual approval of separate projects under this subsection is not necessary when approved specifications are implemented through a project-specific erosion and sediment control plan. Projects not included in this subsection shall comply with the requirements of the appropriate local erosion and sediment control program. The Board shall have the authority to enforce approved specifications and charge fees equal to the lower of (i) \$1,000 or (ii) an amount sufficient to cover the costs associated with standard and specification review and approval, projection inspections, and compliance. Approval of general erosion and sediment control specifications by the Board Department does not relieve the owner or operator from compliance with any other local ordinances and regulations including requirements to submit plans and obtain permits as may be required by such ordinances and regulations.

F. In order to prevent further erosion, a local program VESCP authority may require approval of a conservation an erosion and sediment control plan for any land identified in the local program by the VESCP authority as an erosion impact area.

G. For the purposes of subsections A and B of this section, when land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of an erosion and sediment control plan shall be the responsibility of the owner.

§ 10.1-564. State agency and federal entity projects.

A. A state agency shall not undertake a project involving a land-disturbing activity unless (i) the state agency has submitted annual standards and specifications for its conduct of land-disturbing activities which have been reviewed and approved by the Department as being consistent with the state program this article and associated regulations or (ii) the state agency has submitted a conservation an erosion and sediment control plan for the project which has been reviewed and approved by the Department. Should a federal entity submit an erosion and sediment control plan for a project, land disturbance shall not commence until the Department has reviewed and approved the plan.

B. The Department shall not approve a conservation an erosion and sediment control plan submitted by a federal or state agency or federal entity for a project involving a land-disturbing activity (i) in any locality which has not adopted a local program with more stringent regulations than those of the state program or (ii) in multiple jurisdictions with separate local programs, unless the conservation erosion and sediment control plan is consistent with the requirements of the state program.

C. The Department shall not approve a conservation an erosion and sediment control plan submitted by a federal or state agency or federal entity for a project involving a land-disturbing activity in one locality with a local program with more stringent regulations ordinances than those of the state program unless the conservation erosion and sediment control plan is consistent with the requirements of the local program. If a locality has not submitted a copy of its local program regulations to the Department, the provisions of subsection B of this section shall apply.

D. The Department shall have sixty 60 days in which to comment on any standards and specifications or conservation erosion and sediment control plan submitted to it for review, and its comments shall be binding on the state agency and any private business hired by the state agency.

E. As on-site changes occur, the state agency shall submit changes in a conservation an erosion and sediment control plan to the Department.

F. The state agency responsible for the land-disturbing activity shall ensure compliance with the an approved plan or specifications and the Department and Board, where applicable, shall provide project oversight and enforcement as necessary.

G. If the state agency or federal entity has developed, and the Department has approved, annual standards and specifications, and the state agency or federal entity has been approved by the Board to operate a VESCP as a VESCP authority, erosion and sediment control plan review and approval and land-disturbing activity inspections shall be conducted by such entity. The Department and the Board, where applicable, shall provide project oversight and enforcement as necessary and comprehensive

program compliance review and evaluation. Such standards and specifications shall be consistent with the requirements of this article and associated regulations and the Stormwater Management Act (§10.1-603.2 et seq.) and associated regulations when applicable.

§ 10.1-565. Approved plan required for issuance of grading, building, or other permits; security for performance.

Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities *regulated under this article* may not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed *and, upon the development of an online reporting system by the Department but no later than July 1, 2014, evidence of Virginia stormwater management state permit coverage where it is required.* Prior to issuance of any permit, the agency may also require an applicant to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the agency, to ensure that measures could be taken by the agency at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action which may be required of him by the approved plan as a result of his land-disturbing activity. The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed ~~twenty-five~~ 25 percent of the estimated cost of the conservation action. If the agency takes such conservation action upon such failure by the permittee, the agency may collect from the permittee for the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within ~~sixty~~ 60 days of the achievement of adequate stabilization of the land-disturbing activity in any project or section thereof, the bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated based upon the percentage of stabilization accomplished in the project or section thereof. These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

§ 10.1-566. Monitoring, reports and inspections.

A. ~~The plan-approving authority or, if a permit is issued in connection with land-disturbing activities that involve the issuance of a grading, building, or other permit, the permit-issuing VESCP authority~~ (i) shall provide for periodic inspections of the land-disturbing activity and require that an individual holding a certificate of competence, as provided by § 10.1-561, who will be in charge of and responsible for carrying out the land-disturbing activity and (ii) may require monitoring and reports from the person responsible for carrying out the *erosion and sediment control* plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. However, any ~~plan-approving~~ VESCP authority may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single family residence. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection. ~~If the permit-issuing authority or plan-approving VESCP authority, where authorized to enforce this article, or the Department determines that there is a failure to comply with the plan following an inspection,~~ notice shall be served upon the permittee or person responsible for carrying out the plan 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 land-disturbing 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 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 and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this article and shall be subject to the penalties VESCP authority, where authorized to enforce this article, the Department, or the Board may pursue enforcement as provided by § 10.1-569.

B. Notwithstanding the above provisions of this section the following may be applied:

1. Where a county, city, or town administers the local control program and the permit-issuing authority and the plan-approving authority are not within the same local government department, the locality may designate one department to inspect, monitor, report and ensure compliance. In the event a district has been designated as the plan-approving authority for all or some of the conservation plans, the enforcement of the program shall be with the local government department; however, the district may inspect, monitor and make reports for the local government department.

2. Where a district adopts the local control program and permit-issuing authorities have been established by a locality, the district by joint resolution with the appropriate locality may exercise the responsibilities of the permit-issuing authorities with respect to monitoring, reports, inspections and

551 enforcement.

552 3. Where a permit-issuing authority has been established, and such authority is not vested in an
553 employee or officer of local government but in the commissioner of revenue or some other person, the
554 locality shall exercise the responsibilities of the permit-issuing authority with respect to monitoring,
555 reports, inspections and enforcement unless such responsibilities are transferred as provided for in this
556 section subsection A, a VESCP authority is authorized to enter into agreements or contracts with
557 districts, adjacent localities, or other public or private entities to assist with the responsibilities of this
558 article, including but not limited to the review and determination of adequacy of erosion and sediment
559 control plans submitted for land-disturbing activities as well as monitoring, reports, inspections, and
560 enforcement where an authority is granted such powers by this article.

561 C. Upon receipt issuance of a sworn complaint of an inspection report denoting a violation of this
562 section, § 10.1-563 or § 10.1-564 from the representative of the program authority or the Board
563 responsible for ensuring program compliance, the chief administrative officer, or his designee, of the
564 program authority or the Board may, in conjunction with or subsequent to a notice to comply as
565 specified in subsection A above, a VESCP authority, where authorized to enforce this article, or the
566 Department may issue an order requiring that all or part of the land-disturbing activities permitted on the
567 site be stopped until the specified corrective measures have been taken or, if land-disturbing activities
568 have commenced without an approved plan as provided in § 10.1-563, requiring that all of the
569 land-disturbing activities be stopped until an approved plan or any required permits are obtained. Where
570 the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or
571 sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing
572 activities have commenced without an approved erosion and sediment control plan or any required
573 permits, such an order may be issued whether or not the alleged violator has been issued a notice to
574 comply as specified in subsection A above. Otherwise, such an order may be issued only after the
575 alleged violator has failed to comply with a notice to comply. The order shall be served in the same
576 manner as a notice to comply, and shall remain in effect for seven days from the date of service
577 pending application by the enforcing authority VESCP authority, the Department, or alleged violator for
578 appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have
579 occurred or other appropriate court. If the alleged violator has not obtained an approved erosion and
580 sediment control plan or any required permits within seven days from the date of service of the order,
581 the Department or the chief administrative officer or his designee on behalf of the VESCP authority may
582 issue an order to the owner requiring that all construction and other work on the site, other than
583 corrective measures, be stopped until an approved erosion and sediment control plan and any required
584 permits have been obtained. Such an order shall be served upon the owner by registered or certified
585 mail to the address specified in the permit application or the land records of the locality in which the
586 site is located. The owner may appeal the issuance of an order to the circuit court of the jurisdiction
587 wherein the violation was alleged to have occurred or other appropriate court. Any person violating or
588 failing, neglecting, or refusing to obey an order issued by the Department or the chief administrative
589 officer or his designee on behalf of the VESCP authority may be compelled in a proceeding instituted in
590 the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other
591 appropriate court to obey same and to comply therewith by injunction, mandamus or other appropriate
592 remedy. Upon completion and approval of corrective action or obtaining an approved plan or any
593 required permits, the order shall immediately be lifted. Nothing in this section shall prevent the
594 Department, the Board, or the chief administrative officer or his designee on behalf of the VESCP
595 authority from taking any other action specified in § 10.1-569.

596 § 10.1-566.1. Reporting.

597 Each locality's plan-approving VESCP authority shall report to the Department, in a method such as
598 an online reporting system and on a time schedule established by the Department, a listing of each
599 land-disturbing activity in the locality for which a plan has been approved by the VESCP under this
600 article.

601 § 10.1-566.2. Right of entry.

602 The Department, the VESCP authority, where authorized to enforce this article, or any duly
603 authorized agent of the Department or such VESCP authority, may, at reasonable times and under
604 reasonable circumstances, enter any establishment or upon any property, public or private, for the
605 purpose of obtaining information or conducting surveys or investigations necessary in the enforcement
606 of the provisions of this article.

607 In accordance with a performance bond with surety, cash escrow, letter of credit, any combination
608 thereof, or such other legal arrangement, a VESCP authority may also enter any establishment or upon
609 any property, public or private, for the purpose of initiating or maintaining appropriate actions which
610 are required by the permit conditions associated with a land-disturbing activity when a permittee, after
611 proper notice, has failed to take acceptable action within the time specified.

612 § 10.1-567. Cooperation with federal and state agencies.

The districts and localities operating their own programs, A VESCP authority and the Board are authorized to cooperate and enter into agreements with any federal or state agency in connection with plans the requirements for erosion and sediment control with respect to land-disturbing activities.

§ 10.1-568. Judicial appeals.

A. Final decisions of counties, cities or towns A final decision by a county, city, or town, when serving as a VESCP authority under this article, shall be subject to judicial review by the court of record of the county or city, provided that an appeal is filed within thirty 30 days from the date of any written decision adversely affecting the rights, duties or privileges of the person engaging in or proposing to engage in land-disturbing activities.

B. Final decisions of the districts shall be subject to an administrative review by the Board, provided that an appeal is filed within thirty days from the date of the written decision.

C. Final decisions of the Board either upon its own action or upon the review of the action of a district, Department, or district shall be subject to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

§ 10.1-569. Penalties, injunctions and other legal actions.

A. Violators of §§ 10.1-563, 10.1-564 or § 10.1-566 shall be guilty of a Class 1 misdemeanor.

B. If a locality has adopted an ordinance establishing a uniform schedule of civil penalties as permitted by subsection J of § 10.1-562, any Any person who violates has violated or failed, neglected, or refused to obey any regulation or order of the Board, any order, notice, or requirement of the Department or VESCP authority, any condition of a permit, any provision of its program, or any provision of this article or associated regulation shall, upon a finding of an appropriate general district court, be assessed a civil penalty. If a locality or district serving as a VESCP authority has adopted a uniform schedule of civil penalties as permitted by subsection K of § 10.1-562, such assessment shall be in accordance with the schedule. The erosion and sediment control administrator, his deputy or a certified inspector for the locality wherein the land lies VESCP authority or the Department may issue a summons for collection of the civil penalty and the action may be prosecuted by the locality wherein the land lies. In any trial for a scheduled violation, it shall be the burden of the locality or Department to show the liability of the violator by a preponderance of the evidence. An admission or finding of liability shall not be a criminal conviction for any purpose. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, except that where the violator is the locality itself, or its agent, or where the Department is issuing the summons, the court shall direct the penalty to be paid into the state treasury.

C. The appropriate permit-issuing authority, the program VESCP authority, the Board Department, or the owner of property which has sustained damage or which is in imminent danger of being damaged, may apply to the circuit court in any jurisdiction wherein the land lies or other appropriate court to enjoin a violation or a threatened violation under §§ 10.1-563, 10.1-564 or § 10.1-566 without the necessity of showing that an adequate remedy at law does not exist; however, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the local program VESCP, the Department, and the program VESCP authority, that a violation of the local program VESCP has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the local program VESCP, the Department, nor the program VESCP authority has taken corrective action within fifteen 15 days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.

D. In addition to any criminal or civil penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the program VESCP authority, or the Board Department, as appropriate, in a civil action for damages.

E. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the locality VESCP authority wherein the land lies or the Department. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, except that where the violator is the locality itself, or its agent, or other VESCP authority, or where the penalties are assessed as the result of an enforcement action brought by the Department, the court shall direct the penalty to be paid into the state treasury.

F. With the consent of any person who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any order, notice, or requirement of the Department or VESCP authority or, any condition of a permit, or any provision of this article or associated regulations, the Board, the Director, or plan-approving or permit-issuing VESCP authority may provide, in an order issued by the Board or plan-approving or permit-issuing VESCP authority against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection

674 E of ~~this section~~. Such civil charges shall be instead of any appropriate civil penalty which could be
675 imposed under subsection B or E.

676 G. Upon request of a ~~program authority, or the permit-issuing~~ VESCP authority, the attorney for the
677 Commonwealth shall take legal action to enforce the provisions of this article. Upon request of the
678 Board, ~~the Department, or the district~~, the Attorney General shall take appropriate legal action on behalf
679 of the Board, ~~the Department, or the district~~ to enforce the provisions of this article.

680 H. Compliance with the provisions of this article shall be prima facie evidence in any legal or
681 equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have
682 been met and the complaining party must show negligence in order to recover any damages.

683 § 10.1-569.1. Stop work orders by Department; civil penalties.

684 A. An aggrieved owner of property sustaining pecuniary damage resulting from a violation of an
685 approved *erosion and sediment control* plan or required permit, or from the conduct of land-disturbing
686 activities commenced without an approved plan or required permit, may give written notice of the
687 alleged violation to the ~~program~~ VESCP authority and to the Director.

688 B. Upon receipt of the notice from the aggrieved owner and notification to the program authority, the
689 Director shall conduct an investigation of the aggrieved owner's complaint.

690 C. If the ~~program~~ VESCP authority has not responded to the alleged violation in a manner which
691 causes the violation to cease and abates the damage to the aggrieved owner's property within ~~thirty~~ 30
692 days following receipt of the notice from the aggrieved owner, the aggrieved owner may request that the
693 Director require the violator to stop the violation and abate the damage to his property.

694 D. If (i) the Director's investigation of the complaint indicates that the ~~program~~ VESCP authority has
695 not responded to the alleged violation as required by the ~~local~~ ~~program~~ VESCP, (ii) the ~~program~~ VESCP
696 authority has not responded to the alleged violation within ~~thirty~~ 30 days from the date of the notice
697 given pursuant to subsection A of this section, and (iii) the Director is requested by the aggrieved owner
698 to require the violator to cease the violation, then the Director shall give written notice to the ~~program~~
699 VESCP authority that the ~~Director will request the Board to~~ *Department intends to* issue an order
700 pursuant to subsection E of ~~this section~~.

701 E. If the ~~program~~ VESCP authority has not instituted action to stop the violation and abate the
702 damage to the aggrieved owner's property within ~~ten~~ 10 days following receipt of the notice from the
703 Director, the ~~Board~~ *Department* is authorized to issue an order requiring the owner, permittee, person
704 responsible for carrying out an approved *erosion and sediment control* plan, or person conducting the
705 land-disturbing activities without an approved plan or required permit, to cease all land-disturbing
706 activities until the violation of the plan or permit has ceased, or an approved plan and required permits
707 are obtained, as appropriate, and specified corrective measures have been completed. *The Department*
708 *also may immediately initiate a program review of the VESCP.*

709 F. Such orders are to be issued ~~only after a hearing with reasonable notice to the affected person of~~
710 ~~the time, place and purpose thereof, in accordance with the requirements of the Administrative Process~~
711 *Act (§ 2.2-4000 et seq.), and they shall become effective upon service on the person by certified mail,*
712 *return receipt requested, sent to his address specified in the land records of the locality, or by personal*
713 *delivery by an agent of the Director. Any subsequent identical mail or notice that is sent by the*
714 *Department may be sent by regular mail.* However, if the ~~Board~~ *Department* finds that any such
715 violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion
716 of lands or sediment deposition in waters within the watersheds of the Commonwealth, it may issue,
717 without advance notice or hearing, an emergency order directing such person to cease all land-disturbing
718 activities on the site immediately and shall provide an opportunity for a hearing, after reasonable notice
719 as to the time and place thereof, to such person, to affirm, modify, amend or cancel such emergency
720 order.

721 G. If a person who has been issued an order or emergency order is not complying with the terms
722 thereof, the Board may institute a proceeding in the appropriate circuit court for an injunction,
723 mandamus, or other appropriate remedy compelling the person to comply with such order.

724 H. Any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other
725 remedy obtained pursuant to subsection G of ~~this section~~ shall be subject, in the discretion of the court,
726 to a civil penalty not to exceed \$2,000 for each violation. Any civil penalties assessed by a court shall
727 be paid into the state treasury.

728 § 10.1-570. Authorization for more stringent regulations.

729 A A. *As part of a VESCP, a district or locality is authorized to adopt more stringent soil erosion and*
730 *sediment control regulations or ordinances than those necessary to ensure compliance with the Board's*
731 *regulations, provided that the more stringent regulations or ordinances are based upon factual findings*
732 *of local or regional comprehensive watershed management studies or findings developed through the*
733 *implementation of an MS4 permit or a locally adopted watershed management study and are determined*
734 *by the district or locality to be necessary to prevent any further degradation to water resources, to*
735 *address total maximum daily load requirements, to protect exceptional state waters, or to address*

specific existing water pollution including nutrient and sediment loadings, stream channel erosion, depleted groundwater resources, or excessive localized flooding within the watershed and that prior to adopting more stringent regulations or ordinances, a public hearing is held after giving due notice. The VESCP authority shall report to the Board when more stringent stormwater management regulations or ordinances are determined to be necessary pursuant to this section. However, this section shall not be construed to authorize any district or locality to impose any more stringent regulations for plan approval or permit issuance than those specified in §§ 10.1-563 and 10.1-565.

B. Any provisions of an erosion and sediment control program in existence before July 1, 2012, that contain more stringent provisions than this article shall be exempt from the analysis requirements of subsection A.

§ 10.1-571. No limitation on authority of Water Control Board or Department of Mines, Minerals and Energy.

The provisions of this article shall not limit the powers or duties presently exercised by the State Water Control Board under Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1, or the powers or duties of the Department of Mines, Minerals and Energy as they relate to strip mine reclamation under Chapters 16 (§ 45.1-180 et seq.), 17 (§ 45.1-198 et seq.) and 19 (§ 45.1-226 et seq.) of Title 45.1 or oil or gas exploration under the Virginia Oil and Gas and Oil Act (§ 45.1-361.1 et seq.).

§ 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.

"Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal to or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to the regulations adopted pursuant to the Chesapeake Bay Preservation Act.

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

"Land disturbance" or "land disturbing" "land-disturbing activity" means a man-made 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, except that the term shall not include those exemptions specified in § 10.1-603.8.

"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 the various methods employed by a locality to manage the quality and quantity of runoff resulting from land disturbing activities and 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, man-made 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 stormwater;

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 state 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, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations, and this article and its attendant regulations, using management practices, control techniques, and system, design, and

797 engineering methods, and such other provisions that are appropriate.

798 "Nonpoint source pollution" means pollution *such as sediment, nitrogen, phosphorus, hydrocarbons,*
799 *heavy metals, and toxics* whose sources cannot be pinpointed but rather ~~is~~ *are* washed from the land
800 surface in a diffuse manner by stormwater runoff.

801 "Peak flow rate" means the maximum instantaneous flow from a ~~given~~ *prescribed design* storm
802 condition at a particular location.

803 "Permit" or "VSMP authority permit" means an approval *to conduct a land-disturbing activity* issued
804 by the ~~permit issuing authority~~ *VSMP authority* for the initiation of a land-disturbing activity; ~~or for~~
805 ~~stormwater discharges from an MS4 after evidence of state VSMP general permit coverage has been~~
806 ~~provided where applicable.~~

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

810 "Permittee" means the person ~~or locality~~ to which the permit *or state permit* is issued.

811 "Person" means an individual, corporation, partnership, association, state, municipality, commission,
812 or political subdivision of a state, governmental body *including federal, state, or local entity as*
813 *applicable*, any interstate body, or any other legal entity.

814 "Runoff volume" means the volume of water that runs off the land development project from a
815 prescribed storm event.

816 "State permit" means an approval to conduct a land-disturbing activity issued by the Board in the
817 form of a state stormwater individual permit or coverage issued under a state general permit or an
818 approval issued by the Board for stormwater discharges from an MS4. Under these permits, the
819 Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and
820 regulations and this article and its attendant regulations.

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

824 "Stormwater management plan" means a document containing material describing methods for
825 complying with the requirements of a VSMP.

826 "Stormwater management program" means a program established by a locality that is consistent with
827 the requirements of this article and associated regulations and guidance documents.

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

829 "Virginia Stormwater Management Program (VSMP)" or "VSMP" means the Virginia program for
830 issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing
831 and enforcing requirements pursuant to the federal Clean Water Act and this article a program approved
832 by the Board after September 13, 2011, that has been established by a VSMP authority to manage the
833 quality and quantity of runoff resulting from land-disturbing activities and shall include such items as
834 local ordinances, rules, permit requirements, annual standards and specifications, policies and
835 guidelines, technical materials, and requirements for plan review, inspection, enforcement, where
836 authorized in this article, and evaluation consistent with the requirements of this article and associated
837 regulations.

838 "Virginia Stormwater Management Program authority" or "VSMP authority" means an authority
839 approved by the Board after September 13, 2011, to operate a Virginia Stormwater Management
840 Program or, until such approval is given, the Department. An authority may include a locality; state
841 entity, including the Department; federal entity; or, for linear projects subject to annual standards and
842 specifications in accordance with subsection B of § 10.1-603.5, electric, natural gas, and telephone
843 utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or
844 authorities created pursuant to § 15.2-5102.

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

847 "Watershed" means a defined land area drained by a river or stream, *karst system*, or system of
848 connecting rivers or streams such that all surface water within the area flows through a single outlet. *In*
849 *karst areas, the karst feature to which water drains may be considered the single outlet for the*
850 *watershed.*

851 § 10.1-603.2:1. Powers and duties of the Virginia Soil and Water Conservation Board.

852 In addition to other powers and duties conferred upon the Board, it shall permit, regulate, and control
853 stormwater runoff in the Commonwealth. ~~In accordance with the VSMP, the~~ The Board may issue, deny,
854 revoke, terminate, or amend *state* stormwater individual permits or coverage issued under *state general*
855 *permits*; adopt regulations; approve and periodically review ~~local~~ *Virginia* stormwater management
856 programs and management programs developed in conjunction with a *state* municipal separate storm
857 sewer permit; enforce the provisions of this article; and otherwise act to ensure the general health, safety
858 and welfare of the citizens of the Commonwealth as well as protect the quality and quantity of state

waters from the potential harm of unmanaged stormwater. The Board may:

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

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

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

4. ~~After notice and opportunity for a hearing by the Board,~~ *In accordance with procedures of the Administrative Process Act (§ 2.2-4000 et seq.),* amend or revoke any *state* permit issued ~~by the permit issuing authority~~ under this article on the following grounds or for good cause as may be provided by the regulations of the Board:

a. ~~The permittee or any~~ Any person subject to *state* permit requirements under this article has violated ~~or failed, neglected, or refused to obey~~ any order or regulation of the Board, ~~any order, notice, or requirement of the Department,~~ any condition of a *state* permit, any provision of this article, ~~or any order of a court, or any order of the permit issuing authority,~~ where such violation results in the unreasonable degradation of properties, water quality, stream channels, and other natural resources, or the violation is representative of a pattern of serious or repeated violations including the disregard for or inability to comply with applicable laws, regulations, permit conditions, orders, rules, or requirements;

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

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

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

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

6. ~~Adopt~~ *In accordance with procedures of the Administrative Process Act (§ 2.2-4000 et seq.), 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 or~~ any person subject to *state or VSMP authority* permit requirements under this article (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 *state or VSMP authority* permit issued by the ~~permit issuing authority~~ *Board or VSMP authority*; to comply with the provisions of the *state or VSMP authority* permit, this article and any decision of the ~~permit issuing~~ *VSMP authority, the Department, or the Board,* or (iv) who has violated the terms of an order issued by the court, the ~~permit issuing~~ *VSMP authority, the Department, or the Board:* to comply with the terms of such order, and also to issue orders to require ~~any permittee or~~ any person subject to *state or VSMP authority* permit requirements under this article 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~~ *only after a hearing with at least 30 days' notice to the affected* ~~permittee or any person subject to permit requirements under this article, of the time, place, and purpose thereof in accordance with the procedures of the Administrative Process Act (§ 2.2-4000 et seq.), 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 or~~ any person subject to *state or VSMP authority* permit requirements under this article; provided that if the Board finds that any such ~~permittee or~~ any person

920 subject to *state or VSMP authority* permit requirements under this article is grossly affecting or presents
921 an imminent and substantial danger to (i) the public health, safety or welfare, or the health of animals,
922 fish or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural or
923 other reasonable uses, it may issue, without advance notice or hearing, an emergency special order
924 directing the ~~permittee or~~ any person subject to *state or VSMP authority* permit requirements under this
925 article to cease such pollution or discharge immediately, and shall provide an opportunity for a hearing,
926 after reasonable notice as to the time and place thereof to the ~~permittee or~~ any person subject to *state or*
927 *VSMP authority* permit requirements under this article, to affirm, modify, amend, or cancel such
928 emergency special order. If the ~~permittee or~~ any person subject to *state or VSMP authority* permit
929 requirements under this article who has been issued such a special order or an emergency special order
930 is not complying with the terms thereof, the Board may proceed in accordance with § 10.1-603.14, and
931 where the order is based on a finding of an imminent and substantial danger, the court shall issue an
932 injunction compelling compliance with the emergency special order pending a hearing by the Board. If
933 an emergency special order requires cessation of a discharge, ~~the Board shall provide an opportunity for~~
934 ~~a hearing within 48 hours of the issuance of the injunction the recipient of the order may appeal its~~
935 ~~issuance to the circuit court of the jurisdiction wherein the discharge was alleged to have occurred.~~

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

939 With the consent of ~~any permittee or~~ any person subject to *state or VSMP authority* permit
940 requirements under this article who has violated or failed, neglected, or refused to obey any regulation
941 or order of the Board, ~~any order, notice, or requirement of the Department or VSMP authority~~, any
942 condition of a *state or VSMP authority* permit or any provision of this article, the Board may provide,
943 in an order issued by the Board against such person, for the payment of civil charges for violations in
944 specific sums not to exceed the limit specified in subsection A of § 10.1-603.14. Such civil charges shall
945 be collected in lieu of any appropriate civil penalty that could be imposed pursuant to subsection A of
946 § 10.1-603.14 and shall not be subject to the provisions of § 2.2-514. Such civil charges shall be paid
947 into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management
948 Fund established pursuant to § 10.1-603.4:1.

949 § 10.1-603.2:2. State permits.

950 A. It ~~shall be~~ *is* unlawful to cause a stormwater discharge from an MS4 or a ~~land disturbing~~
951 ~~land-disturbing~~ activity except in compliance with a *state permit issued by a permit issuing authority*
952 *where required*.

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

962 C. *State individual construction permits shall be administered by the Department.*

963 § 10.1-603.3. Establishment of Virginia stormwater management programs.

964 A. Any locality located within Tidewater Virginia as defined by the Chesapeake Bay Preservation
965 Act (§ 10.1-2100 et seq.), or any locality that is partially or wholly designated as required to obtain
966 coverage under an MS4 permit under the provisions of the federal Clean Water Act, *excluding towns,*
967 *unless such town operates a regulated MS4*, shall be required to adopt a local stormwater management
968 program *VSMP* for ~~land disturbing~~ *land-disturbing* activities consistent with the provisions of this article
969 according to a schedule set by the Board. Such schedule shall require adoption no sooner than 15
970 months and not more than 21 months following the effective date of the regulation that establishes local
971 program criteria and delegation procedures, unless the Board deems that the Department's review of the
972 ~~local program VSMP~~ warrants an extension up to an additional 12 months, provided the locality has
973 made substantive progress. ~~A locality may adopt a local stormwater management program at an earlier~~
974 ~~date with the consent of the Board~~ *Localities subject to this subsection are authorized to coordinate*
975 *plan review and inspections with other entities in accordance with subsection H.*

976 B. Any locality not specified in subsection A may elect to adopt and administer a local stormwater
977 management program for land disturbing activities pursuant to this article. *Any town lying within a*
978 *county, which has adopted a VSMP in accordance with subsection A, may adopt its own program or*
979 *shall become subject to the county program. If a town lies within the boundaries of more than one*
980 *county, the town shall be considered to be wholly within the county in which the larger portion of the*
981 *town lies. Such localities* ~~Towns~~ shall inform the ~~Board and the Department~~ of their ~~initial intention~~ to

seek delegation for the stormwater management program for land disturbing permits within six months following the effective date of the regulation that establishes local program criteria and delegation procedures decision according to a schedule established by the Department. Thereafter, the Department shall provide an annual schedule by which localities towns can submit applications for delegation to adopt a VSMP.

C. In the absence of the delegation of a stormwater management program to a locality, the Department will administer the responsibilities of this article within the given jurisdiction in accordance with an adoption and implementation schedule set by the Board In support of VSMP entities, the Department shall:

1. Provide assistance grants to localities not currently operating a local stormwater management program to help the localities to establish their VSMP.

2. Provide technical assistance and training.

3. Provide qualified services in specified geographic areas to a VSMP to assist localities in the administration of components of their programs. The Department shall actively assist localities in the establishment of their programs and in the selection of a contractor or other entity that may provide support to the locality or regional support to several localities.

D. The Department shall develop a model ordinance for establishing a local stormwater management program VSMP consistent with this article and its associated regulations, including the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities.

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

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

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

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

F. The Board may approve a state entity, including the Department, federal entity, or, for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 to operate a Virginia Stormwater Management Program consistent with the requirements of this article and its associated regulations and the VSMP authority's Board-approved annual standards and specifications. For these programs, enforcement shall be administered by the Department and the Board where applicable in accordance with the provisions of this article.

G. The Board shall delegate a local stormwater management program to a locality approve a VSMP when it deems a program consistent with this article and associated regulations, including the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities.

G. Delegated localities H. A VSMP authority may enter into agreements or contracts with soil and water conservation districts, adjacent localities, or other entities to carry out or assist with the responsibilities of this article.

H. I. Localities that adopt a local stormwater management program shall have the authority to issue a consolidated stormwater management and erosion and sediment control permit that is consistent with the provisions of the Erosion and Sediment Control Law (§ 10.1-560 et seq.). When available in accordance with subsection J, such permit, where applicable, shall also include a copy of or reference to state VSMP permit coverage authorization to discharge.

J. Upon the development of an online reporting system by the Department, but no later than July 1, 2014, a VSMP authority shall then be required to obtain evidence of state VSMP permit coverage where it is required prior to providing approval to begin land disturbance.

K. Any local stormwater management program VSMP adopted pursuant to and consistent with this article shall be considered to meet the stormwater management requirements under the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) and attendant regulations, and effective July 1, 2014, shall not be subject to local program review under the Chesapeake Bay Preservation Act.

L. All VSMP authorities shall comply with the provisions of this article and the stormwater

management provisions of the Erosion and Sediment Control Law (§ 10.1-560 et seq.), and related regulations. The VSMP authority responsible for regulating the land-disturbing activity shall require compliance with the issued permit, permit conditions, and plan specifications.

M. VSMPs adopted in accordance with this section shall become effective July 1, 2014, unless otherwise specified by the Board.

§ 10.1-603.4. Development of regulations.

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

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

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 VSMPs 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 VSMP authority shall grant permit land-disturbing activity approval, the conditions and processes under which approval shall be granted, the procedures for communicating disapproval, the conditions under which an approved permit approval may be changed, and requirements for inspection of approved projects;

5. Establish by regulations, with the concurrence of the Director, a statewide permit fee schedule for stormwater management to cover all costs associated with the implementation of a VSMP related to land disturbing land-disturbing activities of one acre or greater. Such fee attributes include the costs associated with plan review, VSMP registration statement review, permit issuance, state-coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing activities as well as program oversight costs. The fee schedule shall also include a provision for a reduced fee for land disturbing 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 fee schedule shall be governed by the following:

a. The revenue generated from the statewide stormwater permit fee shall be collected utilizing, where practicable, an online payment system, and the Department's portion shall be 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 approved a VSMP, 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, with the balance going to the VSMP authority.

b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department or other supporting revenue from a VSMP; however, the fees shall be set at a level sufficient for the Department and the VSMP to fully carry out its their responsibilities under this article; and its attendant regulations and local ordinances or standards and specifications where applicable. When establishing a VSMP, the VSMP authority shall assess the statewide fee schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the portion available to the Department for program oversight responsibilities pursuant to subdivision A 5 a. A VSMP's portion of the fees shall be used solely to carry out the VSMP's responsibilities under this article and its attendant regulations, ordinances, or annual standards and specifications.

c. Until July 1, 2014, the fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the Board, or where the Board has issued an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities for an entity for which it has approved annual standards and specifications, shall be \$750 for each large construction activity with sites or common plans of development equal to or greater than five acres and \$450 for each small construction activity with sites or common plans of development equal to or greater than one acre and less than five acres. On and after July 1, 2014, such fees shall only apply where coverage has been issued under the Board's General Permit for Discharges of Stormwater from Construction Activities to a state agency or federal entity for which it has approved annual standards and specifications. After establishment, such fees may be modified in the future through regulatory actions.

d. Until July 1, 2014, the Department is authorized to assess a \$125 reinspection fee for each visit to a project site that was necessary to check on the status of project site items noted to be in noncompliance and documented as such on a prior project inspection.

e. When any fees are collected pursuant to this section by credit cards, business transaction costs associated with processing such payments may be additionally assessed.

6. Establish statewide standards for stormwater management from ~~land disturbing~~ 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~~ 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~~ VSMPs 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~~ Except where more stringent requirements are necessary to address TMDL requirements or to protect exceptional state waters, 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, 2, 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 man-made 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;

9. Promote the reclamation and reuse of stormwater for uses other than potable water in order to protect state waters and the public health and to minimize the direct discharge of pollutants into state waters;

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

11. Provide for the evaluation and potential inclusion of emerging or innovative stormwater control technologies that may prove effective in reducing nonpoint source pollution.

B. In accordance with the Administrative Process Act (§ 2.2-4000 et seq.), the Board may integrate and consolidate components of the Erosion and Sediment Control Regulations (4 VAC 50-30 et seq.) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20 et seq.) with the Virginia Stormwater Management (VSMP) Permit Regulations (4 VAC 50-60 et seq.) or repeal components so that these programs may be implemented in a consolidated manner that provides greater consistency, understanding, and efficiency for those regulated by and administering a VSMP.

§ 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 by the Department 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.

§ 10.1-603.4:2. Education and training programs.

A. The Board shall issue certificates of competence concerning the content and application of specified subject areas of this article and accompanying regulations, including program administration, plan review, and project inspection, to personnel of VSMP authorities and to any other persons who have completed training programs or in other ways demonstrated adequate knowledge to the satisfaction

of the Board. As part of education and training programs authorized pursuant to subsection E of § 10.1-561, the Department shall develop or certify expanded components to address program administration, plan review, and project inspection elements of the Stormwater Management Act (§ 10.1-603.2 et seq.) and attendant regulations. Reasonable fees to cover the costs of these additional components may be charged.

B. Effective July 1, 2014, personnel of VSMP authorities reviewing plans or conducting inspections pursuant to this chapter shall hold a certificate of competence as provided in subsection A. Professionals registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 shall be deemed to have met the provisions of this section.

§ 10.1-603.5. Annual standards and specifications for state agencies, federal entities, and other specified entities.

A. A state agency may not undertake any land clearing, soil movement, or construction activity involving soil movement or land disturbance unless the agency has submitted a permit application for the land-disturbing activity and the application has been reviewed and approved and a stormwater permit issued by the Department. State agencies entities, including the Department and the Department of Transportation, and for linear projects set out in subsection B, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies shall, and federal entities and authorities created pursuant to § 15.2-5102 may annually submit a single permit application containing stormwater management set of standards and specifications for all as part of their Board VSMP approval that describes how land disturbing land-disturbing activities shall be conducted under. Such standards and specifications shall be consistent with the requirements of this article and associated regulations including the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities and the Erosion and Sediment Control Law (§ 10.1-560 et seq.) and associated regulations. Each project constructed in accordance with the standards and specifications is required to obtain coverage issued under the state general permit prior to land disturbance. State agency stormwater management The standards and specifications shall include, but are not limited to:

1. Technical criteria to meet the requirements of this article and regulations developed under this article;

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 land-disturbing activities covered under this article; and

6. Requirements for documenting on-site changes as they occur to ensure compliance with the requirements of the article.

B. Linear projects subject to annual standards and specifications include:

1. Construction, installation, or maintenance of electric transmission, natural gas, and telephone utility lines and pipelines, and water and sewer lines; and

2. Construction of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

Linear projects not included in subdivisions 1 and 2 shall comply with the requirements of the local or state VSMP in the locality within which the project is located.

C. All state agencies shall comply with the provisions of this article and the stormwater management provisions of the Erosion and Sediment Control Law (§ 10.1-560 et seq.), 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 or inspections in response to a complaint to assure compliance with this article, the Erosion and Sediment Control Law, and regulations adopted thereunder. The Department may take enforcement actions in accordance with this chapter and related regulations.

C. The Department shall have 30 days in which to review the permit application and to issue its permit decision, which shall be binding on the state agency or the private business hired by the state agency.

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

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

§ 10.1-603.6. Duties of the Department.

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

B. The Department is authorized to review the ~~permit application~~ *stormwater management plan* for any project with real or potential interjurisdictional impacts upon the *joint* request of ~~one of~~ the involved localities to determine that the plan is consistent with the provisions of this article. Any such review shall be completed and a report submitted to each locality involved within 90 days of such request being accepted. *The Department may charge a fee that covers its costs for providing such services.*

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

§ 10.1-603.7. Authorization for more stringent ordinances.

A. Localities are authorized to adopt more stringent stormwater management ordinances than those necessary to ensure compliance with the Board's minimum regulations, provided that the more stringent ordinances are based upon factual findings of local or regional comprehensive watershed management studies or findings developed through the implementation of a MS4 permit or a locally adopted watershed management study and are determined by the locality to be necessary to prevent any further degradation to water resources, *to address TMDL requirements, to protect exceptional state waters,* or to address specific existing water pollution including nutrient and sediment loadings, stream channel erosion, depleted groundwater resources, or excessive localized flooding within the watershed and that prior to adopting more stringent ordinances a public hearing is held after giving due notice. Localities shall report to the Board when more stringent stormwater management ordinances are determined to be necessary pursuant to this section.

B. Any *provisions of a* local stormwater management program in existence before January 1, 2005, that contains more stringent provisions than this article shall be exempt from the *analysis* requirements of subsection A. *However, such provisions shall be reported to the Board as part of the locality's VSMP approval package.*

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

A. A person shall not ~~develop any land for residential, commercial, industrial, or institutional use~~ *conduct any land-disturbing activity* until he has submitted a permit application to ~~the permit issuing authority~~ *the VSMP authority that includes a state VSMP permit registration statement and, after July 1, 2014, a stormwater management plan,* and has obtained a ~~permit~~ *VSMP authority approval* to begin land disturbance. *Upon the development of an online reporting system by the Department, but no later than July 1, 2014, a VSMP authority shall then be required to obtain evidence of VSMP permit coverage where it is required prior to providing approval to begin land disturbance.* The ~~permit issuing~~ *VSMP authority* shall act on any permit application within 60 days after it has been determined by the ~~permit issuing~~ *VSMP authority* to be a complete application. The ~~permit issuing~~ *VSMP authority* may either issue the ~~permit~~ or ~~deny the permit~~ *project approval or denial* and shall provide written rationale for the denial. The ~~permit issuing~~ *VSMP authority* shall act on any permit application that has been previously disapproved within 45 days after the application has been revised, resubmitted for approval, and deemed complete. Prior to issuance of any ~~permit approval~~, the ~~permit issuing~~ *VSMP authority* may also require an applicant, excluding ~~those regulated under § 10.1-603.5~~ *state and federal entities*, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the ~~permit issuing~~ *VSMP authority*, to ensure that measures could be taken by the ~~permit issuing~~ *VSMP authority* at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the permit conditions as a result of his ~~land disturbing~~ *land-disturbing* activity. If the ~~permit issuing~~ *VSMP authority* takes such action upon such failure by the applicant, the ~~permit issuing~~ *VSMP authority* may collect from the applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated. These requirements are in addition to all other provisions of law relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

B. *A Chesapeake Bay Preservation Act Land-Disturbing Activity shall be subject to coverage under the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities until July 1, 2014, at which time it shall not be considered a small construction activity but shall be then regulated under the requirements of this article by a VSMP authority.*

C. Notwithstanding any other provisions of this article, the following activities are exempt, *unless otherwise required by federal law:*

1. Permitted surface or deep mining operations and projects, or oil and gas operations and projects

conducted under the provisions of Title 45.1;

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

3. Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing 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 disturbing~~ Land-disturbing activities that disturb less than one acre of land area except for ~~land disturbing~~ 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 *any* locality ~~which has adopted a stormwater management program that administers a VSMP~~ may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;

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;

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

87. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection.

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.~~

§ 10.1-603.8.1. Stormwater nonpoint nutrient offsets.

A. As used in this section:

"Nonpoint nutrient offset" means nutrient reductions certified as nonpoint nutrient offsets under the Chesapeake Bay Watershed Nutrient Exchange Program (§ 62.1-44.19:12 et seq.).

"Permit issuing authority" has the same meaning as in § 10.1-603.2 and includes any locality that has adopted a local stormwater management program.

"Tributary" has the same meaning as in § 62.1-44.19:13.

"Virginia Stormwater Management Program" has the same meaning as in § 10.1-603.2 and includes, until July 1, 2014, any locality that has adopted a local stormwater management program.

B. Permit issuing authorities are A VSMP authority is authorized to allow compliance with stormwater nonpoint nutrient runoff water quality criteria established pursuant to § 10.1-603.4, in whole or in part, through the use of the ~~permittee's~~ applicant's acquisition of nonpoint nutrient offsets in the same tributary.

C. No permit issuing VSMP authority shall allow the use of nonpoint nutrient offsets to address water quantity control requirements. No permit issuing VSMP authority shall allow the use of nonpoint nutrient offsets or other off-site options in contravention of local water quality-based limitations: (i) consistent with determinations made pursuant to ~~subsection B of § 62.1-44.19:7~~ § 62.1-44.15, (ii) contained in a local ordinance developed as part of a municipal separate storm sewer system (MS4) program plan ~~approved~~ accepted by the Department, ~~or~~ (iii) necessary to protect public water supplies or exceptional state waters, or (iv) as otherwise may be established or approved by the Board. In situations where a local TMDL has been approved to protect water quality, off-site options may be considered, provided that such options are located within the affected local watershed.

D. A permit issuing VSMP authority shall allow off-site options in accordance with subsection I

when:

1. The *state* permit applicant demonstrates to the satisfaction of the ~~permit issuing~~ VSMP authority that (i) alternative site designs have been considered that may accommodate on-site best management practices, (ii) on-site best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate on-site best management practices will be implemented, and (iv) full compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably be met on site. For purposes of this subdivision, if an applicant demonstrates on-site control of at least 75 percent of the required phosphorous nutrient reductions, the applicant shall be deemed to have met the requirements of clauses (i) through (iv);

2. Less than five acres of land will be disturbed; or

3. The postconstruction phosphorous control requirement is less than 10 pounds per year.

E. Documentation of the ~~permittee's applicant's~~ acquisition of nonpoint nutrient offsets shall be provided to the ~~permit issuing~~ VSMP authority and the Department in a certification from an offset broker documenting the number of phosphorus nonpoint nutrient offsets acquired, *the costs of the offsets per pound of phosphorus*, and the associated ratio of nitrogen nonpoint nutrient offsets at the offset generating facility. The offset broker shall pay the ~~permit issuing~~ VSMP authority a water quality enhancement fee equal to six percent of the amount paid by the ~~permittee applicant~~ for the nonpoint nutrient offsets. If a locality is not the ~~permit issuing~~ VSMP authority, such fee shall be deposited into the Virginia Stormwater Management Fund established by § 10.1-603.4:1. If the ~~permit issuing~~ VSMP authority is a locality, such fees shall be used solely in the locality where the associated stormwater permit applies for inspection and maintenance of stormwater best management practices, stormwater educational programs, or programs designed to protect or improve local water quality.

F. Nonpoint nutrient offsets used pursuant to subsection B shall be generated in the same or adjacent eight digit hydrologic unit code as defined by the United States Geological Survey as the permitted site *unless a more localized offset is required in accordance with subsection C to protect water quality*. Nonpoint nutrient offsets outside the same or adjacent eight digit hydrologic unit code may only be used if it is determined by the ~~permit issuing~~ VSMP authority that no nonpoint nutrient offsets are available within the same or adjacent eight digit hydrologic unit code when the ~~permit issuing~~ VSMP authority accepts the final site design. In such cases, and subject to other limitations imposed in this section, nonpoint nutrient offsets generated within the same tributary may be used. In no case shall nonpoint nutrient offsets from another tributary be used.

G. For that portion of a site's compliance with stormwater nonpoint nutrient runoff water quality criteria being obtained through nonpoint nutrient offsets, a ~~permit issuing~~ VSMP authority shall (i) use a 1:1 ratio of the nonpoint nutrient offsets to the site's remaining postdevelopment nonpoint nutrient runoff compliance requirement and (ii) assure that the nonpoint nutrient offsets are secured in perpetuity.

H. No ~~permit issuing~~ VSMP authority may grant an exception to, or waiver of, postdevelopment nonpoint nutrient runoff compliance requirements unless off-site options have been considered and found not available.

I. The ~~permit issuing~~ VSMP authority shall require that nonpoint nutrient offsets and other off-site options approved by the Department or applicable state board, including locality pollutant loading pro rata share programs established pursuant to § 15.2-2243, achieve the necessary nutrient reductions prior to the commencement of the ~~permittee's applicant's~~ land-disturbing activity. A pollutant loading pro rata share program established by a locality pursuant to § 15.2-2243 and approved by the Department or applicable state board prior to January 1, 2011, including those that may achieve nutrient reductions after the commencement of the land-disturbing activity, may continue to operate in the approved manner for a transition period ending ~~June 30~~ July 1, 2014. The ~~permittee applicant~~ shall have the right to select between the use of nonpoint nutrient offsets or other off-site options, except during the transition period in those localities to which the transition period applies. The locality may use funds collected for nutrient reductions pursuant to a locality pollutant loading pro rata share program under § 15.2-2243 for nutrient reductions in the same tributary within the same locality as the land-disturbing activity or for the acquisition of nonpoint nutrient offsets. In the case of a phased project, the ~~permittee applicant~~ may acquire or achieve the off-site nutrient reductions prior to the commencement of each phase of the land-disturbing activity in an amount sufficient for each such phase.

J. The Board may establish by regulation a stormwater nutrient program for portions of the Commonwealth that do not drain into the Chesapeake Bay.

K. Nutrient reductions obtained through nonpoint nutrient offsets shall be credited toward compliance with any nutrient allocation assigned to a municipal separate storm sewer system in a Virginia Stormwater Management Program Permit or Total Maximum Daily Load applicable to the location where the activity for which the nonpoint nutrient offsets are used takes place. If the activity for which the nonpoint nutrient offsets are used does not discharge to a municipal separate storm sewer system, the nutrient reductions shall be credited toward compliance with the applicable nutrient allocation.

L. A permit issuing VSMP authority shall allow the full or partial substitution of nonpoint nutrient offsets for existing on-site nutrient controls when (i) the nonpoint nutrient offsets will compensate for 10 or fewer pounds of the annual phosphorous requirement associated with the original land-disturbing activity or (ii) existing on-site controls are not functioning as anticipated after reasonable attempts to comply with applicable maintenance agreements or requirements and the use of nonpoint nutrient offsets will account for the deficiency. The party responsible for maintenance shall be released from maintenance obligations related to the on-site phosphorous controls for which the nonpoint nutrient offsets are substituted. *The Department shall be notified by the state permit applicant within seven days of such substitution and shall be provided details of the action.*

M. To the extent available, with the consent of the permittee applicant, the permit issuing VSMP authority may include the use of nonpoint nutrient offsets or other off-site measures in resolving enforcement actions to compensate for (i) nutrient control deficiencies occurring during the period of noncompliance and (ii) permanent nutrient control deficiencies.

N. This section shall not be construed as limiting the authority established under § 15.2-2243; however, under any pollutant loading pro rata share program established thereunder, the subdivider or developer shall be given appropriate credit for nutrient reductions achieved through nonpoint nutrient offsets or other off-site options.

O. *Prior to land disturbance, in order to properly account for allowed nonpoint nutrient off-site reductions, an applicant shall report to the Department, in accordance with Department procedures, information regarding all off-site reductions that have been authorized to meet stormwater postdevelopment nonpoint nutrient runoff compliance requirements.*

§ 10.1-603.11. Monitoring, reports, investigations, inspections, and stop work orders.

A. The permit issuing VSMP authority (i) shall provide for periodic inspections of the installation of stormwater management measures (ii) may require monitoring and reports from the person responsible for meeting the permit conditions to ensure compliance with the permit and to determine whether the measures required in the 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. If the permit issuing VSMP authority, where authorized to enforce this article, or the Department determines that there is a failure to comply with the permit conditions, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by registered or certified mail to the address specified in the permit application, or by delivery at the site of the development activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, *a stop work order may be issued in accordance with subsection B by the VSMP authority, where authorized to enforce this article, or by the Department, or the permit may be revoked by the permit issuing VSMP authority, or the state permit may be revoked by the Board and the permittee or person responsible for carrying out the permit conditions shall be deemed to be in violation of this article and upon conviction shall be subject to the penalties provided by. The Board or the VSMP authority, where authorized to enforce this article, may pursue enforcement in accordance with § 10.1-603.14.*

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

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

2. Where a permit issuing authority has been established, and such authority is not vested in an employee or officer of local government but in the commissioner of revenue or some other person, the locality shall exercise the responsibilities of the permit issuing authority with respect to monitoring, reports, inspections, and enforcement unless such responsibilities are transferred as provided for in this section. *If a permittee fails to comply with a notice issued in accordance with subsection A within the time specified, the VSMP authority or the Department is authorized to issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.*

Such orders are to be issued in accordance with the requirements of the Administrative Process Act (§ 2.2-4000 et seq.) and shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the VSMP authority or Department. However, if the VSMP authority or the Department finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing

activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.

If a person who has been issued an order is not complying with the terms thereof, the VSMP authority or the Department may institute a proceeding in accordance with § 10.1-603.12:4.

§ 10.1-603.12. Department to review VSMPs.

A. The Department shall develop and implement a review and evaluation schedule so that the effectiveness of each local government's and state agency's stormwater management program VSMP authority, Municipal Separate Storm Sewer System Management Program, and other MS4 permit requirements is evaluated no less than every five years. The review shall include an assessment of the extent to which the program has reduced nonpoint source pollution and mitigated the detrimental effects of localized flooding. Such reviews shall be coordinated with those being implemented in accordance with the Erosion and Sediment Control Law (§ 10.1-560 et seq.) and associated regulations and the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) and associated regulations.

B. Following completion of a compliance review of a VSMP, the Department shall provide results and compliance recommendations to the Board in the form of a corrective action agreement if deficiencies are found; otherwise, the Board may find the program compliant. If, after such a review and evaluation, a local government VSMP is found to have a program that does not comply with the provisions of this article or regulations adopted thereunder, the Board may issue an order requiring that necessary corrective action be taken within a reasonably prescribed time shall establish a schedule for the VSMP authority to come into compliance. The Board shall provide a copy of its decision to the VSMP authority that specifies the deficiencies, actions needed to be taken, and the approved compliance schedule. If the local government VSMP has not implemented the corrective action necessary compliance actions identified by the Board within 30 days following receipt of the notice corrective action agreement, or such additional period as is necessary granted to complete the implementation of the corrective action, then the Board shall take administrative and legal actions to ensure compliance with the provisions of this article. If the program is delegated to the locality by the Board, the Board may revoke such delegation and have the Department administer the program have the authority to (i) issue a special order to any VSMP imposing a civil penalty not to exceed \$5,000 per day with the maximum amount not to exceed \$20,000 per violation for noncompliance with the requirements of this article and its regulations, to be paid into the state treasury and deposited in the Virginia Stormwater Management Fund established by § 10.1-603.4:1 or (ii) revoke its approval of the VSMP. The Administrative Process Act (§ 2.2-4000 et seq.) shall govern the activities and proceedings of the Board under this article and the judicial review thereof.

If the Board revokes its approval of a VSMP, the Board shall find the VSMP authority provisional, and shall have the Department assist with the administration of the program until the VSMP authority is deemed compliant with the requirements of this article and associated regulations. Assisting with administration includes the ability to review and comment on plans to the VSMP authority, to conduct inspections with the VSMP authority, and to conduct enforcement in accordance with this article and associated regulations.

In lieu of issuing a special order or revoking the program, the Board may take legal action against a VSMP pursuant to § 10.1-603.14 to ensure compliance.

§ 10.1-603.12:1. Right of entry.

The Department, the permit issuing VSMP authority, where authorized to enforce this article, any duly authorized agent of the Department or permit issuing VSMP authority, or any locality that is the operator of a regulated municipal separate storm sewer system may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this article. For operators of municipal separate storm sewer systems, this authority shall apply only to those properties from which a discharge enters their municipal separate storm sewer systems.

In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, a VSMP authority may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.

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

The Board, the Department, or the permit issuing VSMP authority, where authorized to enforce this article, may require every permit applicant or, permittee, or any person subject to state permit requirements under this article to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish

the purposes of this article. Any personal information shall not be disclosed except to an appropriate official of the Board, Department, US EPA, or ~~permit issuing~~ VSMP authority or as may be authorized pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). However, disclosure of records of the Department, the Board, or the ~~permit issuing~~ VSMP authority relating to (i) active federal environmental enforcement actions that are considered confidential under federal law, (ii) enforcement strategies, including proposed sanctions for enforcement actions, and (iii) any secret formulae, secret processes, or secret methods other than effluent data used by any ~~permittee~~ *permittee* or under that ~~permittee's~~ *permittee's* direction is prohibited. Upon request, such enforcement records shall be disclosed after a proposed sanction resulting from the investigation has been determined by the Department, the Board, or the ~~permit issuing~~ VSMP authority. This section shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any ~~land disturbing~~ *land-disturbing* activity that may have occurred, or similar documents.

§ 10.1-603.12:3. Private rights; liability.

A. Whenever a common interest community cedes responsibility for the maintenance, repair, and replacement of a stormwater management facility on its real property to the Commonwealth or political subdivision thereof, such common interest community shall be immune from civil liability in relation to such stormwater management facility. In order for the immunity established by this subsection to apply, (i) the common interest community must cede such responsibility by contract or other instrument executed by both parties and (ii) the Commonwealth or the governing body of the political subdivision shall have accepted the responsibility ceded by the common interest community in writing or by resolution. As used in this section, maintenance, repair, and replacement shall include, without limitation, cleaning of the facility, maintenance of adjacent grounds which are part of the facility, maintenance and replacement of fencing where the facility is fenced, and posting of signage indicating the identity of the governmental entity which maintains the facility. Acceptance or approval of an easement, subdivision plat, site plan, or other plan of development shall not constitute the acceptance by the Commonwealth or the governing body of the political subdivision required to satisfy subdivision (ii). The immunity granted by this section shall not apply to actions or omissions by the common interest community constituting intentional or willful misconduct or gross negligence. For the purposes of this section, "common interest community" means the same as that term is defined in § 55-528.

B. Except as provided in subsection A, the fact that any permittee holds or has held a permit *or state permit* issued under this article shall not constitute a defense in any civil action involving private rights.

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

A. It ~~shall be~~ *is* unlawful for any person to fail to comply with any *stop work order, emergency order issued in accordance with § 10.1-603.11, or a special order or emergency special order issued in accordance with § 10.1-603.2:1* that has become final under the provisions of this article. Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, *approved standard and specification*, order, or any permit condition issued by the Board, Department, or ~~permit issuing~~ VSMP authority as authorized to do such, or any provisions of this article may be compelled in a proceeding instituted in any appropriate court by the Board, Department, or ~~permit issuing~~ VSMP authority *where authorized to enforce this article* to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy.

B. *Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty in accordance with the provisions of § 10.1-603.14.*

§ 10.1-603.12:6. Right to hearing.

Any permit applicant ~~or~~ , permittee, *or person subject to state permit requirements* under this article aggrieved by any action of the ~~permit issuing~~ VSMP authority, Department, or Board taken without a formal hearing, or by inaction of the ~~permit issuing~~ VSMP authority, Department, or Board, may demand in writing a formal hearing by the Board or ~~locality~~ *VSMP authority* causing such ~~permit applicant's or permittee's~~ grievance, provided a petition requesting such hearing is filed with the Board or the ~~locality~~ *VSMP authority* within 30 days after notice of such action.

§ 10.1-603.12:7. Hearings.

A. The hearings held under this article pertaining to the responsibilities or actions of the Board may 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~~ *VSMP authorities* holding hearings under this article shall do so in a manner consistent with this section.

§ 10.1-603.13. Appeals.

Any permittee or party aggrieved by a *state* permit or enforcement decision of the ~~permit issuing authority~~ *Department* 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~~ *Department* 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~~ *Department* 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~~ *the Administrative Process Act (§ 2.2-4000 et seq.)* shall not apply to decisions rendered by localities *but appeals shall be conducted in accordance with local appeal procedures.*

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

A. Any person who violates any provision of this article, or of any regulations ~~or~~, ordinances, *or standards and specifications* adopted *or approved* hereunder, including those adopted pursuant to the conditions of an MS4 permit or who fails, neglects, or refuses to comply with any order of the ~~permit issuing~~ *VSMP authority where authorized to enforce this article*, the Department, Board, or court, issued as herein provided, shall be subject to a civil penalty not to exceed \$32,500 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~~ *VSMP authority* in enforcing the provisions of this article. The Board, Department, or ~~permit issuing~~ *VSMP 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 ~~enunci~~ court. Any civil penalties assessed by a court as a result of a summons issued by a locality *as an approved VSMP authority* 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~~ *VSMP authority where authorized to enforce this article* or the Department, ordinance of any locality *approved as a VSMP authority*, any condition of a permit *or state 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 \$32,500, 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~~ *VSMP authority* or the Department, ordinance of any locality *approved as a VSMP authority*, any condition of a permit *or state permit*, or any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this article or knowingly renders inaccurate any monitoring device or method required to be maintained under this article, shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate offense.

C. Any person who knowingly violates any provision of this article, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than 15 years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of \$1 million or an amount that is three times the economic benefit realized by the

defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.

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

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

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

§ 10.1-603.14:1. Enforcement authority of MS4 localities.

A. ~~Any locality may~~ *Localities shall* adopt a stormwater ordinance pursuant to the conditions of a MS4 permit ~~and that is consistent with this article and its associated regulations and that contains provisions including the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities and shall include additional provisions as required to comply with a state MS4 permit.~~ Such locality may utilize the civil penalty provisions in subsection A of § 10.1-603.14, the injunctive authority as provided for in subdivision D 1 of § 10.1-603.14, and the civil charges as authorized in subdivision D 2 of § 10.1-603.14, to enforce the ordinance. At the request of another MS4, the locality may apply the penalties provided for in this section to direct or indirect discharges to any MS4 located within its jurisdiction.

B. Any person who willfully and knowingly violates any provision of such an ordinance is guilty of a Class 1 misdemeanor.

C. The local ordinance authorized by this section shall remain in full force and effect until the locality has been delegated the authority to administer a local stormwater management program, whereupon the locality shall adopt an ordinance that is consistent with Article 1-1 (§ 10.1-603.1 et seq.) of Chapter 6 of this title.

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

~~Localities operating their own programs~~ A VSMP authority and the Department are authorized to cooperate and enter into agreements with any federal or state agency in connection with ~~permits the requirements for land disturbing land-disturbing activities for stormwater management.~~

§ 10.1-659. Flood protection programs; coordination.

The provisions of this chapter shall be coordinated with federal, state and local flood prevention and water quality programs to minimize loss of life, property damage and negative impacts on the environment. This program coordination shall include but not be limited to the following: flood prevention, flood plain management, small watershed protection, dam safety, soil conservation, stormwater management and erosion and sediment control programs of the Department of Conservation and Recreation; the construction activities of the Department of Transportation which result in hydrologic modification of rivers, streams and flood plains; the water quality and other water management programs of the State Water Control Board; forested watershed management programs of the Department of Forestry; the statewide building code and other land use control programs of the Department of Housing and Community Development; ~~local planning assistance programs of the Council on the Environment~~; the habitat management programs of the Virginia Marine Resources Commission; the hazard mitigation planning and disaster response programs of the Department of Emergency Management; the fish habitat protection programs of the Department of Game and Inland Fisheries; the mineral extraction regulatory program of the Department of Mines, Minerals and Energy; the flood plain restrictions of the Department of Waste Management; the Chesapeake Bay Preservation Area criteria and local government assistance programs of the ~~Chesapeake Bay Local Assistance Board~~ *Virginia Soil and Water Conservation Board*. The Department shall also coordinate and cooperate with localities in rendering assistance to such localities in their efforts to comply with the planning, subdivision of land and zoning provisions of Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2. The Department shall cooperate with other public and private agencies having flood plain management programs, and shall coordinate its responsibilities under this article and any other law. These activities shall constitute the Commonwealth's flood prevention and protection program.

§ 10.1-2101. Definitions.

For the purposes of this chapter, the following words shall have the meanings respectively ascribed to them:

"Board" means ~~Chesapeake Bay Local Assistance Board~~ *Virginia Soil and Water Conservation*

1720 Board.

1721 "Chesapeake Bay Preservation Area" means an area delineated by a local government in accordance
1722 with criteria established pursuant to § 10.1-2107.

1723 "Criteria" means criteria developed by the Board pursuant to § 10.1-2107 of this chapter for the
1724 purpose of determining the ecological and geographic extent of Chesapeake Bay Preservation Areas and
1725 for use by local governments in permitting, denying, or modifying requests to rezone, subdivide, or to
1726 use and develop land in Chesapeake Bay Preservation Areas.

1727 "Department" means the Department of Conservation and Recreation.

1728 "Director" means the Director of the Department of Conservation and Recreation.

1729 "Person" means any corporation, association, or partnership, one or more individuals, or any unit of
1730 government or agency thereof.

1731 "Secretary" means the Secretary of Natural Resources.

1732 "State waters" means all waters, on the surface or under the ground, wholly or partially within or
1733 bordering the Commonwealth or within its jurisdiction.

1734 "Tidewater Virginia" means the following jurisdictions:

1735 The Counties of Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax,
1736 Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William,
1737 Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince
1738 William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York, and the Cities of
1739 Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell,
1740 Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach, and
1741 Williamsburg.

1742 § 10.1-2104.1 Program compliance.

1743 Program compliance reviews conducted in accordance with § 10.1-2103 and the regulations
1744 associated with this article shall be coordinated where applicable with those being implemented in
1745 accordance with the Erosion and Sediment Control Law (§ 10.1-560 et seq.) and associated regulations
1746 and the Stormwater Management Control Act (§ 10.1-603.2 et seq.) and associated regulations. The
1747 Department may also conduct a comprehensive or partial program compliance review and evaluation of
1748 a local government program more frequently than the standard schedule.

1749 Following completion of a compliance review of a local government program, the Department shall
1750 provide results and compliance recommendations to the Board in the form of a corrective action
1751 agreement should deficiencies be found; otherwise, the Board may find the program compliant. When
1752 deficiencies are found, the Board will establish a schedule for the local government to come into
1753 compliance. The Board shall provide a copy of its decision to the local government that specifies the
1754 deficiencies, actions needed to be taken, and the approved compliance schedule. If the local government
1755 has not implemented the necessary compliance actions identified by the Board within 30 days following
1756 receipt of the corrective action agreement, or such additional period as is granted to complete the
1757 implementation of the compliance actions, then the Board shall have the authority to issue a special
1758 order to any local government imposing a civil penalty not to exceed \$5,000 per day with the maximum
1759 amount not to exceed \$20,000 per violation for noncompliance with the state program, to be paid into
1760 the state treasury and deposited in the Virginia Stormwater Management Fund established by
1761 § 10.1-603.4:1.

1762 The Administrative Process Act (§ 2.2-4000 et seq.) shall govern the activities and proceedings of the
1763 Board under this article and the judicial review thereof.

1764 In lieu of issuing a special order, the Board is also authorized to take legal action against a local
1765 government to ensure compliance.

1766 § 10.1-2106. Powers and duties of Director.

1767 A. In addition to the other responsibilities set forth herein, the Director shall carry out management
1768 and supervisory responsibilities in accordance with the regulations and policies of the Board. In no event
1769 shall the Director have the authority to promulgate any final adopt regulations.

1770 B. The Director shall be vested with all the authority of the Board related to this article, including
1771 the authority granted by § 10.1-2104, when it is not in session, subject to such regulations as may be
1772 prescribed by the Board.

1773 § 10.1-2107. Board to develop criteria.

1774 A. In order to implement the provisions of this chapter and to assist counties, cities and towns in
1775 regulating the use and development of land and in protecting the quality of state waters, the Board shall
1776 promulgate regulations which establish criteria for use by local governments to determine the ecological
1777 and geographic extent of Chesapeake Bay Preservation Areas. The Board shall also promulgate
1778 regulations which establish criteria for use by local governments in granting, denying, or modifying
1779 requests to rezone, subdivide, or to use and develop land in these areas.

1780 B. In developing and amending the criteria, the Board shall consider all factors relevant to the

1781 protection of water quality from significant degradation as a result of the use and development of land.
1782 The criteria shall incorporate measures such as performance standards, best management practices, and
1783 various planning and zoning concepts to protect the quality of state waters while allowing use and
1784 development of land consistent with the provisions of this chapter. The criteria adopted by the Board,
1785 operating in conjunction with other state water quality programs, shall encourage and promote: (i)
1786 protection of existing high quality state waters and restoration of all other state waters to a condition or
1787 quality that will permit all reasonable public uses and will support the propagation and growth of all
1788 aquatic life, including game fish, which might reasonably be expected to inhabit them; (ii) safeguarding
1789 the clean waters of the Commonwealth from pollution; (iii) prevention of any increase in pollution; (iv)
1790 reduction of existing pollution; and (v) promotion of water resource conservation in order to provide for
1791 the health, safety and welfare of the present and future citizens of the Commonwealth.

1792 C. Prior to the development or amendment of criteria, the Board shall give due consideration to,
1793 among other things, the economic and social costs and benefits which can reasonably be expected to
1794 obtain as a result of the adoption or amendment of the criteria.

1795 D. In developing such criteria the Board may consult with and obtain the comments of any federal,
1796 state, regional, or local agency that has jurisdiction by law or special expertise with respect to the use
1797 and development of land or the protection of water. The Board shall give due consideration to the
1798 comments submitted by such federal, state, regional, or local agencies.

1799 E. ~~Criteria shall be adopted by July 1, 1989~~ *Effective July 1, 2014, requirements promulgated under*
1800 *this article directly related to compliance with the Erosion and Sediment Control Law (§ 10.1-560 et*
1801 *seq.) and the Stormwater Management Act (§ 10.1-603.2 et seq.) and regulated under the authority of*
1802 *those laws shall cease to have effect.*

1803 § 10.1-2129. Agency coordination; conditions of grants.

1804 A. If, in any fiscal year beginning on or after July 1, 2005, there are appropriations to the Fund in
1805 addition to those made pursuant to subsection A of § 10.1-2128, the Secretary of Natural Resources shall
1806 distribute those moneys in the Fund provided from the 10 percent of the annual general fund revenue
1807 collections that are in excess of the official estimates in the general appropriation act, and the 10 percent
1808 of any unrestricted and uncommitted general fund balance at the close of each fiscal year whose
1809 reappropriation is not required in the general appropriation act, as follows:

1810 1. Seventy percent of the moneys shall be distributed to the Department of Conservation and
1811 Recreation and shall be administered by it for the sole purpose of implementing projects or best
1812 management practices that reduce nitrogen and phosphorus nonpoint source pollution, with a priority
1813 given to agricultural best management practices. In no single year shall more than 60 percent of the
1814 moneys be used for projects or practices exclusively within the Chesapeake Bay watershed; and

1815 2. Thirty percent of the moneys shall be distributed to the Department of Environmental Quality,
1816 which shall use such moneys for making grants for the sole purpose of designing and installing nutrient
1817 removal technologies for publicly owned treatment works designated as significant dischargers or
1818 eligible nonsignificant dischargers. The moneys shall also be available for grants when the design and
1819 installation of nutrient removal technology utilizes the Public-Private Education Facilities and
1820 Infrastructure Act (§ 56-575.1 et seq.).

1821 3. Except as otherwise provided in the Appropriation Act, in any fiscal year when moneys are not
1822 appropriated to the Fund in addition to those specified in subsection A of § 10.1-2128, or when moneys
1823 appropriated to the Fund in addition to those specified in subsection A of § 10.1-2128 are less than 40
1824 percent of those specified in subsection A of § 10.1-2128, the Secretary of Natural Resources, in
1825 consultation with the Secretary of Agriculture and Forestry, the State Forester, the Commissioner of
1826 Agriculture and Consumer Services, and the Directors of the Departments of Environmental Quality and
1827 Conservation and Recreation, and with the advice and guidance of the Board of Conservation and
1828 Recreation, the Virginia Soil and Water Conservation Board, ~~and the State Water Control Board, and the~~
1829 ~~Chesapeake Bay Local Assistance Board~~, and following a public comment period of at least 30 days and
1830 a public hearing, shall allocate those moneys deposited in the Fund, but excluding any moneys deposited
1831 into the Virginia Natural Resources Commitment Fund established pursuant to § 10.1-2128.1, between
1832 point and nonpoint sources, both of which shall receive moneys in each such year.

1833 B. 1. Except as may otherwise be specified in the general appropriation act, the Secretary of Natural
1834 Resources, in consultation with the Secretary of Agriculture and Forestry, the State Forester, the
1835 Commissioner of Agriculture and Consumer Services, the State Health Commissioner, and the Directors
1836 of the Departments of Environmental Quality and Conservation and Recreation, and with the advice and
1837 guidance of the Board of Conservation and Recreation, the Virginia Soil and Water Conservation Board,
1838 ~~and the State Water Control Board, and the Chesapeake Bay Local Assistance Board~~, shall develop
1839 written guidelines that (i) specify eligibility requirements; (ii) govern the application for and the
1840 distribution and conditions of Water Quality Improvement Grants; (iii) list criteria for prioritizing
1841 funding requests; and (iv) define criteria and financial incentives for water reuse.

1842 2. In developing the guidelines the Secretary shall evaluate and consider, in addition to such other

factors as may be appropriate to most effectively restore, protect and improve the quality of state waters: (i) specific practices and programs proposed in any tributary strategy plan, and the associated effectiveness and cost per pound of nutrients removed; (ii) water quality impairment or degradation caused by different types of nutrients released in different locations from different sources; and (iii) environmental benchmarks and indicators for achieving improved water quality. The process for development of guidelines pursuant to this subsection shall, at a minimum, include (a) use of an advisory committee composed of interested parties; (b) a 60-day public comment period on draft guidelines; (c) written responses to all comments received; and (d) notice of the availability of draft guidelines and final guidelines to all who request such notice.

3. In addition to those the Secretary deems advisable to most effectively restore, protect and improve the quality of state waters, the criteria for prioritizing funding requests shall include: (i) the pounds of total nitrogen and the pounds of total phosphorus reduced by the project; (ii) whether the location of the water quality restoration, protection or improvement project or program is within a watershed or subwatershed with documented water nutrient loading problems or adopted nutrient reduction goals; (iii) documented water quality impairment; and (iv) the availability of other funding mechanisms. Notwithstanding the provisions of subsection E of § 10.1-2131, the Director of the Department of Environmental Quality may approve a local government point source grant application request for any single project that exceeds the authorized grant amount outlined in subsection E of § 10.1-2131. Whenever a local government applies for a grant that exceeds the authorized grant amount outlined in this chapter or when there is no stated limitation on the amount of the grant for which an application is made, the Directors and the Secretary shall consider the comparative revenue capacity, revenue efforts and fiscal stress as reported by the Commission on Local Government. The development or implementation of cooperative programs developed pursuant to subsection B of § 10.1-2127 shall be given a high priority in the distribution of Virginia Water Quality Improvement Grants from the moneys allocated to nonpoint source pollution.

§ 62.1-195.1. Chesapeake Bay; drilling for oil or gas prohibited.

A. Notwithstanding any other law, a person shall not drill for oil or gas in the waters of the Chesapeake Bay or any of its tributaries. In Tidewater Virginia, as defined in § 10.1-2101, a person shall not drill for oil or gas in, whichever is the greater distance, as measured landward of the shoreline:

1. Those Chesapeake Bay Preservation Areas, as defined in § 10.1-2101, which a local government designates as "Resource Protection Areas" and incorporates into its local comprehensive plan. "Resource Protection Areas" shall be defined according to the criteria developed by the ~~Chesapeake Bay Local Assistance Board~~ *Virginia Soil and Water Conservation Board* pursuant to § 10.1-2107; or

2. Five hundred feet from the shoreline of the waters of the Chesapeake Bay or any of its tributaries.

B. In the event that any person desires to drill for oil or gas in any area of Tidewater Virginia where drilling is not prohibited by the provisions of subsection A of this section, he shall submit to the Department of Mines, Minerals and Energy as part of his application for permit to drill an environmental impact assessment. The environmental impact assessment shall include:

1. The probabilities and consequences of accidental discharge of oil or gas into the environment during drilling, production, and transportation on:

- a. Finfish, shellfish, and other marine or freshwater organisms;
- b. Birds and other wildlife that use the air and water resources;
- c. Air and water quality; and
- d. Land and water resources;

2. Recommendations for minimizing any adverse economic, fiscal, or environmental impacts; and

3. An examination of the secondary environmental effects of induced economic development due to the drilling and production.

C. Upon receipt of an environmental impact assessment, the Department of Mines, Minerals and Energy shall notify the Department of Environmental Quality to coordinate a review of the environmental impact assessment. The Department of Environmental Quality shall:

1. Publish in the Virginia Register of Regulations a notice sufficient to identify the environmental impact assessment and providing an opportunity for public review of and comment on the assessment. The period for public review and comment shall not be less than ~~thirty~~ 30 days from the date of publication;

2. Submit the environmental impact assessment to all appropriate state agencies to review the assessment and submit their comments to the Department of Environmental Quality; and

3. Based upon the review by all appropriate state agencies and the public comments received, submit findings and recommendations to the Department of Mines, Minerals and Energy, within ~~ninety~~ 90 days after notification and receipt of the environmental impact assessment from the Department.

D. The Department of Mines, Minerals and Energy may not grant a permit under § 45.1-361.29 until it has considered the findings and recommendations of the Department of Environmental Quality.

1904 E. The Department of Environmental Quality shall, in conjunction with other state agencies and in
1905 conformance with the Administrative Process Act (§ 2.2-4000 et seq.), develop criteria and procedures to
1906 assure the orderly preparation and evaluation of environmental impact assessments required by this
1907 section.

1908 F. A person may drill an exploratory well or a gas well in any area of Tidewater Virginia where
1909 drilling is not prohibited by the provisions of subsection A of this section only if:

1910 1. For directional drilling, the person has the permission of the owners of all lands to be directionally
1911 drilled into;

1912 2. The person files an oil discharge contingency plan and proof of financial responsibility to
1913 implement the plan, both of which have been filed with and approved by the State Water Control Board.
1914 For purposes of this section, the oil discharge contingency plan shall comply with the requirements set
1915 forth in § 62.1-44.34:15. The Board's regulations governing the amount of any financial responsibility
1916 required shall take into account the type of operation, location of the well, the risk of discharge or
1917 accidental release, the potential damage or injury to state waters or sensitive natural resource features or
1918 the impairment of their beneficial use that may result from discharge or release, the potential cost of
1919 containment and cleanup, and the nature and degree of injury or interference with general health, welfare
1920 and property that may result from discharge or accidental release;

1921 3. All land-disturbing activities resulting from the construction and operation of the permanent
1922 facilities necessary to implement the contingency plan and the area within the berm will be located
1923 outside of those areas described in subsection A of this section;

1924 4. The drilling site is stabilized with boards or gravel or other materials which will result in minimal
1925 amounts of runoff;

1926 5. Persons certified in blowout prevention are present at all times during drilling;

1927 6. Conductor pipe is set as necessary from the surface;

1928 7. Casing is set and pressure grouted from the surface to a point at least 2500 feet below the surface
1929 or 300 feet below the deepest known ground water, as defined in § 62.1-255, for a beneficial use, as
1930 defined in § 62.1-10, whichever is deeper;

1931 8. Freshwater-based drilling mud is used during drilling;

1932 9. There is no onsite disposal of drilling muds, produced contaminated fluids, waste contaminated
1933 fluids or other contaminated fluids;

1934 10. Multiple blow-out preventers are employed; and

1935 11. The person complies with all requirements of Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1
1936 and regulations promulgated thereunder.

1937 G. The provisions of subsection A and subdivisions 1 and 4 through 9 of subsection F of this section
1938 shall be enforced consistent with the requirements of Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1.

1939 H. In the event that exploration activities in Tidewater Virginia result in a finding by the Director of
1940 the Department of Mines, Minerals and Energy that production of commercially recoverable quantities of
1941 oil is likely and imminent, the Director of the Department of Mines, Minerals and Energy shall notify
1942 the Secretary of Commerce and Trade and the Secretary of Natural Resources. At that time, the
1943 Secretaries shall develop a joint report to the Governor and the General Assembly assessing the
1944 environmental risks and safeguards; transportation issues; state-of-the-art oil production well technology;
1945 economic impacts; regulatory initiatives; operational standards; and other matters related to the
1946 production of oil in the region. No permits for oil production wells shall be issued until (i) the Governor
1947 has had an opportunity to review the report and make recommendations, in the public interest, for
1948 legislative and regulatory changes, (ii) the General Assembly, during the next upcoming regular session,
1949 has acted on the Governor's recommendations or on its own initiatives, and (iii) any resulting legislation
1950 has become effective. The report by the Secretaries and the Governor's recommendations shall be
1951 completed within ~~eighteen~~ 18 months of the findings of the Director of the Department of Mines,
1952 Minerals and Energy.

1953 2. That §§ 10.1-572, 10.1-573, 10.1-603.9, 10.1-2102, and 10.1-2112 of the Code of Virginia are
1954 repealed.

1955 3. That the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC
1956 10-20 et seq.) shall be transferred from the Chesapeake Bay Local Assistance Board to the
1957 Virginia Soil and Water Conservation Board on July 1, 2012, and the Virginia Soil and Water
1958 Conservation Board may amend, modify, or delete provisions in these regulations in order to
1959 implement this Act. Current regulations that are in effect shall remain in full force and effect until
1960 altered, amended, or rescinded by the Virginia Soil and Water Conservation Board.

1961 4. That any program determinations of, or enforcement actions initiated by, the Chesapeake Bay
1962 Local Assistance Board shall be assumed by the Virginia Soil and Water Conservation Board and
1963 shall remain in effect until altered, amended, or rescinded by the Virginia Soil and Water
1964 Conservation Board.