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**HOUSE BILL NO. 2048****AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources  
on January 30, 2013)

(Patron Prior to Substitute—Delegate Sherwood)

*A BILL to amend and reenact §§ 2.2-4006, 3.2-409, 3.2-410, 3.2-3602, 10.1-104.1, 10.1-659, 10.1-2123, 15.2-1129.2, 15.2-2114, 15.2-2295.1, 15.2-2403.3, 33.1-70.1, 36-55.64, 58.1-3660.1, 62.1-44.5, 62.1-44.9, 62.1-44.14, 62.1-44.15, 62.1-44.19:13, 62.1-44.19:15, 62.1-44.19:20, 62.1-44.23, 62.1-44.32, 62.1-44.44, 62.1-73, 62.1-195.1, and 62.1-229.4 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 3.1 of Title 62.1 articles numbered 2.3, 2.4, and 2.5, consisting of sections numbered 62.1-44.15:24 through 62.1-44.15:79, and by adding in Article 4.02 of Chapter 3.1 of Title 62.1 sections numbered 62.1-44.19:21, 62.1-44.19:22, and 62.1-44.19:23; and to repeal Article 4 of Chapter 5 (§§ 10.1-560 through 10.1-571), Articles 1.1 and 1.1:1 (§§ 10.1-603.1 through 10.1-603.15:5) of Chapter 6, and Chapter 21 (§§ 10.1-2100 through 10.1-2115) of Title 10.1 of the Code of Virginia, relating to transfer of responsibility for administration of water quality programs.*

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

**1. That §§ 2.2-4006, 3.2-409, 3.2-410, 3.2-3602, 10.1-104.1, 10.1-659, 10.1-2123, 15.2-1129.2, 15.2-2114, 15.2-2295.1, 15.2-2403.3, 33.1-70.1, 36-55.64, 58.1-3660.1, 62.1-44.5, 62.1-44.9, 62.1-44.14, 62.1-44.15, 62.1-44.19:13, 62.1-44.19:15, 62.1-44.19:20, 62.1-44.23, 62.1-44.32, 62.1-44.44, 62.1-73, 62.1-195.1, and 62.1-229.4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3.1 of Title 62.1 articles numbered 2.3, 2.4, and 2.5, consisting of sections numbered 62.1-44.15:24 through 62.1-44.15:79, and by adding in Article 4.02 of Chapter 3.1 of Title 62.1 sections numbered 62.1-44.19:21, 62.1-44.19:22, and 62.1-44.19:23 as follows:**

**§ 2.2-4006. Exemptions from requirements of this article.**

A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:

1. Agency orders or regulations fixing rates or prices.
2. Regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority.
3. Regulations that consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.

**4. Regulations that are:**

a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. However, such regulations shall be filed with the Registrar within 90 days of the law's effective date;

b. Required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or

c. Necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing. Notice of the proposed adoption of these regulations and the Registrar's determination shall be published in the Virginia Register not less than 30 days prior to the effective date of the regulation.

5. Regulations of the Board of Agriculture and Consumer Services adopted pursuant to subsection B of § 3.2-3929 or clause (v) or (vi) of subsection C of § 3.2-3931 after having been considered at two or more Board meetings and one public hearing.

6. Regulations of the regulatory boards served by (i) the Department of Labor and Industry pursuant to Title 40.1 and (ii) the Department of Professional and Occupational Regulation or the Department of Health Professions pursuant to Title 54.1 that are limited to reducing fees charged to regulants and applicants.

7. The development and issuance of procedural policy relating to risk-based mine inspections by the Department of Mines, Minerals and Energy authorized pursuant to §§ 45.1-161.82 and 45.1-161.292:55.

8. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, (c) Virginia Soil and Water Conservation Board pursuant to the Virginia Stormwater Management Act (~~§ 10.1-603.1 et seq.~~) of Title 10.1 pursuant to the Dam Safety Act (§ 10.1-604 et

60 *seq.*), and (d) the development and issuance of general wetlands permits by the Marine Resources  
61 Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission (i)  
62 provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01,  
63 (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action  
64 forms a technical advisory committee composed of relevant stakeholders, including potentially affected  
65 citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral  
66 and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the  
67 proposed general permit.

68 9. The development and issuance by the Board of Education of guidelines on constitutional rights  
69 and restrictions relating to the recitation of the pledge of allegiance to the American flag in public  
70 schools pursuant to § 22.1-202.

71 10. Regulations of the Board of the Virginia College Savings Plan adopted pursuant to § 23-38.77.

72 11. Regulations of the Marine Resources Commission.

73 12. Regulations adopted by the Board of Housing and Community Development pursuant to (i)  
74 Statewide Fire Prevention Code (§ 27-94 et seq.), (ii) the Industrialized Building Safety Law (§ 36-70 et  
75 seq.), (iii) the Uniform Statewide Building Code (§ 36-97 et seq.), and (iv) § 36-98.3, provided the  
76 Board (a) provides a Notice of Intended Regulatory Action in conformance with the provisions of  
77 § 2.2-4007.01, (b) publishes the proposed regulation and provides an opportunity for oral and written  
78 comments as provided in § 2.2-4007.03, and (c) conducts at least one public hearing as provided in  
79 §§ 2.2-4009 and 36-100 prior to the publishing of the proposed regulations. Notwithstanding the  
80 provisions of this subdivision, any regulations promulgated by the Board shall remain subject to the  
81 provisions of § 2.2-4007.06 concerning public petitions, and §§ 2.2-4013 and 2.2-4014 concerning  
82 review by the Governor and General Assembly.

83 13. Amendments to the list of drugs susceptible to counterfeiting adopted by the Board of Pharmacy  
84 pursuant to subsection B of § 54.1-3307.

85 B. Whenever regulations are adopted under this section, the agency shall state as part thereof that it  
86 will receive, consider and respond to petitions by any interested person at any time with respect to  
87 reconsideration or revision. The effective date of regulations adopted under this subsection shall be in  
88 accordance with the provisions of § 2.2-4015, except in the case of emergency regulations, which shall  
89 become effective as provided in subsection B of § 2.2-4012.

90 C. A regulation for which an exemption is claimed under this section or § 2.2-4002 or 2.2-4011 and  
91 that is placed before a board or commission for consideration shall be provided at least two days in  
92 advance of the board or commission meeting to members of the public that request a copy of that  
93 regulation. A copy of that regulation shall be made available to the public attending such meeting.

94 **§ 3.2-409. Ordinances.**

95 A. Any locality may adopt an ordinance creating a complaint, investigation, and agricultural  
96 stewardship plan development program. Ordinances adopted hereunder may contain only provisions that  
97 parallel §§ 3.2-401 and 3.2-402. No such ordinance shall provide for the imposition of civil or criminal  
98 sanctions against an operator or owner who fails to implement a plan. If an owner or operator fails to  
99 implement a plan, the local governing body shall submit a complaint to the Commissioner as provided  
100 in § 3.2-402.

101 B. This section shall not apply to any ordinance: (i) in existence on July 1, 1996; or (ii) adopted  
102 pursuant to the Chesapeake Bay Preservation Act (§ ~~40.1-2100~~ 62.1-44.15:67 et seq.).

103 **§ 3.2-410. Construction of chapter.**

104 Nothing in this chapter shall be construed as duplicative of regulations governing agricultural  
105 practices under the Chesapeake Bay Preservation Act (§ ~~62.1-44.15:67~~ et seq.).

106 **§ 3.2-3602. Local government regulation of fertilizer.**

107 No locality shall regulate the registration, packaging, labeling, sale, use, application, storage or  
108 distribution of fertilizers except by ordinance as provided for in the requirements of the Chesapeake Bay  
109 Preservation Act (§ ~~40.1-2100~~ 62.1-44.15:67 et seq.), the Erosion and Sediment Control Law (§  
110 ~~40.1-560~~ 62.1-44.15:51 et seq.), the Stormwater Management Act (§ ~~40.1-603.1~~ 62.1-44.15:24 et seq.)  
111 or other nonpoint source regulations adopted by the Department of Conservation and Recreation  
112 *Environmental Quality* or the ~~Soil and Water Conservation~~ State Water Control Board. The provisions  
113 of this section shall not preempt the adoption, amendment, or enforcement of the Statewide Fire  
114 Prevention Code pursuant to § 27-97 and the Uniform Statewide Building Code pursuant to § 36-98.

115 **§ 10.1-104.1. Department to assist in the nonpoint source pollution management program.**

116 A. The Department, with the advice of the Board of Conservation and Recreation and the Virginia  
117 Soil and Water Conservation Board and in cooperation with other agencies, organizations, and the public  
118 as appropriate, shall ~~have the lead responsibility for~~ assist in the Commonwealth's nonpoint source  
119 pollution management program. ~~This responsibility includes coordination of the nonpoint source control~~  
120 ~~elements of programs developed pursuant to certain state and federal laws including § 319 of the Clean~~  
121 ~~Water Act and § 6217 of the Coastal Zone Management Act. Further responsibilities include, but are not~~

limited to, the distribution of assigned funds, the identification and establishment of priorities of nonpoint source related water quality problems, and the administration of the Statewide Nonpoint Source Advisory Committee.

B. The Department shall be assisted in performing its nonpoint source pollution management responsibilities by Virginia's soil and water conservation districts. Assistance by the soil and water conservation districts in the delivery of local programs and services may include (i) the provision of technical assistance to advance adoption of conservation management services, (ii) delivery of educational initiatives targeted at youth and adult groups to further awareness and understanding of water quality issues and solutions, and (iii) promotion of incentives to encourage voluntary actions by landowners and land managers in order to minimize nonpoint source pollution contributions to state waters.

The provisions of this section shall not limit the powers and duties of other state agencies.

**§ 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, and 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, *Chesapeake Bay Preservation Area* criteria, stormwater management, erosion and sediment control, 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; 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 Virginia Waste Management Board*; the *Chesapeake Bay Preservation Area* criteria and local government assistance programs of the 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.

**§ 10.1-2123. Definitions.**

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

"Board" means the *State Water Control Board of Conservation and Recreation*.

"Department" means the *Department of Conservation and Recreation Environmental Quality*.

"Director" means the *Director of the Department of Conservation and Recreation Environmental Quality*.

**§ 15.2-1129.2. Creation of local economic revitalization zones.**

A. Any city may establish by ordinance one or more economic revitalization zones for the purpose of providing incentives to private entities to purchase real property and interests in real property to assemble parcels suitable for economic development. Each city establishing an economic revitalization zone may grant incentives and provide regulatory flexibility. Such zones shall be reasonably compact, shall not encompass the entire city, and shall constitute one or more tax parcels not commonly owned. Properties that are acquired through the use of eminent domain shall not be eligible for the incentives and regulatory flexibility provided by the ordinance.

B. The incentives may include, but not be limited to: (i) reduction of permit fees, (ii) reduction of user fees, (iii) reduction of any type of gross receipts tax, and (iv) waiver of tax liens to facilitate the sale of property.

C. Incentives established pursuant to this section may extend for a period of up to 10 years from the date of initial establishment of the economic revitalization zone; however, the extent and duration of any incentive shall conform to the requirements of applicable federal and state law.

D. The regulatory flexibility provided in an economic revitalization zone may include (i) special zoning for the district, (ii) the use of a special permit process, (iii) exemption from certain specified ordinances, excluding ordinances or provisions of ordinances adopted pursuant to the requirements of the *Chesapeake Bay Preservation Act* (§ 10.1-2100 62.1-44.15:67 et seq.), the *Erosion and Sediment Control Law* (§ 10.1-560 62.1-44.15:51 et seq.), and the *Virginia Stormwater Management Act* (§ 10.1-603.1 62.1-44.15:24 et seq.), and (iv) any other incentives adopted by ordinance, which shall be binding upon

183 the locality for a period of up to 10 years.

184 E. The governing body may establish a service district for the provision of additional public services  
185 pursuant to Chapter 24 (§ 15.2-2400 et seq.) of Title 15.2.

186 F. This section shall not authorize any local government powers that are not expressly granted herein.

187 G. Prior to adopting or amending any ordinance pursuant to this section, a locality shall provide for  
188 notice and public hearing in accordance with subsection A of § 15.2-2204.

189 **§ 15.2-2114. Regulation of stormwater.**

190 A. Any locality, by ordinance, may establish a utility or enact a system of service charges to support  
191 a local stormwater management program consistent with ~~Article 1-1 (§ 10.1-603.1 et seq.) of Chapter 6~~  
192 ~~of Title 10 Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1~~ or any other state or federal  
193 regulation governing stormwater management. Income derived from a utility or system of charges shall  
194 be dedicated special revenue, may not exceed the actual costs incurred by a locality operating under the  
195 provisions of this section, and may be used only to pay or recover costs for the following:

196 1. The acquisition, as permitted by § 15.2-1800, of real and personal property, and interest therein,  
197 necessary to construct, operate and maintain stormwater control facilities;

198 2. The cost of administration of such programs;

199 3. Planning, design, engineering, construction, and debt retirement for new facilities and enlargement  
200 or improvement of existing facilities, including the enlargement or improvement of dams, levees,  
201 floodwalls, and pump stations, whether publicly or privately owned, that serve to control stormwater;

202 4. Facility operation and maintenance, including the maintenance of dams, levees, floodwalls, and  
203 pump stations, whether publicly or privately owned, that serve to control the stormwater;

204 5. Monitoring of stormwater control devices and ambient water quality monitoring; and

205 6. Other activities consistent with the state or federal regulations or permits governing stormwater  
206 management, including, but not limited to, public education, watershed planning, inspection and  
207 enforcement activities, and pollution prevention planning and implementation.

208 B. The charges may be assessed to property owners or occupants, including condominium unit  
209 owners or tenants (when the tenant is the party to whom the water and sewer service is billed), and  
210 shall be based upon an analysis that demonstrates the rational relationship between the amount charged  
211 and the services provided. Prior to adopting such a system, a public hearing shall be held after giving  
212 notice as required by charter or by publishing a descriptive notice once a week for two successive weeks  
213 prior to adoption in a newspaper with a general circulation in the locality. The second publication shall  
214 not be sooner than one calendar week after the first publication. However, prior to adoption of any  
215 ordinance pursuant to this section related to the enlargement, improvement, or maintenance of privately  
216 owned dams, a locality shall comply with the notice provisions of § 15.2-1427 and hold a public  
217 hearing.

218 C. A locality adopting such a system shall provide for full waivers of charges to the following:

219 1. A federal, state, or local government, or public entity, that holds a permit to discharge stormwater  
220 from a municipal separate storm sewer system; except that the waiver of charges shall apply only to  
221 property covered by any such permit; and

222 2. Public roads and street rights-of-way that are owned and maintained by state or local agencies  
223 including property rights-of-way acquired through the acquisitions process.

224 D. A locality adopting such a system shall provide for full or partial waivers of charges to any  
225 person who installs, operates, and maintains a stormwater management facility that achieves a permanent  
226 reduction in stormwater flow or pollutant loadings. The locality shall base the amount of the waiver in  
227 part on the percentage reduction in stormwater flow or pollutant loadings, or both, from pre-installation  
228 to post-installation of the facility. No locality shall provide a waiver to any person who does not obtain  
229 a stormwater permit from the Department of Conservation and Recreation or the Department of  
230 Environmental Quality when such permit is required by statute or regulation.

231 E. A locality adopting such a system may provide for full or partial waivers of charges to cemeteries,  
232 property owned or operated by the locality administering the program, and public or private entities that  
233 implement or participate in strategies, techniques, or programs that reduce stormwater flow or pollutant  
234 loadings, or decrease the cost of maintaining or operating the public stormwater management system.

235 F. Any locality may issue general obligation bonds or revenue bonds in order to finance the cost of  
236 infrastructure and equipment for a stormwater control program. Infrastructure and equipment shall  
237 include structural and natural stormwater control systems of all types, including, without limitation,  
238 retention basins, sewers, conduits, pipelines, pumping and ventilating stations, and other plants,  
239 structures, and real and personal property used for support of the system. The procedure for the issuance  
240 of any such general obligation bonds or revenue bonds pursuant to this section shall be in conformity  
241 with the procedure for issuance of such bonds as set forth in the Public Finance Act (§ 15.2-2600 et  
242 seq.).

243 G. In the event charges are not paid when due, interest thereon shall at that time accrue at the rate,  
244 not to exceed the maximum amount allowed by law, determined by the locality until such time as the

overdue payment and interest are paid. Charges and interest may be recovered by the locality by action at law or suit in equity and shall constitute a lien against the property, ranking on a parity with liens for unpaid taxes. The locality may combine the billings for stormwater charges with billings for water or sewer charges, real property tax assessments, or other billings; in such cases, the locality may establish the order in which payments will be applied to the different charges. No locality shall combine its billings with those of another locality or political subdivision, including an authority operating pursuant to Chapter 51 (§ 15.2-5100 et seq.) of Title 15.2, unless such locality or political subdivision has given its consent by duly adopted resolution or ordinance.

H. Any two or more localities may enter into cooperative agreements concerning the management of stormwater.

**§ 15.2-2295.1. Regulation of mountain ridge construction.**

A. As used in this section, unless the context requires a different meaning:

"Construction" means the building, alteration, repair, or improvement of any building or structure.

"Crest" means the uppermost line of a mountain or chain of mountains from which the land falls away on at least two sides to a lower elevation or elevations.

"Protected mountain ridge" means a ridge with (i) an elevation of 2,000 feet or more and (ii) an elevation of 500 feet or more above the elevation of an adjacent valley floor.

"Ridge" means the elongated crest or series of crests at the apex or uppermost point of intersection between two opposite slopes or sides of a mountain and includes all land within 100 feet below the elevation of any portion of such line or surface along the crest.

"Tall buildings or structures" means any building, structure or unit within a multi-unit building with a vertical height of more than forty feet measured from the top of the natural finished grade of the crest or the natural finished grade of the high side of the slope of a ridge to the uppermost point of the building, structure or unit. "Tall buildings or structures" do not include (i) water, radio, telecommunications or television towers or any equipment for the transmission of electricity, telephone or cable television; (ii) structures of a relatively slender nature and minor vertical projections of a parent building, including, but not limited to, chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires or windmills; or (iii) any building or structure designated as a historic landmark, building or structure by the United States or by the Board of Historic Resources.

B. Determinations by the governing body of heights and elevations under this section shall be conclusive.

C. Any locality in which a protected mountain ridge is located may, by ordinance, provide for the regulation of the height and location of tall buildings or structures on protected mountain ridges. The ordinance may be designed and adopted by the locality as an overlay zone superimposed on any preexisting base zone.

D. An ordinance adopted under this section may include criteria for the granting or denial of permits for the construction of tall buildings or structures on protected mountain ridges. Any such ordinance shall provide that permit applications shall be denied if a permit application fails to provide for (i) adequate sewerage, water, and drainage facilities, including, but not limited to, facilities for drinking water and the adequate supply of water for fire protection and (ii) compliance with the Erosion and Sediment Control Law (§ ~~10.1-560~~ 62.1-44.15:51 et seq.).

E. Any locality that adopts an ordinance providing for the regulation of the height and location of tall buildings or structures on protected mountain ridges shall send a copy of the ordinance to the Secretary of Natural Resources.

F. Nothing in this section shall be construed to affect or impair a governing body's authority under this chapter to define and regulate uses in any existing zoning district or to adopt overlay districts regulating uses on mountainous areas as defined by the governing body.

**§ 15.2-2403.3. Stormwater service districts; allocation of revenues.**

Any town located within a stormwater service district created pursuant to this chapter shall be entitled to any revenues collected within the town pursuant to subdivision 6 of § 15.2-2403, subject to the limitations set forth therein, so long as the town maintains its own MS4 permit issued pursuant to § ~~10.1-603.2:2~~ 62.1-44.15:26 or maintains its own stormwater service district.

**§ 33.1-70.1. Requesting Department to hard-surface secondary roads; paving of certain secondary roads within existing rights-of-way; designation as Rural Rustic Road.**

A. Whenever the governing body of any county, after consultation with personnel of the Department of Transportation, adopts a resolution requesting the Department of Transportation to hard-surface any secondary road in such county that carries 50 or more vehicles per day with a hard surface of width and strength adequate for such traffic volume, the Department of Transportation shall give consideration to such resolution in establishing priority in expending the funds allocated to such county. The Department shall consider the paving of roads with a right-of-way width of less than 40 feet under this subsection when land is, has been, or can be acquired by gift for the purpose of constructing a hard-surface road.

306 B. Notwithstanding the provisions of subsection A of this section, any unpaved secondary road that  
307 carries at least 50 but no more than 750 vehicles per day may be paved or improved and paved within  
308 its existing right-of-way or within a wider right-of-way that is less than 40 feet wide if the following  
309 conditions are met:

310 1. The governing body of the county in which the road is located has requested paving of such road  
311 as part of the six-year plan for the county under § 33.1-70.01 and transmitted that request to the  
312 Commissioner of Highways.

313 2. The Commissioner of Highways, after having considered only (i) the safety of such road in its  
314 current condition and in its paved or improved condition, including the desirability of reduced speed  
315 limits and installation of other warning signs or devices, (ii) the views of the residents and owners of  
316 property adjacent to or served by such road, (iii) the views of the governing body making the request,  
317 (iv) the historical and aesthetic significance of such road and its surroundings, (v) the availability of any  
318 additional land that has been or may be acquired by gift or other means for the purpose of paving such  
319 road within its existing right-of-way or within a wider right-of-way that is less than 40 feet wide, and  
320 (vi) environmental considerations, shall grant or deny the request for the paving of such road under this  
321 subsection.

322 C. Notwithstanding the provisions of subsections A and B, the governing body of any county, in  
323 consultation with the Department, may designate a road or road segment as a Rural Rustic Road  
324 provided such road or road segment is located in a low-density development area and has an average  
325 daily traffic volume of no more than 1,500 vehicles per day. For a road or road segment so designated,  
326 improvements shall utilize a paved surface width based on reduced and flexible standards that leave  
327 trees, vegetation, side slopes and open drainage abutting the roadway undisturbed to the maximum  
328 extent possible without compromising public safety. Any road designated as a Rural Rustic Road shall  
329 be subject to § ~~40.1-603.8~~ 62.1-44.15:34. The Department, in consultation with the affected local  
330 governing body, shall first consider the paving of a road or road segment meeting the criteria for a  
331 Rural Rustic Road in accordance with this subsection before making a decision to pave it to another  
332 standard as set forth in this section. The provisions of this subsection shall become effective July 1,  
333 2003.

334 D. The Commonwealth, its agencies, instrumentalities, departments, officers, and employees acting  
335 within the scope of their duties and authority shall be immune for damages by reason of actions taken in  
336 conformity with the provisions of this section. Immunity for the governing body of any political  
337 subdivision requesting paving under this section and the officers and employees of any such political  
338 subdivision shall be limited to that immunity provided pursuant to § 15.2-1405.

339 **§ 36-55.64. Creation of local housing rehabilitation zones.**

340 A. Any city, county, or town may establish, by ordinance, one or more housing rehabilitation zones  
341 for the purpose of providing incentives and regulatory flexibility in such zone.

342 B. The incentives provided in a housing rehabilitation zone may include, but not be limited to (i)  
343 reduction of permit fees, (ii) reduction of user fees, and (iii) waiver of tax liens to facilitate the sale of  
344 property that will be substantially renovated, rehabilitated or replaced.

345 C. Incentives established pursuant to this section may extend for a period of up to 10 years from the  
346 date of initial establishment of the housing rehabilitation zone; however, the extent and duration of any  
347 incentive shall conform to the requirements of applicable federal and state law.

348 D. The regulatory flexibility provided in a housing rehabilitation zone may include, but not be  
349 limited to (i) special zoning for the district, (ii) the use of a special permit process, (iii) exemption from  
350 certain specified ordinances, excluding ordinances or provisions of ordinances adopted pursuant to the  
351 requirements of the Chesapeake Bay Preservation Act (§ ~~40.1-2100~~ 62.1-44.15:67 et seq.), the Erosion  
352 and Sediment Control Law (§ ~~40.1-560~~ 62.1-44.15:51 et seq.), and the Virginia Stormwater Management  
353 Act (§ ~~40.1-603.1~~ 62.1-44.15:24 et seq.), and (iv) any other incentives adopted by ordinance, which  
354 shall be binding upon the locality for a period of up to 10 years.

355 E. The governing body may establish a service district for the provision of additional public services  
356 pursuant to Chapter 24 (§ 15.2-2400 et seq.) of Title 15.2.

357 F. Each locality establishing a housing rehabilitation zone pursuant to this section may also apply for  
358 the designation of a housing revitalization zone pursuant to Chapter 11 (§ 36-159 et seq.) of Title 36.  
359 Nothing in this chapter shall preclude such dual designation.

360 G. Any housing rehabilitation zone established pursuant to this chapter shall be deemed to meet the  
361 requirements for designation of housing revitalization eligible to be financed as an economically mixed  
362 project pursuant to § 36-55.30:2.

363 H. This section shall not authorize any local government powers that are not expressly granted  
364 herein.

365 **§ 58.1-3660.1. Certified stormwater management developments and property.**

366 A. Certified stormwater management developments and property, as defined herein, are hereby  
367 declared to be a separate class of property and shall constitute a classification for local taxation separate

from other such classifications of real property. The governing body of any county, city or town may, by ordinance, exempt or partially exempt such property from local taxation.

B. As used in this section, "certified stormwater management developments and property" means any real estate improvements constructed from permeable material, such as, but not limited to, roads, parking lots, patios, and driveways, which are otherwise constructed of impermeable materials, and which the Department of Conservation and Recreation Environmental Quality has certified to be designed, constructed, or reconstructed for the primary purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth by minimizing stormwater runoff. Permeable material shall be used for at least seventy percent of the surface areas that would otherwise be covered by impermeable materials.

**§ 58.1-3851. Creation of local tourism zones.**

A. Any city, county, or town may establish, by ordinance, one or more tourism zones. Each locality may grant tax incentives and provide certain regulatory flexibility in a tourism zone.

B. The tax incentives may be provided for up to 20 years and may include, but not be limited to (i) reduction of permit fees, (ii) reduction of user fees, and (iii) reduction of any type of gross receipts tax. The extent and duration of such incentive proposals shall conform to the requirements of the Constitutions of Virginia and of the United States.

C. The governing body may also provide for regulatory flexibility in such zone that may include, but not be limited to (i) special zoning for the district, (ii) permit process reform, (iii) exemption from ordinances, excluding ordinances or provisions of ordinances adopted pursuant to the requirements of the Chesapeake Bay Preservation Act (§ 40.1-2100 62.1-44.15:67 et seq.), the Erosion and Sediment Control Law (§ 40.1-560 62.1-44.15:51 et seq.), or the Virginia Stormwater Management Act (§ 40.1-603.1 62.1-44.15:24 et seq.), and (iv) any other incentive adopted by ordinance, which shall be binding upon the locality for a period of up to 10 years.

D. The establishment of a tourism zone shall not preclude the area from also being designated as an enterprise zone.

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

A. Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to:

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

2. Excavate in a wetland;

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

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

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

b. Filling or dumping;

c. Permanent flooding or impounding; or

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

5. Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land disturbing activities unless in compliance with a permit issued pursuant to Article 1-1 (§ 40.1-603.1 et seq.) of Chapter 6 of Title 40.1.

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

**§ 62.1-44.9. Qualifications of members.**

A. Members of the Board shall be citizens of the Commonwealth; shall be selected from the Commonwealth at large for merit without regard to political affiliation; and shall, by character and reputation, reasonably be expected to inspire the highest degree of cooperation and confidence in the work of the Board. Members shall, by their education, training, or experience, be knowledgeable of water quality control and regulation and shall be fairly representative of conservation, public health,

business, *land development*, and agriculture. No person shall become a member of the Board who receives, or during the previous two years has received, a significant portion of his income directly or indirectly from certificate or permit holders or applicants for a certificate or permit.

For the purposes of this section, "significant portion of income" means 10 percent or more of gross personal income for a calendar year, except that it means 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement. Income includes retirement benefits, consultant fees, and stock dividends. Income is not received directly or indirectly from certificate or permit holders or applicants for certificates or permits when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the identity of the primary sources of income.

B. Notwithstanding any other provision of this section relating to Board membership, the qualifications for Board membership shall not be more strict than those that are required by federal statute or regulations of the United States Environmental Protection Agency.

**§ 62.1-44.14. Chairman; Executive Director; employment of personnel; supervision; budget preparation.**

The Board shall elect its chairman, and the Executive Director shall be appointed as set forth in § 2.2-106. The Executive Director shall serve as executive officer and devote his whole time to the performance of his duties, and he shall have such administrative powers as are conferred upon him by the Board; and, further, the Board may delegate to its Executive Director any of the powers and duties invested in it by this chapter except the adoption and promulgation of standards, rules and regulations; and the revocation of certificates. The Executive Director is authorized to issue, modify or revoke orders in cases of emergency as described in §§ 62.1-44.15 (8b) and 62.1-44.34:20 of this chapter. The Executive Director is further authorized to employ such consultants and full-time technical and clerical workers as are necessary and within the available funds to carry out the purposes of this chapter.

It shall be the duty of the Executive Director to exercise general supervision and control over the quality and management of all state waters and to administer and enforce this chapter, and all certificates, standards, policies, rules, regulations, rulings and special orders promulgated by the Board. The Executive Director shall prepare, approve, and submit all requests for appropriations and be responsible for all expenditures pursuant to appropriations. *The Executive Director shall be vested with all the authority of the Board when it is not in session, except for the Board's authority to consider permits pursuant to § 62.1-44.15:02 and to issue special orders pursuant to subdivisions (8a) and (8b) of § 62.1-44.15 and subject to such regulations as may be prescribed by the Board. In no event shall the Executive Director have the authority to adopt or promulgate any regulation.*

**§ 62.1-44.15. Powers and duties; civil penalties.**

It shall be the duty of the Board and it shall have the authority:

(1) [Repealed.]

(2) To study and investigate all problems concerned with the quality of state waters and to make reports and recommendations.

(2a) To study and investigate methods, procedures, devices, appliances, and technologies that could assist in water conservation or water consumption reduction.

(2b) To coordinate its efforts toward water conservation with other persons or groups, within or without the Commonwealth.

(2c) To make reports concerning, and formulate recommendations based upon, any such water conservation studies to ensure that present and future water needs of the citizens of the Commonwealth are met.

(3a) To establish such standards of quality and policies for any state waters consistent with the general policy set forth in this chapter, and to modify, amend or cancel any such standards or policies established and to take all appropriate steps to prevent quality alteration contrary to the public interest or to standards or policies thus established, except that a description of provisions of any proposed standard or policy adopted by regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the standard or policy are most properly referable. The Board shall, from time to time, but at least once every three years, hold public hearings pursuant to § 2.2-4007.01 but, upon the request of an affected person or upon its own motion, hold hearings pursuant to § 2.2-4009, for the purpose of reviewing the standards of quality, and, as appropriate, adopting, modifying, or canceling such standards. Whenever the Board considers the adoption, modification, amendment or cancellation of any standard, it shall give due consideration to, among other factors, the economic and social costs and benefits which can reasonably be expected to obtain as a consequence of the standards as adopted, modified, amended or cancelled. The Board shall also give due consideration to the public health standards issued by the Virginia Department of Health with respect to issues of public health policy and protection. If the Board does not follow the public health standards of the Virginia Department of Health, the Board's reason for



any deviation shall be made in writing and published for any and all concerned parties.

(3b) Except as provided in subdivision (3a), such standards and policies are to be adopted or modified, amended or cancelled in the manner provided by the Administrative Process Act (§ 2.2-4000 et seq.).

(4) To conduct or have conducted scientific experiments, investigations, studies, and research to discover methods for maintaining water quality consistent with the purposes of this chapter. To this end the Board may cooperate with any public or private agency in the conduct of such experiments, investigations and research and may receive in behalf of the Commonwealth any moneys that any such agency may contribute as its share of the cost under any such cooperative agreement. Such moneys shall be used only for the purposes for which they are contributed and any balance remaining after the conclusion of the experiments, investigations, studies, and research, shall be returned to the contributors.

(5) To issue, revoke or amend certificates under prescribed conditions for: (a) the discharge of sewage, industrial wastes and other wastes into or adjacent to state waters; (b) the alteration otherwise of the physical, chemical or biological properties of state waters; (c) excavation in a wetland; or (d) on and after October 1, 2001, the conduct of the following activities in a wetland: (i) new activities to cause draining that significantly alters or degrades existing wetland acreage or functions, (ii) filling or dumping, (iii) permanent flooding or impounding, or (iv) new activities that cause significant alteration or degradation of existing wetland acreage or functions. However, to the extent allowed by federal law, any person holding a certificate issued by the Board that is intending to upgrade the permitted facility by installing technology, control equipment, or other apparatus that the permittee demonstrates to the satisfaction of the Director will result in improved energy efficiency, reduction in the amount of nutrients discharged, and improved water quality shall not be required to obtain a new, modified, or amended permit. The permit holder shall provide the demonstration anticipated by this subdivision to the Department no later than 30 days prior to commencing construction.

(5a) All certificates issued by the Board under this chapter shall have fixed terms. The term of a Virginia Pollution Discharge Elimination System permit shall not exceed five years. The term of a Virginia Water Protection Permit shall be based upon the projected duration of the project, the length of any required monitoring, or other project operations or permit conditions; however, the term shall not exceed 15 years. The term of a Virginia Pollution Abatement permit shall not exceed 10 years, except that the term of a Virginia Pollution Abatement permit for confined animal feeding operations shall be 10 years. The Department of Environmental Quality shall inspect all facilities for which a Virginia Pollution Abatement permit has been issued to ensure compliance with statutory, regulatory, and permit requirements. Department personnel performing inspections of confined animal feeding operations shall be certified under the voluntary nutrient management training and certification program established in § 10.1-104.2. The term of a certificate issued by the Board shall not be extended by modification beyond the maximum duration and the certificate shall expire at the end of the term unless an application for a new permit has been timely filed as required by the regulations of the Board and the Board is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit.

(5b) Any certificate issued by the Board under this chapter may, after notice and opportunity for a hearing, be amended or revoked on any of the following grounds or for good cause as may be provided by the regulations of the Board:

1. The owner has violated any regulation or order of the Board, any condition of a certificate, any provision of this chapter, or any order of a court, where such violation results in a release of harmful substances into the environment or poses a substantial threat of release of harmful substances into the environment or presents a hazard to human health or the violation is representative of a pattern of serious or repeated violations which, in the opinion of the Board, demonstrates the owner's disregard for or inability to comply with applicable laws, regulations, or requirements;

2. The owner has failed to disclose fully all relevant material facts or has misrepresented a material fact in applying for a certificate, or in any other report or document required under this law or under the regulations of the Board;

3. The activity for which the certificate was issued endangers human health or the environment and can be regulated to acceptable levels by amendment or revocation of the certificate; or

4. There exists a material change in the basis on which the permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the certificate necessary to protect human health or the environment.

(5c) Any certificate issued by the Board under this chapter relating to dredging projects governed under Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 may be conditioned upon a demonstration of financial responsibility for the completion of compensatory mitigation requirements. Financial responsibility may be demonstrated by a letter of credit, a certificate of deposit or a performance bond executed in a form approved by the Board. If the U.S. Army Corps of

552 Engineers requires demonstration of financial responsibility for the completion of compensatory  
553 mitigation required for a particular project, then the mechanism and amount approved by the U.S. Army  
554 Corps of Engineers shall be used to meet this requirement.

555 (6) To make investigations and inspections, to ensure compliance with any certificates, standards,  
556 policies, rules, regulations, rulings and special orders which it may adopt, issue or establish and to  
557 furnish advice, recommendations, or instructions for the purpose of obtaining such compliance. In  
558 recognition of §§ 32.1-164 and 62.1-44.18, the Board and the State Department of Health shall enter into  
559 a memorandum of understanding establishing a common format to consolidate and simplify inspections  
560 of sewage treatment plants and coordinate the scheduling of the inspections. The new format shall  
561 ensure that all sewage treatment plants are inspected at appropriate intervals in order to protect water  
562 quality and public health and at the same time avoid any unnecessary administrative burden on those  
563 being inspected.

564 (7) To adopt rules governing the procedure of the Board with respect to: (a) hearings; (b) the filing  
565 of reports; (c) the issuance of certificates and special orders; and (d) all other matters relating to  
566 procedure; and to amend or cancel any rule adopted. Public notice of every rule adopted under this  
567 section shall be by such means as the Board may prescribe.

568 (8a) ~~To~~ *Except as otherwise provided in Articles 2.4 (§ 62.1-44.15:51 et seq.) and 2.5*  
569 *(§ 62.1-44.15:67 et seq.)* issue special orders to owners (i) who are permitting or causing the pollution,  
570 as defined by § 62.1-44.3, of state waters to cease and desist from such pollution, (ii) who have failed to  
571 construct facilities in accordance with final approved plans and specifications to construct such facilities  
572 in accordance with final approved plans and specifications, (iii) who have violated the terms and  
573 provisions of a certificate issued by the Board to comply with such terms and provisions, (iv) who have  
574 failed to comply with a directive from the Board to comply with such directive, (v) who have  
575 contravened duly adopted and promulgated water quality standards and policies to cease and desist from  
576 such contravention and to comply with such water quality standards and policies, (vi) who have violated  
577 the terms and provisions of a pretreatment permit issued by the Board or by the owner of a publicly  
578 owned treatment works to comply with such terms and provisions or (vii) who have contravened any  
579 applicable pretreatment standard or requirement to comply with such standard or requirement; and also  
580 to issue such orders to require any owner to comply with the provisions of this chapter and any decision  
581 of the Board. ~~Orders~~ *Except as otherwise provided by a separate article, orders* issued pursuant to this  
582 subsection may include civil penalties of up to \$32,500 per violation, not to exceed \$100,000 per order.  
583 The Board may assess penalties under this subsection if (a) the person has been issued at least two  
584 written notices of alleged violation by the Department for the same or substantially related violations at  
585 the same site, (b) such violations have not been resolved by demonstration that there was no violation,  
586 by an order issued by the Board or the Director, or by other means, (c) at least 130 days have passed  
587 since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations  
588 have occurred after a hearing conducted in accordance with subdivision (8b). The actual amount of any  
589 penalty assessed shall be based upon the severity of the violations, the extent of any potential or actual  
590 environmental harm, the compliance history of the facility or person, any economic benefit realized from  
591 the noncompliance, and the ability of the person to pay the penalty. The Board shall provide the person  
592 with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order  
593 that assesses penalties pursuant to this subsection. The issuance of a notice of alleged violation by the  
594 Department shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged  
595 violation shall include a description of each violation, the specific provision of law violated, and  
596 information on the process for obtaining a final decision or fact finding from the Department on whether  
597 or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a  
598 determination. Such civil penalties shall be paid into the state treasury and deposited by the State  
599 Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.), except that  
600 civil penalties assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or Article 11 (§ 62.1-44.34:14  
601 et seq.) shall be paid into the Virginia Petroleum Storage Tank Fund in accordance with § 62.1-44.34:11,  
602 *and except that civil penalties assessed for violations of Article 2.3 (§ 62.1-44.15:24 et seq.) shall be*  
603 *paid in accordance with the provisions of § 62.1-44.15:48.*

604 (8b) Such special orders are to be issued only after a hearing before a hearing officer appointed by  
605 the Supreme Court in accordance with § 2.2-4020 or, if requested by the person, before a quorum of the  
606 Board with at least 30 days' notice to the affected owners, of the time, place and purpose thereof, and  
607 they shall become effective not less than 15 days after service as provided in § 62.1-44.12; provided that  
608 if the Board finds that any such owner is grossly affecting or presents an imminent and substantial  
609 danger to (i) the public health, safety or welfare, or the health of animals, fish or aquatic life; (ii) a  
610 public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, it  
611 may issue, without advance notice or hearing, an emergency special order directing the owner to cease  
612 such pollution or discharge immediately, and shall provide an opportunity for a hearing, after reasonable  
613 notice as to the time and place thereof to the owner, to affirm, modify, amend or cancel such emergency

special order. If an owner who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board may proceed in accordance with § 62.1-44.23, and where the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires cessation of a discharge, the Board shall provide an opportunity for a hearing within 48 hours of the issuance of the injunction.

(8c) The provisions of this section notwithstanding, the Board may proceed directly under § 62.1-44.32 for any past violation or violations of any provision of this chapter or any regulation duly promulgated hereunder.

(8d) With the consent of any owner who has violated or failed, neglected or refused to obey any regulation or order of the Board, any condition of a permit or any provision of this chapter, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums not to exceed the limit specified in § 62.1-44.32 (a). Such civil charges shall be instead of any appropriate civil penalty which could be imposed under § 62.1-44.32 (a) and shall not be subject to the provisions of § 2.2-514. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.), excluding civil charges assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et seq.) of Chapter 3.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles, *or civil charges assessed for violations of Article 2.3 (§ 62.1-44.15:24 et seq.), or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under that article.*

The amendments to this section adopted by the 1976 Session of the General Assembly shall not be construed as limiting or expanding any cause of action or any other remedy possessed by the Board prior to the effective date of said amendments.

(8e) The Board shall develop and provide an opportunity for public comment on guidelines and procedures that contain specific criteria for calculating the appropriate penalty for each violation based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty.

(8f) Before issuing a special order under subdivision (8a) or by consent under (8d), with or without an assessment of a civil penalty, to an owner of a sewerage system requiring corrective action to prevent or minimize overflows of sewage from such system, the Board shall provide public notice of and reasonable opportunity to comment on the proposed order. Any such order under subdivision (8d) may impose civil penalties in amounts up to the maximum amount authorized in § 309(g) of the Clean Water Act. Any person who comments on the proposed order shall be given notice of any hearing to be held on the terms of the order. In any hearing held, such person shall have a reasonable opportunity to be heard and to present evidence. If no hearing is held before issuance of an order under subdivision (8d), any person who commented on the proposed order may file a petition, within 30 days after the issuance of such order, requesting the Board to set aside such order and provide a formal hearing thereon. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Board shall immediately set aside the order, provide a formal hearing, and make such petitioner a party. If the Board denies the petition, the Board shall provide notice to the petitioner and make available to the public the reasons for such denial, and the petitioner shall have the right to judicial review of such decision under § 62.1-44.29 if he meets the requirements thereof.

(9) To make such rulings under §§ 62.1-44.16, 62.1-44.17 and 62.1-44.19 as may be required upon requests or applications to the Board, the owner or owners affected to be notified by certified mail as soon as practicable after the Board makes them and such rulings to become effective upon such notification.

(10) To adopt such regulations as it deems necessary to enforce the general water quality management program of the Board in all or part of the Commonwealth, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.

(11) To investigate any large-scale killing of fish.

(a) Whenever the Board shall determine that any owner, whether or not he shall have been issued a certificate for discharge of waste, has discharged sewage, industrial waste, or other waste into state waters in such quantity, concentration or manner that fish are killed as a result thereof, it may effect such settlement with the owner as will cover the costs incurred by the Board and by the Department of Game and Inland Fisheries in investigating such killing of fish, plus the replacement value of the fish destroyed, or as it deems proper, and if no such settlement is reached within a reasonable time, the

675 Board shall authorize its executive secretary to bring a civil action in the name of the Board to recover  
676 from the owner such costs and value, plus any court or other legal costs incurred in connection with  
677 such action.

678 (b) If the owner is a political subdivision of the Commonwealth, the action may be brought in any  
679 circuit court within the territory embraced by such political subdivision. If the owner is an  
680 establishment, as defined in this chapter, the action shall be brought in the circuit court of the city or the  
681 circuit court of the county in which such establishment is located. If the owner is an individual or group  
682 of individuals, the action shall be brought in the circuit court of the city or circuit court of the county in  
683 which such person or any of them reside.

684 (c) For the purposes of this subsection the State Water Control Board shall be deemed the owner of  
685 the fish killed and the proceedings shall be as though the State Water Control Board were the owner of  
686 the fish. The fact that the owner has or held a certificate issued under this chapter shall not be raised as  
687 a defense in bar to any such action.

688 (d) The proceeds of any recovery had under this subsection shall, when received by the Board, be  
689 applied, first, to reimburse the Board for any expenses incurred in investigating such killing of fish. The  
690 balance shall be paid to the Board of Game and Inland Fisheries to be used for the fisheries'  
691 management practices as in its judgment will best restore or replace the fisheries' values lost as a result  
692 of such discharge of waste, including, where appropriate, replacement of the fish killed with game fish  
693 or other appropriate species. Any such funds received are hereby appropriated for that purpose.

694 (e) Nothing in this subsection shall be construed in any way to limit or prevent any other action  
695 which is now authorized by law by the Board against any owner.

696 (f) Notwithstanding the foregoing, the provisions of this subsection shall not apply to any owner who  
697 adds or applies any chemicals or other substances that are recommended or approved by the State  
698 Department of Health to state waters in the course of processing or treating such waters for public water  
699 supply purposes, except where negligence is shown.

700 (12) To administer programs of financial assistance for planning, construction, operation, and  
701 maintenance of water quality control facilities for political subdivisions in the Commonwealth.

702 (13) To establish policies and programs for effective area-wide or basin-wide water quality control  
703 and management. The Board may develop comprehensive pollution abatement and water quality control  
704 plans on an area-wide or basin-wide basis. In conjunction with this, the Board, when considering  
705 proposals for waste treatment facilities, is to consider the feasibility of combined or joint treatment  
706 facilities and is to ensure that the approval of waste treatment facilities is in accordance with the water  
707 quality management and pollution control plan in the watershed or basin as a whole. In making such  
708 determinations, the Board is to seek the advice of local, regional, or state planning authorities.

709 (14) To establish requirements for the treatment of sewage, industrial wastes and other wastes that  
710 are consistent with the purposes of this chapter; however, no treatment shall be less than secondary or  
711 its equivalent, unless the owner can demonstrate that a lesser degree of treatment is consistent with the  
712 purposes of this chapter.

713 (15) To promote and establish requirements for the reclamation and reuse of wastewater that are  
714 protective of state waters and public health as an alternative to directly discharging pollutants into waters  
715 of the state. The requirements shall address various potential categories of reuse and may include  
716 general permits and provide for greater flexibility and less stringent requirements commensurate with the  
717 quality of the reclaimed water and its intended use. The requirements shall be developed in consultation  
718 with the Department of Health and other appropriate state agencies. This authority shall not be construed  
719 as conferring upon the Board any power or duty duplicative of those of the State Board of Health.

720 (16) To establish and implement policies and programs to protect and enhance the Commonwealth's  
721 wetland resources. Regulatory programs shall be designed to achieve no net loss of existing wetland  
722 acreage and functions. Voluntary and incentive-based programs shall be developed to achieve a net  
723 resource gain in acreage and functions of wetlands. The Board shall seek and obtain advice and  
724 guidance from the Virginia Institute of Marine Science in implementing these policies and programs.

725 (17) To establish additional procedures for obtaining a Virginia Water Protection Permit pursuant to  
726 §§ 62.1-44.15:20 and 62.1-44.15:22 for a proposed water withdrawal involving the transfer of water  
727 resources between major river basins within the Commonwealth that may impact water basins in another  
728 state. Such additional procedures shall not apply to any water withdrawal in existence as of July 1,  
729 2012, except where the expansion of such withdrawal requires a permit under §§ 62.1-44.15:20 and  
730 62.1-44.15:22, in which event such additional procedures may apply to the extent of the expanded  
731 withdrawal only. The applicant shall provide as part of the application (i) an analysis of alternatives to  
732 such a transfer, (ii) a comprehensive analysis of the impacts that would occur in the source and  
733 receiving basins, (iii) a description of measures to mitigate any adverse impacts that may arise, (iv) a  
734 description of how notice shall be provided to interested parties, and (v) any other requirements that the  
735 Board may adopt that are consistent with the provisions of this section and §§ 62.1-44.15:20 and  
736 62.1-44.15:22 or regulations adopted thereunder. This subdivision shall not be construed as limiting or

expanding the Board's authority under §§ 62.1-44.15:20 and 62.1-44.15:22 to issue permits and impose conditions or limitations on the permitted activity.

(18) To be the lead agency for the Commonwealth's nonpoint source pollution management program, including coordination of the nonpoint source control elements of programs developed pursuant to certain state and federal laws, including § 319 of the federal Clean Water Act and § 6217 of the federal Coastal Zone Management Act. Further responsibilities include the adoption of regulations necessary to implement a nonpoint source pollution management program in the Commonwealth, the distribution of assigned funds, the identification and establishment of priorities to address nonpoint source related water quality problems, the administration of the Statewide Nonpoint Source Advisory Committee, and the development of a program for the prevention and control of soil erosion, sediment deposition, and nonagricultural runoff to conserve Virginia's natural resources.

#### Article 2.3.

#### Stormwater Management Act.

#### § 62.1-44.15:24. Definitions.

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

"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 provisions of this chapter.

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

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"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 activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in § 62.1-44.15:34.

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

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

"Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a particular location.

"Permit" or "VSMP authority permit" means an approval to conduct a land-disturbing activity issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of state VSMP general permit coverage has been provided where applicable.

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

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

"State permit" means an approval to conduct a land-disturbing activity issued by the Board in the form of a state stormwater individual permit or coverage issued under a state general permit or an

859 approval issued by the Board for stormwater discharges from an MS4. Under these permits, the  
858 Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and  
857 regulations and this article and its attendant regulations.

856 "Stormwater" means precipitation that is discharged across the land surface or through conveyances  
855 to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff  
854 and drainage.

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

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

850 "Virginia Stormwater Management Program" or "VSMP" means a program approved by the Soil and  
849 Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water  
848 Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage  
847 the quality and quantity of runoff resulting from land-disturbing activities and shall include such items  
846 as local ordinances, rules, permit requirements, annual standards and specifications, policies and  
845 guidelines, technical materials, and requirements for plan review, inspection, enforcement, where  
844 authorized in this article, and evaluation consistent with the requirements of this article and associated  
843 regulations.

842 "Virginia Stormwater Management Program authority" or "VSMP authority" means an authority  
841 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  
839 entity, including the Department; federal entity; or, for linear projects subject to annual standards and  
838 specifications in accordance with subsection B of § 62.1-44.15:31, electric, natural gas, and telephone  
837 utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or  
836 authorities created pursuant to § 15.2-5102.

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

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

829 **§ 62.1-44.15:25. Further powers and duties of the State Water Control Board.**

828 In addition to other powers and duties conferred upon the Board, it shall permit, regulate, and  
827 control stormwater runoff in the Commonwealth. The Board may issue, deny, revoke, terminate, or  
826 amend state stormwater individual permits or coverage issued under state general permits; adopt  
825 regulations; approve and periodically review Virginia Stormwater Management Programs and  
824 management programs developed in conjunction with a state municipal separate storm sewer permit;  
823 enforce the provisions of this article; and otherwise act to ensure the general health, safety, and welfare  
822 of the citizens of the Commonwealth as well as protect the quality and quantity of state waters from the  
821 potential harm of unmanaged stormwater. The Board may:

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

818 2. Take administrative and legal actions to ensure compliance with the provisions of this article by  
817 any person subject to state or VSMP authority permit requirements under this article, and those entities  
816 with an approved Virginia Stormwater Management Program and management programs developed in  
815 conjunction with a state municipal separate storm sewer system permit, including the proper  
814 enforcement and implementation of, and continual compliance with, this article.

813 3. In accordance with procedures of the Administrative Process Act (§ 2.2-4000 et seq.), amend or  
812 revoke any state permit issued under this article on the following grounds or for good cause as may be  
811 provided by the regulations of the Board:

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

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

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

798 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 activity controlled by the state permit necessary to prevent unreasonable degradation of properties, water quality, stream channels, and other natural resources.

4. Cause investigations and inspections 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.

5. In accordance with procedures of the Administrative Process Act (§ 2.2-4000 et seq.), adopt rules governing (i) hearings, (ii) the filing of reports, (iii) the issuance of permits and special orders, and (iv) all other matters relating to procedure, and amend or cancel any rule adopted.

6. Issue special orders to 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 Board or VSMP authority to comply with the provisions of the state or VSMP authority permit, this article, and any decision of the VSMP authority, the Department, or the Board; or (iv) who has violated the terms of an order issued by the court, the VSMP authority, the Department, or the Board to comply with the terms of such order, and also to issue orders to require 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 in accordance with the procedures of the Administrative Process Act (§ 2.2-4000 et seq.) and shall become effective not less than 15 days after the date of mailing with confirmation of delivery of the notice to the last known address of any person subject to state or VSMP authority permit requirements under this article, provided that if the Board finds that any such person subject to state or VSMP authority permit requirements under this article is grossly affecting or presents an imminent and substantial danger to (i) the public health, safety, or welfare or the health of animals, fish, or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural, or other reasonable uses, it may issue, without advance notice or hearing, an emergency special order directing any person subject to state or VSMP authority permit requirements under this article to cease such pollution or discharge immediately, and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof to any person subject to state or VSMP authority permit requirements under this article, to affirm, modify, amend, or cancel such emergency special order. If any person subject to state or VSMP authority permit requirements under this article who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board may proceed in accordance with § 62.1-44.15:48, and where the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires cessation of a discharge, the recipient of the order may appeal its issuance to the circuit court of the jurisdiction wherein the discharge was alleged to have occurred.

The provisions of this section notwithstanding, the Board may proceed directly under § 62.1-44.15:48 for any past violation or violations of any provision of this article or any regulation duly adopted hereunder.

With the consent of any person subject to state or VSMP authority permit requirements under this article 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 VSMP authority, any condition of a state or VSMP authority permit, or any provision of this article, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for violations in specific sums not to exceed the limit specified in subsection A of § 62.1-44.15:48. Such civil charges shall be collected in lieu of any appropriate civil penalty that could be imposed pursuant to subsection A of § 62.1-44.15:48 and shall not be subject to the provisions of § 2.2-514. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29.

#### **§ 62.1-44.15:26. State permits.**

A. All state permits issued by the Board under this article shall have fixed terms. The term of a state permit shall be based upon the projected duration of the project, the length of any required monitoring, or other project operations or permit conditions; however, the term shall not exceed five years. The term of a permit issued by the Board shall not be extended by modification beyond the maximum duration and the permit shall expire at the end of the term unless it is administratively continued in accordance with Board regulations.

B. State individual construction permits shall be administered by the Department.



921     **§ 62.1-44.15:27. Establishment of Virginia Stormwater Management Programs.**

922     A. Any locality, excluding towns, unless such town operates a regulated MS4, shall be required to  
923     adopt a VSMP for land-disturbing activities consistent with the provisions of this article according to a  
924     schedule set by the Board. Such schedule shall require adoption no sooner than 15 months and not  
925     more than 21 months following the effective date of the regulation that establishes local program  
926     criteria and delegation procedures, unless the Board deems that the Department's review of the VSMP  
927     warrants an extension up to an additional 12 months, provided the locality has made substantive  
928     progress. Localities subject to this subsection are authorized to coordinate plan review and inspections  
929     with other entities in accordance with subsection H.

930     B. Any town lying within a county that has adopted a VSMP in accordance with subsection A may  
931     adopt its own program or shall become subject to the county program. If a town lies within the  
932     boundaries of more than one county, the town shall be considered to be wholly within the county in  
933     which the larger portion of the town lies. Towns shall inform the Department of their decision  
934     according to a schedule established by the Department. Thereafter, the Department shall provide an  
935     annual schedule by which towns can submit applications to adopt a VSMP.

936     C. In support of VSMP authorities, the Department shall:

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

939     2. Provide technical assistance and training.

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

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

947     E. Each locality that administers an approved VSMP shall, by ordinance, establish a VSMP that  
948     shall be administered in conjunction with a local MS4 program and a local erosion and sediment  
949     control program if required pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.), and which shall include  
950     the following:

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

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

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

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

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

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

973     I. Localities shall issue a consolidated stormwater management and erosion and sediment control  
974     permit that is consistent with the provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51  
975     et seq.). When available in accordance with subsection J, such permit, where applicable, shall also  
976     include a copy of or reference to state VSMP permit coverage authorization to discharge.

977     J. Upon the development of an online reporting system by the Department, but no later than July 1,  
978     2014, a VSMP authority shall then be required to obtain evidence of state VSMP permit coverage where  
979     it is required prior to providing approval to begin land disturbance.

980     K. Any VSMP adopted pursuant to and consistent with this article shall be considered to meet the  
981     stormwater management requirements under the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et  
982     seq.) and attendant regulations, and effective July 1, 2014, shall not be subject to local program review



under the stormwater management provisions the Chesapeake Bay Preservation Act.

L. All VSMP authorities shall comply with the provisions of this article and the stormwater management provisions of Article 2.4 (§ 62.1-44.15:51 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.

**§ 62.1-44.15:28. Development of regulations.**

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

1. Establish standards and procedures for administering a 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 Erosion and Sediment Control Law (§ 62.1-44.15:51 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 VSMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VSMP authority shall grant land-disturbing activity approval, the conditions and processes under which approval shall be granted, the procedures for communicating disapproval, the conditions under which an approval may be changed, and requirements for inspection of approved projects;

5. Establish by regulations a statewide permit fee schedule to cover all costs associated with the implementation of a VSMP related to 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 activities between 2,500 square feet and up to one acre in Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) localities. The 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 § 62.1-44.15:29. However, whenever the Board has approved a VSMP, no more than 30 percent of the total revenue generated by the statewide stormwater permit fees collected 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 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 amount established in the regulations as available to the Department for program oversight responsibilities pursuant to subdivision 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 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 (§ 62.1-44.15:51 et seq.) and this article. However, such standards shall also apply to 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;

7. Require that 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. Except where more stringent requirements are necessary to address total maximum daily load 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-year, two-year, 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 § 62.1-44.15:27 or 62.1-44.15:33;

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 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. The Board may integrate and consolidate components of the regulations implementing the Erosion and Sediment Control program and the Chesapeake Bay Preservation Area Designation and Management program with the regulations governing the Virginia Stormwater Management Program (VSMP) Permit program 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.

**§ 62.1-44.15:29. 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 §§ 62.1-44.15:28, 62.1-44.15:38, and 62.1-44.15:71 and all civil penalties collected pursuant to § 62.1-44.19:22 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.

**§ 62.1-44.15:30. 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 § 62.1-44.15:52, the Department shall develop or certify expanded components to address program administration, plan review, and project inspection elements of this article 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 for the purposes of renewals.

**§ 62.1-44.15:31. Annual standards and specifications for state agencies, federal entities, and other specified entities.**

A. State entities, including 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 set of standards and specifications for Department approval that describes how land-disturbing activities shall be conducted. Such standards and specifications shall be consistent with the requirements of this article and associated regulations, including the regulations governing the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities and the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and associated regulations. Each project constructed in accordance with the requirements of this article, its attendant regulations, and where required standards and specifications shall obtain coverage issued under the state general permit prior to land disturbance. The standards and specifications shall include:

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 activities covered under this article; and

6. Requirements for documenting onsite 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. 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 (§ 62.1-44.15:51 et seq.), and regulations adopted thereunder. The Department may take enforcement actions in accordance with this article and related regulations.

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

**§ 62.1-44.15:32. Duties of the Department.**

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

B. The Department is authorized to review the stormwater management plan for any project with real or potential interjurisdictional impacts upon the request of one or all 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 of the requesting locality to cover its costs for providing such services.

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

**§ 62.1-44.15:33. 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.

**§ 62.1-44.15:34. Regulated activities; submission and approval of a permit application; security for performance; exemptions.**

A. A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement and, after July 1, 2014, a stormwater management plan, and has obtained 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 be required to obtain evidence of VSMP permit coverage where it is required prior to providing approval to begin land disturbance. The VSMP authority shall act on any permit application within 60 days after it has been determined by the VSMP authority to be a complete application. The VSMP authority may either issue project approval or denial and shall provide written rationale for the denial. The 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 approval, the VSMP authority may also require an applicant, excluding 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 VSMP authority, to ensure that measures could be taken by the VSMP authority at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions that may be required of him by the permit conditions as a result of his land-disturbing activity. If the VSMP authority takes such action upon such failure by the applicant, the VSMP authority may collect from the applicant 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 no longer 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, livestock feedlot operations, or as additionally set forth by the Board in regulations, 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 provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) may regulate these single-family residences where land disturbance exceeds 2,500 square feet;

4. Land-disturbing activities that disturb less than one acre of land area except for land-disturbing activity exceeding an area of 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 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 any locality 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. Discharges to a sanitary sewer or a combined sewer system;

6. Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;

7. 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; and

8. Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VSMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsection A is required within 30 days of commencing the land-disturbing activity.

**§ 62.1-44.15:35. Nutrient credit use and additional offsite options for construction activities.**

A. As used in this section:

"Nutrient credit" or "credit" means a nutrient credit certified pursuant to Article 4.02 (§ 62.1-44.19:12 et seq.).

"Tributary" has the same meaning as in § 62.1-44.19:13. For areas outside of the Chesapeake Bay Watershed, "tributary" includes the following watersheds: Albemarle Sound, Coastal; Atlantic Ocean, Coastal; Big Sandy; Chowan; Clinch-Powell; New Holston (Upper Tennessee); New River; Roanoke; and Yadkin.

"Virginia Stormwater Management Program Authority" or "VSMP authority" has the same meaning as in § 62.2-44.15:24 and includes, until July 1, 2014, any locality that has adopted a local stormwater management program.

B. A VSMP authority is authorized to allow compliance with stormwater nonpoint nutrient runoff water quality criteria established pursuant to § 62.1-44.15:28, in whole or in part, through the use of the applicant's acquisition of nutrient credits in the same tributary.

C. No applicant shall use nutrient credits to address water quantity control requirements. No applicant shall use nutrient credits or other offsite options in contravention of local water quality-based limitations (i) determined pursuant to subsection B of § 62.1-44.19:14, (ii) adopted pursuant to § 62.1-44.15:33 or other applicable authority, (iii) deemed necessary to protect public water supplies from demonstrated adverse nutrient impacts, or (iv) as otherwise may be established or approved by the Board. Where such a limitation exists, offsite options may be used provided that such options do not preclude or impair compliance with the local limitation.

D. A VSMP authority shall allow offsite options in accordance with subsection I when:

1. Less than five acres of land will be disturbed;

2. The postconstruction phosphorous control requirement is less than 10 pounds per year; or

3. The state permit applicant demonstrates to the satisfaction of the VSMP authority that (i) alternative site designs have been considered that may accommodate onsite best management practices, (ii) onsite best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate onsite best management practices will be implemented, and (iv) full compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably be met onsite. For purposes of this subdivision, if an applicant demonstrates onsite 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).

E. Documentation of the applicant's acquisition of nutrient credits shall be provided to the VSMP authority and the Department in a certification from the credit provider documenting the number of phosphorus nutrient credits acquired and the associated ratio of nitrogen nutrient credits at the credit-generating entity. Until the effective date of regulations establishing application fees in accordance with § 62.1-44.19:20, the credit provider shall pay the Department a water quality enhancement fee equal to six percent of the amount paid by the applicant for the credits. Such fee shall be deposited into the Virginia Stormwater Management Fund established by § 62.1-44.15:29.

F. Nutrient credits 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 except as otherwise limited in subsection C. Nutrient credits outside the same or adjacent eight-digit hydrologic unit code may only be used if it is determined by the VSMP authority that no credits are available within the same or adjacent eight-digit hydrologic unit code when the VSMP authority accepts the final site design. In such cases, and subject to other limitations imposed in this section, credits available within the same tributary may be used. In no case shall credits from another tributary be

1290 used.

1291 G. For that portion of a site's compliance with stormwater nonpoint nutrient runoff water quality  
1292 criteria being obtained through nutrient credits, the applicant shall (i) comply with a 1:1 ratio of the  
1293 nutrient credits to the site's remaining postdevelopment nonpoint nutrient runoff compliance requirement  
1294 being met by credit use and (ii) use credits certified as perpetual credits pursuant to Article 4.02  
1295 (§62.1-44.19:12 et seq.).

1296 H. No VSMP authority may grant an exception to, or waiver of, postdevelopment nonpoint nutrient  
1297 runoff compliance requirements unless offsite options have been considered and found not available.

1298 I. The VSMP authority shall require that nutrient credits and other offsite options approved by the  
1299 Department or applicable state board, including locality pollutant loading pro rata share programs  
1300 established pursuant to § 15.2-2243, achieve the necessary nutrient reductions prior to the  
1301 commencement of the applicant's land-disturbing activity. A pollutant loading pro rata share program  
1302 established by a locality pursuant to § 15.2-2243 and approved by the Department or applicable state  
1303 board prior to January 1, 2011, including those that may achieve nutrient reductions after the  
1304 commencement of the land-disturbing activity, may continue to operate in the approved manner for a  
1305 transition period ending July 1, 2014. The applicant shall have the right to select between the use of  
1306 nutrient credits or other offsite options, except during the transition period in those localities to which  
1307 the transition period applies. The locality may use funds collected for nutrient reductions pursuant to a  
1308 locality pollutant loading pro rata share program under § 15.2-2243 for nutrient reductions in the same  
1309 tributary within the same locality as the land-disturbing activity or for the acquisition of nutrient credits.  
1310 In the case of a phased project, the applicant may acquire or achieve the offsite nutrient reductions  
1311 prior to the commencement of each phase of the land-disturbing activity in an amount sufficient for each  
1312 such phase.

1313 J. Nutrient reductions obtained through nutrient credits shall be credited toward compliance with any  
1314 nutrient allocation assigned to a municipal separate storm sewer system in a Virginia Stormwater  
1315 Management Program Permit or Total Maximum Daily Load applicable to the location where the  
1316 activity for which the nutrient credits are used takes place. If the activity for which the nutrient credits  
1317 are used does not discharge to a municipal separate storm sewer system, the nutrient reductions shall  
1318 be credited toward compliance with the applicable nutrient allocation.

1319 K. A VSMP authority shall allow the full or partial substitution of perpetual nutrient credits for  
1320 existing onsite nutrient controls when (i) the nutrient credits will compensate for 10 or fewer pounds of  
1321 the annual phosphorous requirement associated with the original land-disturbing activity or (ii) existing  
1322 onsite controls are not functioning as anticipated after reasonable attempts to comply with applicable  
1323 maintenance agreements or requirements and the use of nutrient credits will account for the deficiency.  
1324 Upon determination by the VSMP authority that the conditions established by clause (i) or (ii) have  
1325 been met, the party responsible for maintenance shall be released from maintenance obligations related  
1326 to the onsite phosphorous controls for which the nutrient credits are substituted.

1327 L. To the extent available, with the consent of the applicant, the VSMP authority, the Board or the  
1328 Department may include the use of nutrient credits or other offsite measures in resolving enforcement  
1329 actions to compensate for (i) nutrient control deficiencies occurring during the period of noncompliance  
1330 and (ii) permanent nutrient control deficiencies.

1331 M. This section shall not be construed as limiting the authority established under § 15.2-2243;  
1332 however, under any pollutant loading pro rata share program established thereunder, the subdivider or  
1333 developer shall be given appropriate credit for nutrient reductions achieved through nutrient credits or  
1334 other offsite options.

1335 N. In order to properly account for allowed nonpoint nutrient offsite reductions, an applicant shall  
1336 report to the Department, in accordance with Department procedures, information regarding all offsite  
1337 reductions that have been authorized to meet stormwater postdevelopment nonpoint nutrient runoff  
1338 compliance requirements.

1339 O. An applicant or a permittee found to be in noncompliance with the requirements of this section  
1340 shall be subject to the enforcement and penalty provisions of this article.

1341 **§ 62.1-44.15:36. (For contingent repeal, see Editor's note) Recovery of administrative costs.**

1342 Any locality that administers a stormwater management program may charge applicants a  
1343 reasonable fee to defray the cost of program administration, including costs associated with plan review,  
1344 issuance of permits, periodic inspection for compliance with approved plans, and necessary enforcement,  
1345 provided that charges for such costs are not made under any other law, ordinance, or program. The fee  
1346 shall not exceed an amount commensurate with the services rendered and expenses incurred or \$1,000,  
1347 whichever is less.

1348 **§ 62.1-44.15:37. Monitoring, reports, investigations, inspections, and stop work orders.**

1349 A. The VSMP authority (i) shall provide for periodic inspections of the installation of stormwater  
1350 management measures, (ii) may require monitoring and reports from the person responsible for meeting  
1351 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) shall conduct such investigations and perform such other actions as are necessary to carry out the provisions of this article. If the 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 mailing with confirmation of delivery 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 Board, or the permit may be revoked by the VSMP authority, or the state permit may be revoked by the Board. The Board or the VSMP authority, where authorized to enforce this article, may pursue enforcement in accordance with § 62.1-44.15:48.

B. If a permittee fails to comply with a notice issued in accordance with subsection A within the time specified, the VSMP authority, where authorized to enforce this article, or the Department may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or 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 shall be issued (i) in accordance with local procedures if issued by a locality serving as a VSMP authority or (ii) after a hearing held in accordance with the requirements of the Administrative Process Act (§ 2.2-4000 et seq.) if issued by the Department. Such orders shall become effective upon service on the person by mailing, with confirmation of delivery, 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 § 62.1-44.15:42.

**§ 62.1-44.15:38. Department to review VSMPs.**

A. The Department shall develop and implement a review and evaluation schedule so that the effectiveness of each 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 (§ 62.1-44.15:51 et seq.) and associated regulations and, where applicable, the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 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 VSMP is found to have a program that does not comply with the provisions of this article or regulations adopted thereunder, the Board 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 VSMP has not implemented the necessary compliance actions identified by the Board within 30 days following receipt of the corrective action agreement, or such additional period as is granted to complete the implementation of the corrective action, then the Board shall 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 § 62.1-44.15:29 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



1413 administration includes the ability to review and comment on plans to the VSMP authority, to conduct  
1414 inspections with the VSMP authority, and to conduct enforcement in accordance with this article and  
1415 associated regulations.

1416 In lieu of issuing a special order or revoking the program, the Board may take legal action against  
1417 a VSMP pursuant to § 62.1-44.15:48 to ensure compliance.

1418 **§ 62.1-44.15:39. Right of entry.**

1419 The Department, the VSMP authority, where authorized to enforce this article, any duly authorized  
1420 agent of the Department or VSMP authority, or any locality that is the operator of a regulated  
1421 municipal separate storm sewer system may, at reasonable times and under reasonable circumstances,  
1422 enter any establishment or upon any property, public or private, for the purpose of obtaining  
1423 information or conducting surveys or investigations necessary in the enforcement of the provisions of  
1424 this article. For operators of municipal separate storm sewer systems, this authority shall apply only to  
1425 those properties from which a discharge enters their municipal separate storm sewer systems.

1426 In accordance with a performance bond with surety, cash escrow, letter of credit, any combination  
1427 thereof, or such other legal arrangement, a VSMP authority may also enter any establishment or upon  
1428 any property, public or private, for the purpose of initiating or maintaining appropriate actions that are  
1429 required by the permit conditions associated with a land-disturbing activity when a permittee, after  
1430 proper notice, has failed to take acceptable action within the time specified.

1431 **§ 62.1-44.15:40. Information to be furnished.**

1432 The Board, the Department, or the VSMP authority, where authorized to enforce this article, may  
1433 require every permit applicant, every permittee, or any person subject to state permit requirements  
1434 under this article to furnish when requested such application materials, plans, specifications, and other  
1435 pertinent information as may be necessary to determine the effect of his discharge on the quality of state  
1436 waters, or such other information as may be necessary to accomplish the purposes of this article. Any  
1437 personal information shall not be disclosed except to an appropriate official of the Board, Department,  
1438 U.S. Environmental Protection Agency, or VSMP authority or as may be authorized pursuant to the  
1439 Virginia Freedom of Information Act (§ 2.2-3700 et seq.). However, disclosure of records of the  
1440 Department, the Board, or the VSMP authority relating to (i) active federal environmental enforcement  
1441 actions that are considered confidential under federal law, (ii) enforcement strategies, including  
1442 proposed sanctions for enforcement actions, and (iii) any secret formulae, secret processes, or secret  
1443 methods other than effluent data used by any permittee or under that permittee's direction is prohibited.  
1444 Upon request, such enforcement records shall be disclosed after a proposed sanction resulting from the  
1445 investigation has been determined by the Department, the Board, or the VSMP authority. This section  
1446 shall not be construed to prohibit the disclosure of records related to inspection reports, notices of  
1447 violation, and documents detailing the nature of any land-disturbing activity that may have occurred, or  
1448 similar documents.

1449 **§ 62.1-44.15:41. Private rights; liability.**

1450 A. Whenever a common interest community cedes responsibility for the maintenance, repair, and  
1451 replacement of a stormwater management facility on its real property to the Commonwealth or political  
1452 subdivision thereof, such common interest community shall be immune from civil liability in relation to  
1453 such stormwater management facility. In order for the immunity established by this subsection to apply,  
1454 (i) the common interest community must cede such responsibility by contract or other instrument  
1455 executed by both parties and (ii) the Commonwealth or the governing body of the political subdivision  
1456 shall have accepted the responsibility ceded by the common interest community in writing or by  
1457 resolution. As used in this section, maintenance, repair, and replacement shall include, without  
1458 limitation, cleaning of the facility, maintenance of adjacent grounds that are part of the facility,  
1459 maintenance and replacement of fencing where the facility is fenced, and posting of signage indicating  
1460 the identity of the governmental entity that maintains the facility. Acceptance or approval of an  
1461 easement, subdivision plat, site plan, or other plan of development shall not constitute the acceptance by  
1462 the Commonwealth or the governing body of the political subdivision required to satisfy clause (ii). The  
1463 immunity granted by this section shall not apply to actions or omissions by the common interest  
1464 community constituting intentional or willful misconduct or gross negligence. For the purposes of this  
1465 section, "common interest community" means the same as that term is defined in § 55-528.

1466 B. Except as provided in subsection A, the fact that any permittee holds or has held a permit or state  
1467 permit issued under this article shall not constitute a defense in any civil action involving private rights.

1468 **§ 62.1-44.15:42. Enforcement by injunction, etc.**

1469 A. It is unlawful for any person to fail to comply with any stop work order, emergency order issued  
1470 in accordance with § 62.1-44.15:37, or a special order or emergency special order issued in accordance  
1471 with § 62.1-44.15:25 that has become final under the provisions of this article. Any person violating or  
1472 failing, neglecting, or refusing to obey any rule, regulation, ordinance, approved standard and  
1473 specification, order, or permit condition issued by the Board, Department, or VSMP authority as  
1474 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 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 § 62.1-44.15:48.

**§ 62.1-44.15:43. Testing validity of regulations; judicial review.**

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

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

**§ 62.1-44.15:44. Right to hearing.**

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

**§ 62.1-44.15:45. Hearings.**

VSMP authorities holding hearings under this article shall do so in a manner consistent with § 62.1-44.26.

**§ 62.1-44.15:46. Appeals.**

Any permittee or party aggrieved by a state permit or enforcement decision of the Department or Board under this article, 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 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 Constitution of the United States. 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 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 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.

**§ 62.1-44.15:47. Appeal to Court of Appeals.**

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

**§ 62.1-44.15:48. Penalties, injunctions, and other legal actions.**

A. Any person who violates any provision of this article or of any regulation, ordinance, or standard and specification 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 a VSMP authority authorized to enforce this article, the Department, the Board, or a 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 VSMP authority in enforcing the provisions of this article. The Board, Department, or VSMP authority may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate 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 § 62.1-44.15:29. 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, any order of a VSMP authority authorized to enforce this article or the Department, any 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, any order of the VSMP authority or the Department, any 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 VSMP authority, where authorized to enforce this article, may apply to the 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 VSMP authority or the Department, or any provision of this article, the Board, Department, or 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.

**§ 62.1-44.15:49. Enforcement authority of MS4 localities.**

A. Localities shall adopt a stormwater ordinance pursuant to the conditions of a MS4 permit 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 § 62.1-44.15:48, the injunctive authority as provided for in subdivision D 1 of § 62.1-44.15:48, and the civil charges as authorized in subdivision D 2 of § 62.1-44.15:48, 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 approved as a VSMP authority.

**§ 62.1-44.15:50. Cooperation with federal and state agencies.**

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

**Article 2.4.**

**Erosion and Sediment Control Law.**

**§ 62.1-44.15:51. 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 VESCP 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 VESCP 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, land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1, or professional soil scientist as defined in § 54.1-2200.

"Certified program administrator" means an employee or agent of a VESCP 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.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"District" or "soil and water conservation district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Article 1.5 (§ 10.1-1187.21 et seq.) of Chapter 11.1 of Title 10.1.

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

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

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

2. Individual service connections;

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

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

5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1;

6. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Board in regulation, 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.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

7. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;

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

9. Disturbed land areas of less than 10,000 square feet in size or 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations; however, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;

10. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

1659 11. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are  
1660 within the regulatory authority of and approved by local wetlands boards, the Marine Resources  
1661 Commission, or the United States Army Corps of Engineers; however, any associated land that is  
1662 disturbed outside of this exempted area shall remain subject to this article and the regulations adopted  
1663 pursuant thereto; and

1664 12. Emergency work to protect life, limb, or property, and emergency repairs; however, if the  
1665 land-disturbing activity would have required an approved erosion and sediment control plan, if the  
1666 activity were not an emergency, then the land area disturbed shall be shaped and stabilized in  
1667 accordance with the requirements of the VESCP authority.

1668 "Natural channel design concepts" means the utilization of engineering analysis and fluvial  
1669 geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the  
1670 purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and  
1671 allows larger flows to access its bankfull bench and its floodplain.

1672 "Owner" means the owner or owners of the freehold of the premises or lesser estate therein,  
1673 mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person,  
1674 firm, or corporation in control of a property.

1675 "Peak flow rate" means the maximum instantaneous flow from a given storm condition at a  
1676 particular location.

1677 "Permittee" means the person to whom the local permit authorizing land-disturbing activities is  
1678 issued or the person who certifies that the approved erosion and sediment control plan will be followed.

1679 "Person" means any individual, partnership, firm, association, joint venture, public or private  
1680 corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county,  
1681 city, town, or other political subdivision of the Commonwealth, governmental body, including a federal  
1682 or state entity as applicable, any interstate body, or any other legal entity.

1683 "Runoff volume" means the volume of water that runs off the land development project from a  
1684 prescribed storm event.

1685 "Town" means an incorporated town.

1686 "Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the  
1687 Board that has been established by a VESCP authority for the effective control of soil erosion, sediment  
1688 deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the  
1689 unreasonable degradation of properties, stream channels, waters, and other natural resources and shall  
1690 include such items where applicable as local ordinances, rules, permit requirements, annual standards  
1691 and specifications, policies and guidelines, technical materials, and requirements for plan review,  
1692 inspection, enforcement where authorized in this article, and evaluation consistent with the requirements  
1693 of this article and its associated regulations.

1694 "Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an  
1695 authority approved by the Board to operate a Virginia Erosion and Sediment Control Program. An  
1696 authority may include a state entity, including the Department; a federal entity; a district, county, city,  
1697 or town; or for linear projects subject to annual standards and specifications, electric, natural gas, and  
1698 telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad  
1699 companies, or authorities created pursuant to § 15.2-5102.

1700 "Water quality volume" means the volume equal to the first one-half inch of runoff multiplied by the  
1701 impervious surface of the land development project.

1702 **§ 62.1-44.15:52. Virginia Erosion and Sediment Control Program.**

1703 A. The Board shall develop a program and adopt regulations in accordance with the Administrative  
1704 Process Act (§ 2.2-4000 et seq.) for the effective control of soil erosion, sediment deposition, and  
1705 nonagricultural runoff that shall be met in any control program to prevent the unreasonable  
1706 degradation of properties, stream channels, waters, and other natural resources. Stream restoration and  
1707 relocation projects that incorporate natural channel design concepts are not man-made channels and  
1708 shall be exempt from any flow rate capacity and velocity requirements for natural or man-made  
1709 channels as defined in any regulations promulgated pursuant to this section or § 62.1-44.15:54 or  
1710 62.1-44.15:65. Any plan approved prior to July 1, 2014, that provides for stormwater management that  
1711 addresses any flow rate capacity and velocity requirements for natural or man-made channels shall  
1712 satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the  
1713 practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain  
1714 and release over a 24-hour period the expected rainfall resulting from the one-year, 24-hour storm; and  
1715 (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour  
1716 storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good  
1717 forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor  
1718 that is equal to the runoff volume from the site when it was in a good forested condition divided by the  
1719 runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity  
1720 and velocity requirement for natural or man-made channels as defined in regulations promulgated

pursuant to § 62.1-44.15:54 or 62.1-44.15:65. 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 (§ 62.1-44.15:24 et seq.) and attendant regulations, unless such land-disturbing activities are in accordance with the grandfathering provisions of the Virginia Stormwater Management Program (VSMP) Permit 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 VESCP authorities.

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

D. The Board shall approve VESCP authorities and shall periodically conduct a comprehensive program compliance review and evaluation to ensure that all VESCPs operating under the jurisdiction of this article meet minimum standards of effectiveness in controlling soil erosion, sediment deposition, and nonagricultural runoff. The Department shall develop a schedule for conducting periodic reviews and evaluations of the effectiveness of VESCPs unless otherwise directed by the Board. Such reviews where applicable shall be coordinated with those being implemented in accordance with the Stormwater Management Act (§ 62.1-44.15:24 et seq.) and associated regulations and the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 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.

E. The Board shall issue certificates of competence concerning the content, application, and intent of specified subject areas of this article 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 article 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 Stormwater Management Act (§ 62.1-44.15:24 et seq.) and attendant regulations in accordance with § 62.1-44.15:30.

F. Department personnel conducting inspections pursuant to this article shall hold a certificate of competence as provided in subsection E.

**§ 62.1-44.15:53. Certification of program personnel.**

A. The minimum standards of VESCP effectiveness established by the Board pursuant to subsection C of § 62.1-44.15:52 shall provide that (i) 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 shall be conducted by a certified inspector; and (iii) a 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 area of plan review, project inspection, or program administration that was attained prior to the adoption of the mandatory certification provisions of subsection A 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 or a professional soil scientist as defined in § 54.1-2200 shall be deemed to satisfy the certification requirements for the purposes of renewals.

**§ 62.1-44.15:54. Establishment of Virginia Erosion and Sediment Control Program.**

A. Counties and cities shall adopt and administer a VESCP.

Any town lying within a county that has adopted its own 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

1782 which the larger portion of the town lies.

1783 B. A VESCP authority may enter into agreements or contracts with soil and water conservation  
1784 districts, adjacent localities, or other public or private entities to assist with carrying out the provisions  
1785 of this article, including the review and determination of adequacy of erosion and sediment control  
1786 plans submitted for land-disturbing activities on a unit or units of land as well as for monitoring,  
1787 reports, inspections, and enforcement where authorized in this article, of such land-disturbing activities.

1788 C. Any VESCP adopted by a county, city, or town shall be approved by the Board if it establishes by  
1789 ordinance requirements that are consistent with this article and associated regulations.

1790 D. Each approved VESCP operated by a county, city, or town shall include provisions for the  
1791 integration of the VESCP with Virginia stormwater management, flood insurance, flood plain  
1792 management, and other programs requiring compliance prior to authorizing a land-disturbing activity in  
1793 order to make the submission and approval of plans, issuance of permits, payment of fees, and  
1794 coordination of inspection and enforcement activities more convenient and efficient both for the local  
1795 governments and those responsible for compliance with the programs.

1796 E. The Board may approve a state entity, federal entity, or, for linear projects subject to annual  
1797 standards and specifications, electric, natural gas, and telephone utility companies, interstate and  
1798 intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to  
1799 § 15.2-5102 to operate a VESCP consistent with the requirements of this article and its associated  
1800 regulations and the VESCP authority's Department-approved annual standards and specifications. For  
1801 these programs, enforcement shall be administered by the Department and the Board where applicable  
1802 in accordance with the provisions of this article.

1803 F. Following completion of a compliance review of a VESCP in accordance with subsection D of  
1804 § 62.1-44.15:52, the Department shall provide results and compliance recommendations to the Board in  
1805 the form of a corrective action agreement if deficiencies are found; otherwise, the Board may find the  
1806 program compliant. If a comprehensive or partial program compliance review conducted by the  
1807 Department of a VESCP indicates that the VESCP authority has not administered, enforced where  
1808 authorized to do so, or conducted its VESCP in a manner that satisfies the minimum standards of  
1809 effectiveness established pursuant to subsection C of § 62.1-44.15:52, the Board shall establish a  
1810 schedule for the VESCP authority to come into compliance. The Board shall provide a copy of its  
1811 decision to the VESCP authority that specifies the deficiencies, actions needed to be taken, and the  
1812 approved compliance schedule required to attain the minimum standard of effectiveness and shall  
1813 include an offer to provide technical assistance to implement the corrective action. If the VESCP  
1814 authority has not implemented the necessary compliance actions identified by the Board within 30 days  
1815 following receipt of the corrective action agreement, or such additional period as is granted to complete  
1816 the implementation of the corrective action, then the Board shall have the authority to (i) issue a special  
1817 order to any VESCP, imposing a civil penalty not to exceed \$5,000 per day with the maximum amount  
1818 not to exceed \$20,000 per violation for noncompliance with the state program, to be paid into the state  
1819 treasury and deposited in the Virginia Stormwater Management Fund established by § 62.1-44.15:29 or  
1820 (ii) revoke its approval of the VESCP. The Administrative Process Act (§ 2.2-4000 et seq.) shall govern  
1821 the activities and proceedings of the Board and the judicial review thereof.

1822 In lieu of issuing a special order or revoking the program, the Board is authorized to take legal  
1823 action against a VESCP to ensure compliance.

1824 G. If the Board revokes its approval of the VESCP of a county, city, or town, and the locality is in a  
1825 district, the district, upon approval of the Board, shall adopt and administer a VESCP for the locality.  
1826 To carry out its program, the district shall adopt regulations in accordance with the Administrative  
1827 Process Act (§ 2.2-4000 et seq.) consistent with this article and associated regulations. The regulations  
1828 may be revised from time to time as necessary. The program and regulations shall be available for  
1829 public inspection at the principal office of the district.

1830 H. If the Board (i) revokes its approval of a VESCP of a district, or of a county, city, or town not in  
1831 a district, or (ii) finds that a local program consistent with this article and associated regulations has  
1832 not been adopted by a district or a county, city, or town that is required to adopt and administer a  
1833 VESCP, the Board shall find the VESCP authority provisional, and have the Department assist with the  
1834 administration of the program until the Board finds the VESCP authority compliant with the  
1835 requirements of this article and associated regulations. "Assisting with administration" includes but is  
1836 not limited to the ability to review and comment on plans to the VESCP authority, to conduct  
1837 inspections with the VESCP authority, and to conduct enforcement in accordance with this article and  
1838 associated regulations.

1839 I. If the Board revokes its approval of a state entity, federal entity, or, for linear projects subject to  
1840 annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and  
1841 intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to  
1842 § 15.2-5102, the Board shall find the VESCP authority provisional, and have the Department assist with  
1843 the administration of the program until the Board finds the VESCP authority compliant with the

requirements of this article and associated regulations. Assisting with administration includes the ability to review and comment on plans to the VESCP authority and to conduct inspections with the VESCP authority in accordance with this article and associated regulations.

J. Any VESCP authority that administers an erosion and sediment control program may charge applicants a reasonable fee to defray the cost of program administration. Such fee may be in addition to any fee charged for administration of a Virginia Stormwater Management Program, although payment of fees may be consolidated in order to provide greater convenience and efficiency for those responsible for compliance with the programs. A VESCP authority shall hold a public hearing prior to establishing a schedule of fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VESCP authority's expense involved.

K. The governing body of any county, city, or town, or a district board that is authorized to administer a VESCP, may adopt an ordinance or regulation where applicable providing that violations of any regulation or order of the Board, any provision of its program, any condition of a permit, or any provision of this article shall be subject to a civil penalty. The civil penalty for any one violation shall be not less than \$100 nor more than \$1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties that exceed a total of \$10,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties that exceed a total of \$10,000. Adoption of such an ordinance providing that violations are subject to a civil penalty shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection A of § 62.1-44.15:63. The penalties set out in this subsection are also available to the Board in its enforcement actions.

**§ 62.1-44.15:55. Regulated land-disturbing activities; submission and approval of erosion and sediment control plan.**

A. Except as provided in § 62.1-44.15:56 for state agency and federal entity land-disturbing activities, no person shall engage in any land-disturbing activity until he has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved. 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 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 VESCP, an erosion and sediment control plan may, at the request of one or all of the VESCP authorities, be submitted to the Department for review and approval rather than to each jurisdiction concerned. The Department may charge the jurisdictions requesting the review 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 multijurisdictional 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 VESCP authority.

B. The VESCP authority shall review erosion and sediment control plans submitted to it and grant written approval within 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 erosion and sediment control measures included in the plan and 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 VESCP authority, as provided by § 62.1-44.15:52, who will be in charge of and responsible for carrying out the land-disturbing activity. However, any 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 § 62.1-44.15:52. 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 VESCP authority within the time specified in this subsection, the plan shall be deemed approved and



1905 the person authorized to proceed with the proposed activity. The VESCP authority shall act on any  
1906 erosion and sediment control plan that has been previously disapproved within 45 days after the plan  
1907 has been revised, resubmitted for approval, and deemed adequate.

1908 C. The VESCP authority may require changes to an approved plan in the following cases:

1909 1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or

1910 2. Where the person responsible for carrying out the approved plan finds that because of changed  
1911 circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed  
1912 amendments to the plan, consistent with the requirements of this article and associated regulations, are  
1913 agreed to by the VESCP authority and the person responsible for carrying out the plan.

1914 D. Electric, natural gas, and telephone utility companies, interstate and intrastate natural gas  
1915 pipeline companies, and railroad companies shall, and authorities created pursuant to § 15.2-5102 may,  
1916 file general erosion and sediment control standards and specifications annually with the Department for  
1917 review and approval. Such standards and specifications shall be consistent with the requirements of this  
1918 article and associated regulations and the Stormwater Management Act (§ 62.1-44.15:24 et seq.) and  
1919 associated regulations where applicable. The specifications shall apply to:

1920 1. Construction, installation, or maintenance of electric transmission, natural gas, and telephone  
1921 utility lines and pipelines, and water and sewer lines; and

1922 2. Construction of the tracks, rights-of-way, bridges, communication facilities, and other related  
1923 structures and facilities of the railroad company.

1924 The Department shall have 60 days in which to approve the standards and specifications. If no  
1925 action is taken by the Department within 60 days, the standards and specifications shall be deemed  
1926 approved. Individual approval of separate projects within subdivisions 1 and 2 is not necessary when  
1927 approved specifications are followed. Projects not included in subdivisions 1 and 2 shall comply with  
1928 the requirements of the appropriate VESCP. The Board shall have the authority to enforce approved  
1929 specifications and charge fees equal to the lower of (i) \$1,000 or (ii) an amount sufficient to cover the  
1930 costs associated with standard and specification review and approval, project inspections, and  
1931 compliance.

1932 E. Any person engaging, in more than one jurisdiction, in the creation and operation of a wetland  
1933 mitigation or stream restoration bank or banks, which have been approved and are operated in  
1934 accordance with applicable federal and state guidance, laws, or regulations for the establishment, use,  
1935 and operation of wetlands mitigation or stream restoration banks, pursuant to a mitigation banking  
1936 instrument signed by the Department of Environmental Quality, the Marine Resources Commission, or  
1937 the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment  
1938 control standards and specifications for wetland mitigation or stream restoration banks annually with  
1939 the Department for review and approval consistent with guidelines established by the Board.

1940 The Department shall have 60 days in which to approve the specifications. If no action is taken by  
1941 the Department within 60 days, the specifications shall be deemed approved. Individual approval of  
1942 separate projects under this subsection is not necessary when approved specifications are implemented  
1943 through a project-specific erosion and sediment control plan. Projects not included in this subsection  
1944 shall comply with the requirements of the appropriate local erosion and sediment control program. The  
1945 Board shall have the authority to enforce approved specifications and charge fees equal to the lower of  
1946 (i) \$1,000 or (ii) an amount sufficient to cover the costs associated with standard and specification  
1947 review and approval, projection inspections, and compliance. Approval of general erosion and sediment  
1948 control specifications by the Department does not relieve the owner or operator from compliance with  
1949 any other local ordinances and regulations including requirements to submit plans and obtain permits  
1950 as may be required by such ordinances and regulations.

1951 F. In order to prevent further erosion, a VESCP authority may require approval of an erosion and  
1952 sediment control plan for any land identified by the VESCP authority as an erosion impact area.

1953 G. For the purposes of subsections A and B, when land-disturbing activity will be required of a  
1954 contractor performing construction work pursuant to a construction contract, the preparation,  
1955 submission, and approval of an erosion and sediment control plan shall be the responsibility of the  
1956 owner.

1957 **§ 62.1-44.15:56. State agency and federal entity projects.**

1958 A. A state agency shall not undertake a project involving a land-disturbing activity unless (i) the  
1959 state agency has submitted annual standards and specifications for its conduct of land-disturbing  
1960 activities that have been reviewed and approved by the Department as being consistent with this article  
1961 and associated regulations or (ii) the state agency has submitted an erosion and sediment control plan  
1962 for the project that has been reviewed and approved by the Department. When a federal entity submits  
1963 an erosion and sediment control plan for a project, land disturbance shall not commence until the  
1964 Department has reviewed and approved the plan.

1965 B. The Department shall not approve an erosion and sediment control plan submitted by a state  
1966 agency or federal entity for a project involving a land-disturbing activity (i) in any locality that 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 erosion and sediment control plan is consistent with the requirements of the state program.

C. The Department shall not approve an erosion and sediment control plan submitted by a state agency or federal entity for a project involving a land-disturbing activity in one locality with a local program with more stringent ordinances than those of the state program unless the 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 shall apply.

D. The Department shall have 60 days in which to comment on any standards and specifications or 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 onsite changes occur, the state agency shall submit changes in an erosion and sediment control plan to the Department.

F. The state agency responsible for the land-disturbing activity shall ensure compliance with an approved plan, 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 (§ 62.1-44.15:24 et seq.) and associated regulations when applicable.

**§ 62.1-44.15:57. 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 shall 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 Program 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 that 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 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 the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 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.

**§ 62.1-44.15:58. Monitoring, reports, and inspections.**

A. The 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 § 62.1-44.15:52, 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 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 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

2028 shall be served upon the permittee or person responsible for carrying out the plan by mailing with  
2029 confirmation of delivery to the address specified in the permit application or in the plan certification, or  
2030 by delivery at the site of the land-disturbing activities to the agent or employee supervising such  
2031 activities. The notice shall specify the measures needed to comply with the plan and shall specify the  
2032 time within which such measures shall be completed. Upon failure to comply within the time specified,  
2033 the permit may be revoked and the VESCP authority, where authorized to enforce this article, the  
2034 Department, or the Board may pursue enforcement as provided by § 62.1-44.15:63.

2035 B. Notwithstanding the provisions of subsection A, a VESCP authority is authorized to enter into  
2036 agreements or contracts with districts, adjacent localities, or other public or private entities to assist  
2037 with the responsibilities of this article, including but not limited to the review and determination of  
2038 adequacy of erosion and sediment control plans submitted for land-disturbing activities as well as  
2039 monitoring, reports, inspections, and enforcement where an authority is granted such powers by this  
2040 article.

2041 C. Upon issuance of an inspection report denoting a violation of this section, § 62.1-44.15:55, or  
2042 62.1-44.15:56, in conjunction with or subsequent to a notice to comply as specified in subsection A, a  
2043 VESCP authority, where authorized to enforce this article, or the Department may issue an order  
2044 requiring that all or part of the land-disturbing activities permitted on the site be stopped until the  
2045 specified corrective measures have been taken or, if land-disturbing activities have commenced without  
2046 an approved plan as provided in § 62.1-44.15:55, requiring that all of the land-disturbing activities be  
2047 stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance  
2048 is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in  
2049 waters within the watersheds of the Commonwealth, or where the land-disturbing activities have  
2050 commenced without an approved erosion and sediment control plan or any required permits, such an  
2051 order may be issued whether or not the alleged violator has been issued a notice to comply as specified  
2052 in subsection A. Otherwise, such an order may be issued only after the alleged violator has failed to  
2053 comply with a notice to comply. The order for noncompliance with a plan shall be served in the same  
2054 manner as a notice to comply, and shall remain in effect for seven days from the date of service  
2055 pending application by the VESCP authority, the Department, or alleged violator for appropriate relief  
2056 to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other  
2057 appropriate court. The order for disturbance without an approved plan or permits shall be served upon  
2058 the owner by mailing with confirmation of delivery to the address specified in the land records of the  
2059 locality, shall be posted on the site where the disturbance is occurring, and shall remain in effect until  
2060 such time as permits and plan approvals are secured, except in such situations where an agricultural  
2061 exemption applies. If the alleged violator has not obtained an approved erosion and sediment control  
2062 plan or any required permit within seven days from the date of service of the order, the Department or  
2063 the chief administrative officer or his designee on behalf of the VESCP authority may issue a subsequent  
2064 order to the owner requiring that all construction and other work on the site, other than corrective  
2065 measures, be stopped until an approved erosion and sediment control plan and any required permits  
2066 have been obtained. The subsequent order shall be served upon the owner by mailing with confirmation  
2067 of delivery to the address specified in the permit application or the land records of the locality in which  
2068 the site is located. The owner may appeal the issuance of any order to the circuit court of the  
2069 jurisdiction wherein the violation was alleged to have occurred or other appropriate court. Any person  
2070 violating or failing, neglecting, or refusing to obey an order issued by the Department or the chief  
2071 administrative officer or his designee on behalf of the VESCP authority may be compelled in a  
2072 proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have  
2073 occurred or other appropriate court to obey same and to comply therewith by injunction, mandamus, or  
2074 other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved  
2075 plan or any required permits, the order shall immediately be lifted. Nothing in this section shall prevent  
2076 the Department, the Board, or the chief administrative officer or his designee on behalf of the VESCP  
2077 authority from taking any other action specified in § 62.1-44.15:63.

2078 **§ 62.1-44.15:59. Reporting.**

2079 Each VESCP authority shall report to the Department, in a method such as an online reporting  
2080 system and on a time schedule established by the Department, a listing of each land-disturbing activity  
2081 for which a plan has been approved by the VESCP under this article.

2082 **§ 62.1-44.15:60. Right of entry.**

2083 The Department, the VESCP authority, where authorized to enforce this article, or any duly  
2084 authorized agent of the Department or such VESCP authority may, at reasonable times and under  
2085 reasonable circumstances, enter any establishment or upon any property, public or private, for the  
2086 purpose of obtaining information or conducting surveys or investigations necessary in the enforcement  
2087 of the provisions of this article.

2088 In accordance with a performance bond with surety, cash escrow, letter of credit, any combination  
2089 thereof, or such other legal arrangement, a VESCP authority may also enter any establishment or upon

any property, public or private, for the purpose of initiating or maintaining appropriate actions that 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.

**§ 62.1-44.15:61. Cooperation with federal and state agencies.**

A VESCP authority and the Board are authorized to cooperate and enter into agreements with any federal or state agency in connection with the requirements for erosion and sediment control with respect to land-disturbing activities.

**§ 62.1-44.15:62. Judicial appeals.**

A. A final decision by a county, city, or town, when serving as a VESCP authority under this article, shall be subject to judicial review, provided that an appeal is filed within 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 Board, Department, or district shall be subject to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

**§ 62.1-44.15:63. Penalties, injunctions and other legal actions.**

A. Violators of § 62.1-44.15:55, 62.1-44.15:56, or 62.1-44.15:58 shall be guilty of a Class 1 misdemeanor.

B. 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, any condition of a permit, or any provision of this article or associated regulation shall, upon a finding of an appropriate 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 § 62.1-44.15:54, such assessment shall be in accordance with the schedule. The VESCP authority or the Department may issue a summons for collection of the civil penalty. 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 VESCP authority, the Department, or the owner of property that 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 § 62.1-44.15:55, 62.1-44.15:56, or 62.1-44.15:58 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 VESCP, the Department, and the VESCP authority that a violation of the VESCP has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the VESCP, the Department, nor the VESCP authority has taken corrective action within 15 days to eliminate the conditions that have caused, or create the probability of causing, damage to his property.

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

E. Without limiting the remedies that 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 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, any condition of a permit, or any provision of this article or associated regulations, the Board, the Director, or VESCP authority may provide, in an order issued by the Board or VESCP authority against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection E. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under subsection B or E.

G. Upon request of a VESCP authority, the attorney for the Commonwealth shall take legal action to enforce the provisions of this article. Upon request of the Board, the Department, or the district, the Attorney General shall take appropriate legal action on behalf of the Board, the Department, or the district to enforce the provisions of this article.

2151 *H. Compliance with the provisions of this article shall be prima facie evidence in any legal or*  
2152 *equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have*  
2153 *been met and the complaining party must show negligence in order to recover any damages.*

2154 **§ 62.1-44.15:64. Stop work orders by Department; civil penalties.**

2155 *A. An aggrieved owner of property sustaining pecuniary damage resulting from a violation of an*  
2156 *approved erosion and sediment control plan or required permit, or from the conduct of land-disturbing*  
2157 *activities commenced without an approved plan or required permit, may give written notice of the*  
2158 *alleged violation to the VESCP authority and to the Director.*

2159 *B. Upon receipt of the notice from the aggrieved owner and notification to the VESCP authority, the*  
2160 *Director shall conduct an investigation of the aggrieved owner's complaint.*

2161 *C. If the VESCP authority has not responded to the alleged violation in a manner that causes the*  
2162 *violation to cease and abates the damage to the aggrieved owner's property within 30 days following*  
2163 *receipt of the notice from the aggrieved owner, the aggrieved owner may request that the Director*  
2164 *require the violator to stop the violation and abate the damage to his property.*

2165 *D. If (i) the Director's investigation of the complaint indicates that the VESCP authority has not*  
2166 *responded to the alleged violation as required by the VESCP, (ii) the VESCP authority has not*  
2167 *responded to the alleged violation within 30 days from the date of the notice given pursuant to*  
2168 *subsection A, and (iii) the Director is requested by the aggrieved owner to require the violator to cease*  
2169 *the violation, then the Director shall give written notice to the VESCP authority that the Department*  
2170 *intends to issue an order pursuant to subsection E.*

2171 *E. If the VESCP authority has not instituted action to stop the violation and abate the damage to the*  
2172 *aggrieved owner's property within 10 days following receipt of the notice from the Director, the*  
2173 *Department is authorized to issue an order requiring the owner, permittee, person responsible for*  
2174 *carrying out an approved erosion and sediment control plan, or person conducting the land-disturbing*  
2175 *activities without an approved plan or required permit to cease all land-disturbing activities until the*  
2176 *violation of the plan or permit has ceased or an approved plan and required permits are obtained, as*  
2177 *appropriate, and specified corrective measures have been completed. The Department also may*  
2178 *immediately initiate a program review of the VESCP.*

2179 *F. Such orders are to be issued after a hearing held in accordance with the requirements of the*  
2180 *Administrative Process Act (§ 2.2-4000 et seq.), and they shall become effective upon service on the*  
2181 *person by mailing with confirmation of delivery, sent to his address specified in the land records of the*  
2182 *locality, or by personal delivery by an agent of the Director. Any subsequent identical mail or notice*  
2183 *that is sent by the Department may be sent by regular mail. However, if the Department finds that any*  
2184 *such violation is grossly affecting or presents an imminent and substantial danger of causing harmful*  
2185 *erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, it may*  
2186 *issue, without advance notice or hearing, an emergency order directing such person to cease all*  
2187 *land-disturbing activities on the site immediately and shall provide an opportunity for a hearing, after*  
2188 *reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel*  
2189 *such emergency order.*

2190 *G. If a person who has been issued an order or emergency order is not complying with the terms*  
2191 *thereof, the Board may institute a proceeding in the appropriate circuit court for an injunction,*  
2192 *mandamus, or other appropriate remedy compelling the person to comply with such order.*

2193 *H. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or*  
2194 *other remedy obtained pursuant to subsection G shall be subject, in the discretion of the court, to a civil*  
2195 *penalty not to exceed \$2,000 for each violation. Any civil penalties assessed by a court shall be paid*  
2196 *into the state treasury.*

2197 **§ 62.1-44.15:65. Authorization for more stringent regulations.**

2198 *A. As part of a VESCP, a district or locality is authorized to adopt more stringent soil erosion and*  
2199 *sediment control regulations or ordinances than those necessary to ensure compliance with the Board's*  
2200 *regulations, provided that the more stringent regulations or ordinances are based upon factual findings*  
2201 *of local or regional comprehensive watershed management studies or findings developed through the*  
2202 *implementation of an MS4 permit or a locally adopted watershed management study and are determined*  
2203 *by the district or locality to be necessary to prevent any further degradation to water resources, to*  
2204 *address total maximum daily load requirements, to protect exceptional state waters, or to address*  
2205 *specific existing water pollution including nutrient and sediment loadings, stream channel erosion,*  
2206 *depleted groundwater resources, or excessive localized flooding within the watershed and that prior to*  
2207 *adopting more stringent regulations or ordinances, a public hearing is held after giving due notice. The*  
2208 *VESCP authority shall report to the Board when more stringent stormwater management regulations or*  
2209 *ordinances are determined to be necessary pursuant to this section. However, this section shall not be*  
2210 *construed to authorize any district or locality to impose any more stringent regulations for plan*  
2211 *approval or permit issuance than those specified in §§ 62.1-44.15:55 and 62.1-44.15:57.*

2212 *B. Any provisions of an erosion and sediment control program in existence before July 1, 2012, that*

contains more stringent provisions than this article shall be exempt from the analysis requirements of subsection A.

**§ 62.1-44.15:66. No limitation on authority Department of Mines, Minerals and Energy.**

The provisions of this article shall not limit 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 Gas and Oil Act (§ 45.1-361.1 et seq.).

Article 2.5.

Chesapeake Bay Preservation Act.

**§ 62.1-44.15:67. Cooperative state-local program.**

A. Healthy state and local economies and a healthy Chesapeake Bay are integrally related; balanced economic development and water quality protection are not mutually exclusive. The protection of the public interest in the Chesapeake Bay, its tributaries, and other state waters and the promotion of the general welfare of the people of the Commonwealth require that (i) the counties, cities, and towns of Tidewater Virginia incorporate general water quality protection measures into their comprehensive plans, zoning ordinances, and subdivision ordinances; (ii) the counties, cities, and towns of Tidewater Virginia establish programs, in accordance with criteria established by the Commonwealth, that define and protect certain lands, hereinafter called Chesapeake Bay Preservation Areas, which if improperly developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries; (iii) the Commonwealth make its resources available to local governing bodies by providing financial and technical assistance, policy guidance, and oversight when requested or otherwise required to carry out and enforce the provisions of this chapter; and (iv) all agencies of the Commonwealth exercise their delegated authority in a manner consistent with water quality protection provisions of local comprehensive plans, zoning ordinances, and subdivision ordinances when it has been determined that they comply with the provisions of this chapter.

B. Local governments have the initiative for planning and for implementing the provisions of this article, and the Commonwealth shall act primarily in a supportive role by providing oversight for local governmental programs, by establishing criteria as required by this chapter, and by providing those resources necessary to carry out and enforce the provisions of this chapter.

**§ 62.1-44.15:68. Definitions.**

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

"Chesapeake Bay Preservation Area" means an area delineated by a local government in accordance with criteria established pursuant to § 62.1-44.15:72.

"Criteria" means criteria developed by the Board pursuant to § 62.1-44.15:72 for the purpose of determining the ecological and geographic extent of Chesapeake Bay Preservation Areas and for use by local governments in permitting, denying, or modifying requests to rezone, subdivide, or use and develop land in Chesapeake Bay Preservation Areas.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Secretary" means the Secretary of Natural Resources.

"Tidewater Virginia" means the following jurisdictions:

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

**§ 62.1-44.15:69. Powers and duties of the Board.**

The Board is responsible for carrying out the purposes and provisions of this article and is authorized to:

1. Provide land use and development and water quality protection information and assistance to the various levels of local, regional, and state government within the Commonwealth.

2. Consult, advise, and coordinate with the Governor, the Secretary, the General Assembly, other state agencies, regional agencies, local governments, and federal agencies for the purpose of implementing this chapter.

3. Provide financial and technical assistance and advice to local governments and to regional and state agencies concerning aspects of land use and development and water quality protection pursuant to this chapter.

4. Promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.).

2274 5. Develop, promulgate, and keep current the criteria required by § 62.1-44.15:72.  
2275 6. Provide technical assistance and advice or other aid for the development, adoption, and  
2276 implementation of local comprehensive plans, zoning ordinances, subdivision ordinances, and other land  
2277 use and development and water quality protection measures utilizing criteria established by the Board to  
2278 carry out the provisions of this chapter.  
2279 7. Develop procedures for use by local governments to designate Chesapeake Bay Preservation Areas  
2280 in accordance with the criteria developed pursuant to § 62.1-44.15:72.  
2281 8. Ensure that local government comprehensive plans, zoning ordinances, and subdivision ordinances  
2282 are in accordance with the provisions of this chapter. Determination of compliance shall be in  
2283 accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).  
2284 9. Make application for federal funds that may become available under federal acts and to transmit  
2285 such funds when applicable to any appropriate person.  
2286 10. Take administrative and legal actions to ensure compliance by counties, cities, and towns with  
2287 the provisions of this chapter including the proper enforcement and implementation of, and continual  
2288 compliance with, this chapter.  
2289 11. Perform such other duties and responsibilities related to the use and development of land and the  
2290 protection of water quality as the Secretary may assign.  
2291 **§ 62.1-44.15:70. Exclusive authority of Board to institute legal actions.**  
2292 The Board shall have the exclusive authority to institute or intervene in legal and administrative  
2293 actions to ensure compliance by local governing bodies with this chapter and with any criteria or  
2294 regulations adopted hereunder.  
2295 **§ 62.1-44.15:71. Program compliance.**  
2296 Program compliance reviews conducted in accordance with § 62.1-44.15:69 and the regulations  
2297 associated with this article shall be coordinated where applicable with those being implemented in  
2298 accordance with the erosion and sediment control and stormwater management provisions of this  
2299 chapter and associated regulations. The Department may also conduct a comprehensive or partial  
2300 program compliance review and evaluation of a local government program more frequently than the  
2301 standard schedule.  
2302 Following completion of a compliance review of a local government program, the Department shall  
2303 provide results and compliance recommendations to the Board in the form of a corrective action  
2304 agreement should deficiencies be found; otherwise, the Board may find the program compliant. When  
2305 deficiencies are found, the Board will establish a schedule for the local government to come into  
2306 compliance. The Board shall provide a copy of its decision to the local government that specifies the  
2307 deficiencies, actions needed to be taken, and the approved compliance schedule. If the local government  
2308 has not implemented the necessary compliance actions identified by the Board within 30 days following  
2309 receipt of the corrective action agreement, or such additional period as is granted to complete the  
2310 implementation of the compliance actions, then the Board shall have the authority to issue a special  
2311 order to any local government imposing a civil penalty not to exceed \$5,000 per day with the maximum  
2312 amount not to exceed \$20,000 per violation for noncompliance with the state program, to be paid into  
2313 the state treasury and deposited in the Virginia Stormwater Management Fund established by  
2314 § 62.1-44.15:29.  
2315 The Administrative Process Act (§ 2.2-4000 et seq.) shall govern the activities and proceedings of the  
2316 Board under this article and the judicial review thereof.  
2317 In lieu of issuing a special order, the Board is also authorized to take legal action against a local  
2318 government to ensure compliance.  
2319 **§ 62.1-44.15:72. Board to develop criteria.**  
2320 A. In order to implement the provisions of this article and to assist counties, cities, and towns in  
2321 regulating the use and development of land and in protecting the quality of state waters, the Board shall  
2322 promulgate regulations that establish criteria for use by local governments to determine the ecological  
2323 and geographic extent of Chesapeake Bay Preservation Areas. The Board shall also promulgate  
2324 regulations that establish criteria for use by local governments in granting, denying, or modifying  
2325 requests to rezone, subdivide, or use and develop land in these areas.  
2326 B. In developing and amending the criteria, the Board shall consider all factors relevant to the  
2327 protection of water quality from significant degradation as a result of the use and development of land.  
2328 The criteria shall incorporate measures such as performance standards, best management practices, and  
2329 various planning and zoning concepts to protect the quality of state waters while allowing use and  
2330 development of land consistent with the provisions of this chapter. The criteria adopted by the Board,  
2331 operating in conjunction with other state water quality programs, shall encourage and promote (i)  
2332 protection of existing high quality state waters and restoration of all other state waters to a condition or  
2333 quality that will permit all reasonable public uses and will support the propagation and growth of all  
2334 aquatic life, including game fish, which might reasonably be expected to inhabit them; (ii) safeguarding  
2335 the clean waters of the Commonwealth from pollution; (iii) prevention of any increase in pollution; (iv)

reduction of existing pollution; and (v) promotion of water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the Commonwealth.

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

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

E. Effective July 1, 2014, requirements promulgated under this article directly related to compliance with the erosion and sediment control and stormwater management provisions of this chapter and regulated under the authority of those provisions shall cease to have effect.

**§ 62.1-44.15:73. Local government authority.**

Counties, cities, and towns are authorized to exercise their police and zoning powers to protect the quality of state waters consistent with the provisions of this article.

**§ 62.1-44.15:74. Local governments to designate Chesapeake Bay Preservation Areas; incorporate into local plans and ordinances; impose civil penalties.**

A. Counties, cities, and towns in Tidewater Virginia shall use the criteria developed by the Board to determine the extent of the Chesapeake Bay Preservation Area within their jurisdictions. Designation of Chesapeake Bay Preservation Areas shall be accomplished by every county, city, and town in Tidewater Virginia not later than 12 months after adoption of criteria by the Board.

B. Counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters into each locality's comprehensive plan consistent with the provisions of this article.

C. All counties, cities, and towns in Tidewater Virginia shall have zoning ordinances that incorporate measures to protect the quality of state waters in the Chesapeake Bay Preservation Areas consistent with the provisions of this article. Zoning in Chesapeake Bay Preservation Areas shall comply with all criteria set forth in or established pursuant to § 62.1-44.15:72.

D. Counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into their subdivision ordinances consistent with the provisions of this article. Counties, cities, and towns in Tidewater Virginia shall ensure that all subdivisions developed pursuant to their subdivision ordinances comply with all criteria developed by the Board.

E. In addition to any other remedies which may be obtained under any local ordinance enacted to protect the quality of state waters in Chesapeake Bay Preservation Areas, counties, cities, and towns in Tidewater Virginia may incorporate the following penalties into their zoning, subdivision, or other ordinances:

1. Any person who (i) violates any provision of any such ordinance or (ii) violates or fails, neglects, or refuses to obey any local governmental body's or official's final notice, order, rule, regulation, or variance or permit condition authorized under such ordinance shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$5,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as the court may direct by order, except that where the violator is the county, city, or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

2. With the consent of any person who (i) violates any provision of any local ordinance related to the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects, or refuses to obey any local governmental body's or official's notice, order, rule, regulation, or variance or permit condition authorized under such ordinance, the local government may provide for the issuance of an order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Such civil charges shall be paid into the treasury of the county, city, or town in which the violation occurred for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is the county, city, or town itself, or its agent, the civil charges shall be paid into the state treasury. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subdivision 1. Civil charges may be in addition to the cost of any restoration required or ordered by the local governmental body or official.

F. Localities that are subject to the provisions of this article may by ordinance adopt an appeal period for any person aggrieved by a decision of a board that has been established by the locality to hear cases regarding ordinances adopted pursuant to this article. The ordinance shall allow the aggrieved party a minimum of 30 days from the date of such decision to appeal the decision to the



2397 circuit court.

2398 **§ 62.1-44.15:75. Local governments outside of Tidewater Virginia may adopt provisions.**

2399 Any local government, although not a part of Tidewater Virginia, may employ the criteria developed  
2400 pursuant to § 62.1-44.15:72 and may incorporate protection of the quality of state waters into their  
2401 comprehensive plans, zoning ordinances, and subdivision ordinances consistent with the provisions of  
2402 this article.

2403 **§ 62.1-44.15:76. Local government requirements for water quality protection.**

2404 Local governments shall employ the criteria promulgated by the Board to ensure that the use and  
2405 development of land in Chesapeake Bay Preservation Areas shall be accomplished in a manner that  
2406 protects the quality of state waters consistent with the provisions of this article.

2407 **§ 62.1-44.15:77. Effect on other governmental authority.**

2408 The authorities granted herein are supplemental to other state, regional, and local governmental  
2409 authority. No authority granted to a local government by this article shall affect in any way the  
2410 authority of the Board. No authority granted to a local government by this article shall limit in any way  
2411 any other planning, zoning, or subdivision authority of that local government.

2412 **§ 62.1-44.15:78. State agency consistency.**

2413 All agencies of the Commonwealth shall exercise their authorities under the Constitution and laws of  
2414 Virginia in a manner consistent with the provisions of comprehensive plans, zoning ordinances, and  
2415 subdivision ordinances that comply with §§ 62.1-44.15:74 and 62.1-44.15:75.

2416 **§ 62.1-44.15:79. Vested rights protected.**

2417 The provisions of this article shall not affect vested rights of any landowner under existing law.

2418 **§ 62.1-44.19:13. Definitions.**

2419 As used in this article, unless the context requires a different meaning:

2420 "Annual mass load of total nitrogen" (expressed in pounds per year) means the daily total nitrogen  
2421 concentration (expressed as mg/L to the nearest 0.01 mg/L) multiplied by the flow volume of effluent  
2422 discharged during the 24-hour period (expressed as MGD to the nearest 0.01 MGD), multiplied by 8.34  
2423 and rounded to the nearest whole number to convert to pounds per day (lbs/day) units, then totaled for  
2424 the calendar month to convert to pounds per month (lbs/mo) units, and then totaled for the calendar year  
2425 to convert to pounds per year (lbs/yr) units.

2426 "Annual mass load of total phosphorus" (expressed in pounds per year) means the daily total  
2427 phosphorus concentration (expressed as mg/L to the nearest 0.01mg/L) multiplied by the flow volume of  
2428 effluent discharged during the 24-hour period (expressed as MGD to the nearest 0.01 MGD) multiplied  
2429 by 8.34 and rounded to the nearest whole number to convert to pounds per day (lbs/day) units, then  
2430 totaled for the calendar month to convert to pounds per month (lbs/mo) units, and then totaled for the  
2431 calendar year to convert to pounds per year (lbs/yr) units.

2432 "Association" means the Virginia Nutrient Credit Exchange Association authorized by this article.

2433 "Attenuation" means the rate at which nutrients are reduced through natural processes during  
2434 transport in water.

2435 "Best management practice," "practice," or "BMP" means a structural practice, nonstructural  
2436 practice, or other management practice used to prevent or reduce nutrient loads associated with  
2437 stormwater from reaching surface waters or the adverse effects thereof.

2438 "Biological nutrient removal technology" means (i) technology that will achieve an annual average  
2439 total nitrogen effluent concentration of eight milligrams per liter and an annual average total phosphorus  
2440 effluent concentration of one milligram per liter, or (ii) equivalent reductions in loads of total nitrogen  
2441 and total phosphorus through the recycle or reuse of wastewater as determined by the Department.

2442 "Delivered total nitrogen load" means the discharged mass load of total nitrogen from a point source  
2443 that is adjusted by the delivery factor for that point source.

2444 "Delivered total phosphorus load" means the discharged mass load of total phosphorus from a point  
2445 source that is adjusted by the delivery factor for that point source.

2446 "Delivery factor" means an estimate of the number of pounds of total nitrogen or total phosphorus  
2447 delivered to tidal waters for every pound discharged from a permitted facility, as determined by the  
2448 specific geographic location of the permitted facility, to account for attenuation that occurs during  
2449 riverine transport between the permitted facility and tidal waters. Delivery factors shall be calculated  
2450 using the Chesapeake Bay Program watershed model.

2451 "Department" means the Department of Environmental Quality.

2452 "Equivalent load" means 2,300 pounds per year of total nitrogen and 300 pounds per year of total  
2453 phosphorus at a flow volume of 40,000 gallons per day; 5,700 pounds per year of total nitrogen and 760  
2454 pounds per year of total phosphorus at a flow volume of 100,000 gallons per day; and 28,500 pounds  
2455 per year of total nitrogen and 3,800 pounds per year of total phosphorus at a flow volume of 500,000  
2456 gallons per day.

2457 "Facility" means a point source discharging or proposing to discharge total nitrogen or total  
2458 phosphorus to the Chesapeake Bay or its tributaries. This term does not include confined animal feeding



operations, discharges of stormwater, return flows from irrigated agriculture, or vessels.

"General permit" means the general permit authorized by this article.

"MS4" means a municipal separate storm sewer system.

"Nutrient credit" or "credit" means a nutrient reduction that is certified pursuant to this article and expressed in pounds of phosphorus or nitrogen either (i) delivered to tidal waters when the credit is generated within the Chesapeake Bay Watershed or (ii) as otherwise specified when generated in the Southern Rivers watersheds. "Nutrient credit" does not include point source nitrogen credits or point source phosphorus credits as defined in this section.

"Nutrient credit-generating entity" means an entity that generates nonpoint source nutrient credits.

"Permitted facility" means a facility authorized by the general permit to discharge total nitrogen or total phosphorus. For the sole purpose of generating point source nitrogen credits or point source phosphorus credits, "permitted facility" shall also mean the Blue Plains wastewater treatment facility operated by the District of Columbia Water and Sewer Authority.

"Permittee" means a person authorized by the general permit to discharge total nitrogen or total phosphorus.

"Point source nitrogen credit" means the difference between (i) the waste load allocation for a permitted facility specified as an annual mass load of total nitrogen, and (ii) the monitored annual mass load of total nitrogen discharged by that facility, where clause (ii) is less than clause (i), and where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered total nitrogen load.

"Point source phosphorus credit" means the difference between (i) the waste load allocation for a permitted facility specified as an annual mass load of total phosphorus, and (ii) the monitored annual mass load of total phosphorus discharged by that facility, where clause (ii) is less than clause (i), and where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered total phosphorus load.

"State-of-the-art nutrient removal technology" means (i) technology that will achieve an annual average total nitrogen effluent concentration of three milligrams per liter and an annual average total phosphorus effluent concentration of 0.3 milligrams per liter, or (ii) equivalent load reductions in total nitrogen and total phosphorus through recycle or reuse of wastewater as determined by the Department.

"Tributaries" means those river basins for which separate tributary strategies were prepared pursuant to § 2.2-218 and includes the Potomac, Rappahannock, York, and James River Basins, and the Eastern Coastal Basin, which encompasses the creeks and rivers of the Eastern Shore of Virginia that are west of Route 13 and drain into the Chesapeake Bay.

"Waste load allocation" means (i) the water quality-based annual mass load of total nitrogen or annual mass load of total phosphorus allocated to individual facilities pursuant to the Water Quality Management Planning Regulation (9 VAC 25-720) or its successor, or permitted capacity in the case of nonsignificant dischargers; (ii) the water quality-based annual mass load of total nitrogen or annual mass load of total phosphorus acquired pursuant to § 62.1-44.19:15 for new or expanded facilities; or (iii) applicable total nitrogen or total phosphorus waste load allocations under the Chesapeake Bay total maximum daily loads (TMDLs) to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries.

#### **§ 62.1-44.19:15. New or expanded facilities.**

A. An owner or operator of a new or expanded facility shall comply with the applicable requirements of this section as a condition of the facility's coverage under the general permit.

1. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued before July 1, 2005, that expands his facility to discharge 100,000 gallons or more per day, or an equivalent load directly into tidal waters, or 500,000 gallons or more per day, or an equivalent load, directly into nontidal waters shall demonstrate to the Department that he has acquired waste load allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his waste load allocations or permitted design capacity as of July 1, 2005, and will install state-of-the-art nutrient removal technology at the time of the expansion.

2. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued before July 1, 2005, that expands his facility to discharge 100,000 gallons or more per day up to and including 499,999 gallons per day, or an equivalent load, directly into nontidal waters, shall demonstrate to the Department that he has acquired waste load allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his permitted capacity as of July 1, 2005, and will install, at a minimum, biological nutrient removal technology at the time of the expansion.

3. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued before July 1, 2005, that expands his facility to discharge 40,000 gallons or

2520 more per day up to and including 99,999 gallons per day, or an equivalent load, directly into tidal or  
2521 nontidal waters, shall demonstrate to the Department that he has acquired waste load allocations  
2522 sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads  
2523 resulting from any expansion beyond his permitted capacity as of July 1, 2005.

2524 4. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination  
2525 System permit first issued on or after July 1, 2005, to discharge 40,000 gallons or more per day, or an  
2526 equivalent load, shall demonstrate to the Department that he has acquired waste load allocations  
2527 sufficient to offset his delivered total nitrogen and delivered total phosphorus loads, and will install (i) at  
2528 a minimum, biological nutrient removal technology at any facility authorized to discharge up to and  
2529 including 99,999 gallons per day, or an equivalent load, directly into tidal and nontidal waters, or up to  
2530 and including 499,999 gallons per day, or an equivalent load, to nontidal waters; and (ii) state-of-the-art  
2531 nutrient removal technology at any facility authorized to discharge 100,000 gallons or more per day, or  
2532 an equivalent load, directly into tidal waters, or 500,000 gallons or more per day, or an equivalent load,  
2533 directly into nontidal waters.

2534 5. An owner or operator of a facility treating domestic sewage authorized by a Virginia Pollutant  
2535 Discharge Elimination System permit with a discharge greater than 1,000 gallons per day up to and  
2536 including 39,999 gallons per day that has not commenced the discharge of pollutants prior to January 1,  
2537 2011, shall demonstrate to the Department that he has acquired waste load allocations sufficient to offset  
2538 his delivered total nitrogen and delivered total phosphorus loads prior to commencing the discharge,  
2539 except when the facility is for short-term temporary use only or when treatment of domestic sewage is  
2540 not the primary purpose of the facility.

2541 B. Waste load allocations required by this section to offset new or increased delivered total nitrogen  
2542 and delivered total phosphorus loads shall be acquired in accordance with this subsection.

2543 1. Such allocations may be acquired from one or a combination of the following:

2544 a. Acquisition of all or a portion of the waste load allocations or point source nitrogen or point  
2545 source phosphorus credits from one or more permitted facilities in the same tributary;

2546 b. Acquisition of credits certified by the Board pursuant to § 62.1-44.19:20 ~~or certified by the Soil~~  
2547 ~~and Water Conservation Board pursuant to § 10.1-603.15:2.~~ Such best management practices shall  
2548 achieve reductions beyond those already required by or funded under federal or state law, or the  
2549 Virginia Chesapeake Bay TMDL Watershed Implementation Plan, and shall be installed in the same  
2550 tributary in which the new or expanded facility is located and included as conditions of the facility's  
2551 individual Virginia Pollutant Discharge Elimination System permit;

2552 c. Acquisition of allocations purchased through the Nutrient Offset Fund established pursuant to  
2553 § 10.1-2128.2; or

2554 d. Acquisition of allocations through such other means as may be approved by the Department on a  
2555 case-by-case basis.

2556 2. Such allocations or credits shall be provided for a minimum period of five years with each  
2557 registration under the general permit. This subdivision shall not preclude the Board from adopting  
2558 longer-term or permanent allocation requirements by regulation.

2559 3. The Board shall give priority to allocations or credits acquired in accordance with subdivisions 1  
2560 a, 1 b, and 1 d. The Board shall approve allocations acquired in accordance with subdivision 1 d only  
2561 after the owner or operator has demonstrated that he has made a good faith effort to acquire sufficient  
2562 allocations in accordance with subdivisions 1 a, 1 b, and 1 d and that such allocations are not  
2563 reasonably available taking into account timing, cost, and other relevant factors.

2564 4. Notwithstanding the priority provisions in subdivision 3, the Board may grant a waste load  
2565 allocation in accordance with subdivision 1 d to an owner or operator of a facility authorized by a  
2566 Virginia Pollution Abatement permit to land apply domestic sewage if (i) the Virginia Pollution  
2567 Abatement permit was issued before July 1, 2005; (ii) the waste load allocation does not exceed such  
2568 facility's permitted design capacity as of July 1, 2005; (iii) the waste treated by the existing facility is  
2569 going to be treated and discharged pursuant to a Virginia Pollutant Discharge Elimination System permit  
2570 for a new discharge; and (iv) the owner or operator installs state-of-the-art nutrient removal technology  
2571 at such facility. Such facilities cannot generate credits or waste load allocations, based upon the removal  
2572 of land application sites, that can be acquired by other permitted facilities to meet the requirements of  
2573 this article.

2574 C. Until such time as the Director finds that no allocations are reasonably available in an individual  
2575 tributary, the general permit shall provide for the acquisition of allocations through payments into the  
2576 Nutrient Offset Fund established in § 10.1-2128.2. Such payments shall be promptly applied by the  
2577 Department to achieve equivalent point or nonpoint source reductions in the same tributary beyond those  
2578 reductions already required by or funded under federal or state law or the Virginia Chesapeake Bay  
2579 TMDL Watershed Implementation Plan. The general permit shall base the cost of each pound of  
2580 allocation on (i) the estimated cost of achieving a reduction of one pound of nitrogen or phosphorus at  
2581 the facility that is securing the allocation, or comparable facility, for each pound of allocation acquired;

or (ii) the average cost of reducing two pounds of nitrogen or phosphorus from nonpoint sources in the same tributary for each pound of allocation acquired, whichever is higher. Upon each reissuance of the general permit, the Board may adjust the cost of each pound of allocation based on current costs and cost estimates.

D. The acquisition of nutrient allocations or credits from animal waste-to-energy or animal waste reduction facilities, or the acquisition of such nutrient allocations or credits from entities acting on behalf of such facilities, shall be considered point source allocations or credits for all nutrient trading purposes and shall not be subject to any otherwise applicable nonpoint source trading ratio if the best management practice being used to generate such nutrient allocations or credits is a point source nutrient removal technology. Point source nutrient removal technology shall include animal waste gasification in which lab analysis of the animal waste reveals the concentration of nutrients in the animal waste being fed into the gasifier, and the fate of the nutrients during the animal waste gasification process, is known and documented using studies such as air emissions tests and ash analyses.

**§ 62.1-44.19:20. Nutrient credit certification.**

A. *The Board may adopt regulations for the purpose of establishing procedures for the certification of point source nutrient credits except that no certification shall be required for point source nitrogen and point source phosphorus credits generated by point sources regulated under the Watershed General Virginia Pollutant Discharge Elimination System Permit issued pursuant to § 62.1-44.19:14. The Board may shall adopt regulations for the purpose of establishing procedures for the certification of nonpoint source nutrient credits other than (i) point source nitrogen or point source phosphorus credits generated by point sources covered by the general permit issued pursuant to § 62.1-44.19:14 and (ii) nutrient credits certified by the Soil and Water Conservation Board and the Department of Conservation and Recreation pursuant to Article 1.1-1 (§ 10.1-603.15:1 et seq.) of Chapter 6 of Title 10.1. During the promulgation of the regulations, the Board shall consult with the Department of Conservation and Recreation to avoid duplication and to promote consistency where appropriate.*

B. Regulations adopted pursuant to this section shall:

1. Establish procedures for the certification and registration of credits, including:

a. Certifying credits that may be generated from effective nutrient controls or removal practices, including activities associated with the types of facilities or practices historically regulated by the Board, such as water withdrawal and treatment and wastewater collection, treatment, and beneficial reuse; and

b. *Certifying credits that may be generated from agricultural and urban stormwater best management practices, use or management of manures, managed turf, land use conversion, stream or wetlands projects, shellfish aquaculture, algal harvesting, and other established or innovative methods of nutrient control or removal, as appropriate;*

c. *Establishing a process and standards for wetland or stream credits to be converted to nutrient credits. Such process and standards shall only apply to wetland or stream credits that were established after July 1, 2005, and have not been transferred or used. Under no circumstances shall such credits be used for both wetland or stream credit and nutrient credit purposes;*

d. *Certifying credits from multiple practices that are bundled as a package by the applicant;*

e. *Prohibiting the certification of credits generated from activities funded by federal or state water quality grant funds other than controls and practices under subdivision B 1 a; however, baseline levels may be achieved through the use of such grants;*

f. Establishing a timely and efficient certification process including application requirements, a reasonable application fee schedule not to exceed \$10,000 per application, and review and approval procedures; and

g. *Requiring public notification of a proposed nutrient credit-generating entity;*

2. Establish credit calculation procedures for proposed credit-generating practices, including the determination of:

a. Baselines for credits certified under subdivision B 1 a in accordance with any applicable provisions of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs; and

b. *Baselines established for agricultural practices, which shall be those actions necessary to achieve a level of reduction assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs as implemented on the tract, field, or other land area under consideration;*

c. *Baselines for urban practices from new development and redevelopment, which shall be in compliance with postconstruction nutrient loading requirements of the Virginia Stormwater Management Program regulations. Baselines for all other existing development shall be at a level necessary to achieve the reductions assigned in the urban sector in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs;*

d. *Baselines for land use conversion, which shall be based on the pre-conversion land use and the level of reductions assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or*

2643 approved TMDLs applicable to that land use;

2644 e. Baselines for other nonpoint source credit-generating practices, which shall be based on the

2645 Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs using the best

2646 available scientific and technical information;

2647 f. Unless otherwise established by the Board, for certification within the Chesapeake Bay Watershed

2648 a credit-generating practice that involves land use conversion, which shall represent controls beyond

2649 those in place as of July 1, 2005. For other waters for which a TMDL has been approved, the practice

2650 shall represent controls beyond those in place at the time of TMDL approval;

2651 g. Baseline dates for all other credit-generating practices, which shall be based on the Virginia

2652 Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs; and

2653 h. Credit quantities, which shall be established using the best available scientific and technical

2654 information at the time of certification;

2655 3. Provide certification of credits on an appropriate temporal basis, such as annual, term of years, or

2656 perpetual, depending on the nature of the credit-generating practice. A credit shall be certified for a term

2657 of no less than 12 months;

2658 4. Establish ~~operation and maintenance requirements and associated financial assurance requirements~~

2659 ~~to include alternatives such as requirements to reasonably assure the generation of the credit depending~~

2660 ~~on the nature of the credit-generating activity and use, such as legal instruments for perpetual credits,~~

2661 ~~operation and maintenance requirements, and associated financial assurance requirements. Financial~~

2662 ~~assurance requirements may include letters of credit, escrows, surety bonds, insurance, and where the~~

2663 ~~credits are used or generated by a locality, authority, utility, sanitation district, or permittee operating an~~

2664 ~~MS4 or a point source permitted under this article, its existing tax or rate authority;~~

2665 5. Establish appropriate reporting requirements;

2666 6. Provide for the ability of the Department to inspect or audit for compliance with the requirements

2667 of such regulations;

2668 7. Provide that the option to acquire nutrient credits for compliance purposes shall not eliminate any

2669 requirement to comply with local water quality requirements; and

2670 8. Establish a credit retirement requirement whereby five percent of nonpoint source credits in the

2671 Chesapeake Bay Watershed other than controls and practices under subdivision B 1 a are permanently

2672 retired at the time of certification pursuant to this section for the purposes of offsetting growth in

2673 unregulated nutrient loads; and

2674 9. Establish such other requirements as the Board deems necessary and appropriate.

2675 C. Prior to the adoption of such regulations, the Board shall certify credits that may be generated

2676 from effective nutrient controls or removal practices, including activities associated with the types of

2677 facilities or practices historically regulated by the Board, such as water withdrawal and treatment and

2678 wastewater collection, treatment, and beneficial reuse, on a case-by-case basis using the best available

2679 scientific and technical information.

2680 D. The Department shall establish and maintain an online Virginia Nutrient Credit Registry of

2681 credits as follows:

2682 1. The registry shall include all nonpoint source credits certified pursuant to this article and may

2683 include point source nitrogen and point source phosphorus credits generated from point sources covered

2684 by the general permit issued pursuant to § 62.1-44.19:14 or point source nutrient credits certified

2685 pursuant to this section at the option of the owner. No other credits shall be valid for compliance

2686 purposes.

2687 2. Registration of credits on the registry shall not preclude or restrict the right of the owner of such

2688 credits from transferring the credits on such commercial terms as may be established by and between

2689 the owner and the regulated or unregulated party acquiring the credits.

2690 3. The Department shall establish procedures for the listing and tracking of credits on the registry,

2691 including but not limited to (i) notification of the availability of new nutrient credits to the locality

2692 where the credit-generating practice is implemented at least five business days prior to listing on the

2693 registry to provide the locality an opportunity to acquire such credits at fair market value for

2694 compliance purposes and (ii) notification that the listing of credits on the registry does not constitute a

2695 representation by the Board or the owner that the credits will satisfy the specific regulatory

2696 requirements applicable to the prospective user's intended use and that the prospective user is

2697 encouraged to contact the Board for technical assistance to identify limitations, if any, applicable to the

2698 intended use.

2699 4. The registry shall be publicly accessible without charge.

2700 E. The owner or operator of a nonpoint source nutrient credit-generating entity that fails to comply

2701 with the provisions of this section shall be subject to the enforcement and penalty provisions of

2702 § 62.1-44.19:22.

2703 F. Nutrient credits from stormwater nonpoint nutrient credit-generating facilities in receipt of a

2704 Nonpoint Nutrient Offset Authorization for Transfer letter from the Department prior to July 1, 2012,

shall be considered certified nutrient credits and shall not be subject to further certification requirements or to the credit retirement requirement under subdivision B 8. However, such facilities shall be subject to the other provisions of this article, including registration, inspection, reporting, and enforcement.

**§ 62.1-44.19:21. Nutrient credit use by regulated entities.**

A. An MS4 permittee may acquire, use, and transfer nutrient credits for purposes of compliance with any waste load allocations established as effluent limitations in an MS4 permit issued pursuant to § 62.1-44.15:25. Such method of compliance may be approved by the Department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits. The permittee may use such credits for compliance purposes only if (i) the credits, whether annual, term, or perpetual, are generated and applied for purposes of compliance for the same calendar year; (ii) the credits are acquired no later than a date following the calendar year in which the credits are applied as specified by the Department consistent with the permittee's Virginia Stormwater Management Program (VSMP) permit annual report deadline under such permit; (iii) the credits are generated in the same locality or tributary, except that permittees in the Eastern Coastal Basin may also acquire credits from the Potomac and Rappahannock tributaries; and (iv) the credits either are point source nitrogen or point source phosphorus credits generated by point sources covered by the general permit issued pursuant to § 62.1-44.19:14, or are certified pursuant to § 62.1-44.19:20. An MS4 permittee may enter into an agreement with one or more other MS4 permittees within the same locality or within the same or adjacent eight-digit hydrologic unit code to collectively meet the sum of any waste load allocations in their permits. Such permittees shall submit to the Department for approval a compliance plan to achieve their aggregate permit waste load allocations.

B. Those applicants required to comply with water quality requirements for land-disturbing activities operating under a General VSMP Permit for Discharges of Stormwater from Construction Activities or a Construction Individual Permit may acquire and use perpetual nutrient credits certified and registered on the Virginia Nutrient Credit Registry in accordance with § 62.1-44.15:35.

C. Confined animal feeding operations issued permits pursuant to this chapter may acquire, use, and transfer credits for compliance with any waste load allocations contained in the provisions of a Virginia Pollutant Discharge Elimination System (VPDES) permit. Such method of compliance may be approved by the Department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits.

D. Facilities registered under the Industrial Stormwater General Permit issued pursuant to this chapter may acquire, use, and transfer credits for compliance with any waste load allocations established as effluent limitations in a VPDES permit. Such method of compliance may be approved by the Department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits.

E. Public notice of each compliance plan submitted for approval pursuant to this section shall be given by the Department.

F. This section shall not be construed to limit or otherwise affect the authority of the Board to establish and enforce more stringent water quality-based effluent limitations for total nitrogen or total phosphorus in permits where those limitations are necessary to protect local water quality. The exchange or acquisition of credits pursuant to this article shall not affect any requirement to comply with such local water quality-based limitations.

**§ 62.1-44.19:22. Enforcement and penalties.**

A. Transfer of certified nutrient credits by an operator of a nutrient credit-generating entity may be suspended by the Department until such time as the operator comes into compliance with this article and attendant regulations.

B. Any operator of a nutrient credit-generating entity who violates any provision of this article, or of any regulations adopted hereunder, shall be subject to a civil penalty not to exceed \$10,000 within the discretion of the court. The Department may issue a summons for collection of the civil penalty, and the action may be prosecuted in the appropriate circuit court. When the penalties are assessed by the court as a result of a summons issued by the Department, 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 § 62.1-44.15:29.

**§ 62.1-44.19:23. Appeals.**

Any person applying to establish a nutrient credit-generating entity or an operator of a nutrient credit-generating entity aggrieved by any action of the Department taken in accordance with this section, or by inaction of the Department, shall have the right to review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

**§ 62.1-44.23. Enforcement by injunction, etc.**

Any person violating or failing, neglecting or refusing to obey any rule, regulation, order, water

2766 quality standard, pretreatment standard, or requirement of or any provision of any certificate issued by  
2767 the Board, or by the owner of a publicly owned treatment works issued to an industrial user, or any  
2768 provisions of this chapter, *except as provided by a separate article*, may be compelled in a proceeding  
2769 instituted in any appropriate court by the Board to obey same and to comply therewith by injunction,  
2770 mandamus or other appropriate remedy.

2771 **§ 62.1-44.32. Penalties.**

2772 (a) ~~Any~~ *Except as otherwise provided in this chapter*, any person who violates any provision of this  
2773 chapter, or who fails, neglects, or refuses to comply with any order of the Board, or order of a court,  
2774 issued as herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation  
2775 within the discretion of the court. Each day of violation of each requirement shall constitute a separate  
2776 offense. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer  
2777 into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1,  
2778 excluding penalties assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et  
2779 seq.) of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition  
2780 of approval relating to or issued under those articles.

2781 Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the  
2782 treasury of the county, city, or town in which the violation occurred, to be used for the purpose of  
2783 abating environmental pollution therein in such manner as the court may, by order, direct, except that  
2784 where the owner in violation is such county, city or town itself, or its agent, the court shall direct such  
2785 penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia  
2786 Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1, excluding penalties  
2787 assessed for violations of Article 9 or 10 of Chapter 3.1 of Title 62.1, or a regulation, administrative or  
2788 judicial order, or term or condition of approval relating to or issued under those articles.

2789 In the event that a county, city, or town, or its agent, is the owner, such county, city, or town, or its  
2790 agent, may initiate a civil action against any user or users of a waste water treatment facility to recover  
2791 that portion of any civil penalty imposed against the owner proximately resulting from the act or acts of  
2792 such user or users in violation of any applicable federal, state, or local requirements.

2793 (b) ~~Any~~ *Except as otherwise provided in this chapter*, any person who willfully or negligently  
2794 violates any provision of this chapter, any regulation or order of the Board, any condition of a certificate  
2795 or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more  
2796 than 12 months and a fine of not less than \$2,500 nor more than \$32,500, either or both. Any person  
2797 who knowingly violates any provision of this chapter, any regulation or order of the Board, any  
2798 condition of a certificate or any order of a court issued as herein provided, or who knowingly makes  
2799 any false statement in any form required to be submitted under this chapter or knowingly renders  
2800 inaccurate any monitoring device or method required to be maintained under this chapter, shall be guilty  
2801 of a felony punishable by a term of imprisonment of not less than one year nor more than three years,  
2802 or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not  
2803 more than 12 months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any  
2804 defendant that is not an individual shall, upon conviction of a violation under this subsection, be  
2805 sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall  
2806 constitute a separate offense.

2807 (c) ~~Any~~ *Except as otherwise provided in this chapter*, any person who knowingly violates any  
2808 provision of this chapter, and who knows at that time that he thereby places another person in imminent  
2809 danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a  
2810 term of imprisonment of not less than two years nor more than 15 years and a fine of not more than  
2811 \$250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation  
2812 under this subsection, be sentenced to pay a fine not exceeding the greater of \$1 million or an amount  
2813 that is three times the economic benefit realized by the defendant as a result of the offense. The  
2814 maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent  
2815 conviction of the same person under this subsection.

2816 (d) Criminal prosecution under this section shall be commenced within three years of discovery of  
2817 the offense, notwithstanding the limitations provided in any other statute.

2818 **§ 62.1-44.44. Construction of chapter.**

2819 (a) Nothing in this chapter shall be construed as superseding any provisions of Chapter 5 of Title  
2820 10.1, or as limiting or affecting any powers, duties or responsibilities conferred or imposed heretofore or  
2821 hereafter on the Virginia Soil and Water Conservation Board.

2822 (b) Nothing in this chapter shall be construed as altering, or as authorizing any alteration of, any  
2823 existing riparian rights or other vested rights in water or water use.

2824 **§ 62.1-73. Appointment and removal of Virginia members of Commission.**

2825 In pursuance of Article IV of said compact there shall be three members of the Ohio River Valley  
2826 Water Sanitation Commission from Virginia. ~~One member~~ *Two members* of the Commission shall be  
2827 appointed by the Governor, subject to confirmation by the General Assembly, from the membership of

the State Water Control Board continued under § 62.1-44.7. The term of the commissioner shall be coincident with that of his term upon the State Water Control Board. Any vacancy in the office of the commissioner shall be filled by appointment by the Governor. The ~~second~~ *third* Virginia member of the Commission shall be the Director of the Department of Environmental Quality. ~~The third Virginia member shall be the Director of the Department of Conservation and Recreation.~~ Any member of the Commission appointed pursuant to this section who cannot be present at a meeting of the Commission, or at any committee or subcommittee of the Commission, may designate any employee of the Department of Environmental Quality, ~~the Department of Conservation and Recreation,~~ or a member of the State Water Control Board to attend the meeting and vote on his behalf.

Any commissioner may be removed from office by the Governor.

**§ 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~~ *62.1-44.15:68*, 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~~ *62.1-44.15:68*, 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 ~~Virginia Soil and Water Conservation State Water Control Board~~ pursuant to § ~~10.1-2107~~ *62.1-44.15:72*; 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, 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 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 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.

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

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

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

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



containment and cleanup, and the nature and degree of injury or interference with general health, welfare and property that may result from discharge or accidental release;

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

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

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

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

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

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

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

10. Multiple blow-out preventers are employed; and

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

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

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

**§ 62.1-229.4. Loans for stormwater runoff control best management practices.**

Loans may be made from the Fund, in the Board's discretion, to a local government for the purpose of constructing facilities or structures or implementing other best management practices that reduce or prevent pollution of state waters caused by stormwater runoff from impervious surfaces. The Board, ~~in consultation with the Department of Conservation and Recreation,~~ shall develop guidelines for the administration of such loans and shall determine the terms and conditions of any loan from the Fund. Unless otherwise required by law, loans for such facilities, structures, and other best management practices may be made only when loan requests for eligible wastewater treatment facilities designed to meet the water quality standards established pursuant to § 62.1-44.15 have first been satisfied. The Board shall give priority (i) first to local governments that have adopted a stormwater control program in accordance with § 15.2-2114, (ii) second to projects designed to reduce or prevent a pollutant in a water body where the water body is in violation of water quality standards established pursuant to § 62.1-44.15, (iii) third to local governments subject to an MS4 discharge permit *issued by the Board* in accordance with ~~§ 10.1-603.2:2~~ *62.1-44.15:20*, (iv) fourth to local governments that have adopted a stormwater management program in accordance with ~~Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1~~ *the stormwater management provisions of the State Water Control Law (§ 62.1-44.2 et seq.)*, and (v) fifth to all others.

2. That Article 4 of Chapter 5 (§§ 10.1-560 through 10.1-571), Articles 1.1 and 1.1:1 (§§ 10.1-603.1 through 10.1-603.15:5) of Chapter 6, and Chapter 21 (§§ 10.1-2100 through 10.1-2115) of Title 10.1 of the Code of Virginia are repealed.

3. That § 62.1-44.15:36 as created by this act shall be repealed upon the effective date of a statewide permit fee schedule pursuant to § 10.1-603.4 by the Virginia Soil and Water Conservation Board prior to July 1, 2013 or pursuant to § 62.1-44.15:28, as added by this act, by the State Water Control Board on or after July 1, 2013, whichever occurs sooner.

4. That the transfer of the responsibility for administering the issuance of national pollutant discharge elimination system permits for the control of stormwater discharges shall become effective on July 1, 2013, or upon the U.S. Environmental Protection Agency's rescission of authorization for delegation of program authority to the Virginia Soil and Water Conservation

2951 Board, whichever occurs later.

2952 5. That upon the Governor's approval of the provisions of this act, the Department of  
2953 Environmental Quality shall seek the U.S. Environmental Protection Agency's rescission of  
2954 authorization for delegation of program authority to the Virginia Soil and Water Conservation  
2955 Board to return delegation of program authority to the State Water Control Board for the  
2956 issuance of the national pollutant discharge elimination system permits for the control of  
2957 stormwater discharges for MS4 and construction activities under the federal Clean Water Act.  
2958 Permits issued by the Virginia Soil and Water Conservation Board or a Virginia Erosion and  
2959 Sediment Control Program authority or a Virginia Stormwater Management Program authority  
2960 acting under the Virginia Soil and Water Conservation Board's authority that have not expired or  
2961 been revoked or terminated before or on the program transfer date shall continue to remain in  
2962 full force and effect until their specified expiration dates.

2963 6. That the regulations adopted by the Virginia Soil and Water Conservation Board to administer  
2964 and implement the Virginia Stormwater Management Act (§ 10.1-603.1 et seq. of the Code of  
2965 Virginia), the Erosion and Sediment Control Law (§ 10.1- 560 et seq. of the Code of Virginia), and  
2966 the Chesapeake Bay Preservation Act (§ 10.1- 2100 et seq. of the Code of Virginia) are transferred  
2967 from the Virginia Soil and Water Conservation Board to the State Water Control Board, and the  
2968 State Water Control Board may amend, modify, or delete provisions in these regulations in order  
2969 to implement this act. Such regulations shall remain in full force and effect until altered, amended,  
2970 or rescinded by the State Water Control Board.

2971 7. That the initial actions of the State Water Control Board to adopt, with necessary amendments,  
2972 the regulations implementing the programs being transferred by this act from the Virginia Soil  
2973 and Water Conservation Board to the State Water Control Board shall be exempt from Article 2  
2974 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia. After transfer of the  
2975 programs, if the State Water Control Board determines that additional amendments to the  
2976 regulations are necessary solely to enable implementation of the programs in accordance with this  
2977 act, the regulatory actions necessary shall be exempt from Article 2 (§ 2.2-4006 et seq.) of Chapter  
2978 40 of Title 2.2 of the Code of Virginia, except that the Department of Environmental Quality shall  
2979 provide an opportunity for public comment on the regulatory actions.

2980 8. That any regulatory action initiated by the Virginia Soil and Water Conservation Board to  
2981 amend the programs being transferred by this act may be continued by the State Water Control  
2982 Board at the time of the program transfer and that the State Water Control Board shall act  
2983 expeditiously to address all such actions.

2984 9. That the full-time employees employed in the administration of the programs being transferred  
2985 by this act shall be transferred from the Department of Conservation and Recreation to the  
2986 Department of Environmental Quality. The Department of Conservation and Recreation is  
2987 directed to transfer to the Department of Environmental Quality all appropriations, including  
2988 special funds, for programs identified for transfer by this act. The Department of Environmental  
2989 Quality is authorized to hire additional staff to operate the programs transferred by this act.

2990 10. That guidance of the Department of Conservation and Recreation, the Virginia Soil and Water  
2991 Conservation Board, and the former Chesapeake Bay Local Assistance Board relating to programs  
2992 to be transferred by this act shall remain in effect until amended or repealed.