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HOUSE BILL NO. 1170

Offered January 15, 2014

A BILL to amend and reenact § 62.1-44.15:34 of the Code of Virginia, relating to stormwater management; single-family residences.

Patron—Rush

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:**1. That § 62.1-44.15:34 of the Code of Virginia is amended and reenacted as follows:****§ 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~~ *three acres* 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

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HB1170

59 activity exceeding an area of 2,500 square feet in all areas of the jurisdictions designated as subject to
60 the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to
61 the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) or activities that are
62 part of a larger common plan of development or sale that is one acre or greater of disturbance; however,
63 the governing body of any locality that administers a VSMP may reduce this exception to a smaller area
64 of disturbed land or qualify the conditions under which this exception shall apply;

65 5. Discharges to a sanitary sewer or a combined sewer system;

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

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

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