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HOUSE BILL NO. 649

Offered January 8, 2014

Prefiled January 7, 2014

A BILL to amend and reenact §§ 62.1-44.15:24 and 62.1-44.15:34 of the Code of Virginia, relating to stormwater management programs.

Patron—Ransone

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.15:24 and 62.1-44.15:34 of the Code of Virginia are amended and reenacted as follows:

§ 62.1-44.15:24. Definitions.

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

"Agreement in lieu of a stormwater management plan" means a contract between the VSMP Authority and the owner that specifies the conservation measures that shall be implemented in the construction of a single-family residence and the expected reduction in stormwater runoff. Such contract may be executed by the VSMP Authority in lieu of a stormwater management plan and a completed Virginia Runoff Reduction Method spreadsheet.

"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

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59 by the VSMP authority for the initiation of a land-disturbing activity after evidence of state VSMP
60 general permit coverage has been provided where applicable.

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

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

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

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

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

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

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

82 "Virginia Stormwater Management Program authority" or "VSMP authority" means an authority
83 approved by the Board after September 13, 2011, to operate a Virginia Stormwater Management
84 Program or, until such approval is given, the Department. An authority may include a locality; state
85 entity, including the Department; federal entity; or, for linear projects subject to annual standards and
86 specifications in accordance with subsection B of § 62.1-44.15:31, electric, natural gas, and telephone
87 utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or
88 authorities created pursuant to § 15.2-5102.

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

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

95 **§ 62.1-44.15:34. Regulated activities; submission and approval of a permit application; security**
96 **for performance; exemptions.**

97 A. A person shall not conduct any land-disturbing activity until he has submitted a permit application
98 to the VSMP authority that includes a state VSMP permit registration statement and, after July 1, 2014,
99 a stormwater management plan *or an agreement in lieu of a stormwater management plan*, and has
100 obtained VSMP authority approval to begin land disturbance. Upon the development of an online
101 reporting system by the Department, but no later than July 1, 2014, a VSMP authority shall be required
102 to obtain evidence of VSMP permit coverage where it is required prior to providing approval to begin
103 land disturbance. The VSMP authority shall act on any permit application within 60 days after it has
104 been determined by the VSMP authority to be a complete application. The VSMP authority may either
105 issue project approval or denial and shall provide written rationale for the denial. The VSMP authority
106 shall act on any permit application that has been previously disapproved within 45 days after the
107 application has been revised, resubmitted for approval, and deemed complete. Prior to issuance of any
108 approval, the VSMP authority may also require an applicant, excluding state and federal entities, to
109 submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination
110 thereof, or such other legal arrangement acceptable to the VSMP authority, to ensure that measures
111 could be taken by the VSMP authority at the applicant's expense should he fail, after proper notice,
112 within the time specified to initiate or maintain appropriate actions that may be required of him by the
113 permit conditions as a result of his land-disturbing activity. If the VSMP authority takes such action
114 upon such failure by the applicant, the VSMP authority may collect from the applicant the difference
115 should the amount of the reasonable cost of such action exceed the amount of the security held. Within
116 60 days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter
117 of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded
118 to the applicant or terminated. These requirements are in addition to all other provisions of law relating
119 to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

120 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. *Where the construction of a separately built single-family residence disturbing less than one acre requires the applicant to submit a stormwater management plan to a VSMP authority, the applicant may instead submit an agreement in lieu of a stormwater management plan;*

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.