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SENATE BILL NO. 423

Offered January 8, 2014

Prefiled January 7, 2014

A BILL to amend and reenact §§ 62.1-44.15:24, 62.1-44.15:25, and 62.1-44.15:34 of the Code of Virginia, relating to stormwater management programs.

Patron—Hanger

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.15:24, 62.1-44.15:25, 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 permit" means a contract between the VSMP authority and the permittee that specifies conservation measures that shall be implemented in the construction of a single-family residence; such contract may be executed by the VSMP authority in lieu of a Virginia Stormwater Management Program permit.

"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

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59 general permit coverage has been provided where applicable.

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

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

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

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

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

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

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

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

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

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

94 **§ 62.1-44.15:25. Further powers and duties of the State Water Control Board.**

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

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

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

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

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

120 b. Any person subject to state permit requirements under this article has failed to disclose fully all

relevant material facts or has misrepresented a material fact in applying for a state permit, or in any other report or document required under this law or under the regulations of the Board;

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

d. There exists a material change in the basis on which the state permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge or land-disturbing 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.

7. Adopt regulations pursuant to § 62.1-44.15:28 that provide:

a. A procedure by which a stormwater plan that is approved along with a common plan of development shall govern the development of the individual parcels that are subject to the common plan

under subsequent owners. The regulations shall, by an efficient method including permit-by-rule or other method, allow for the extension of any required VSMP permit coverage from the original developer to the buyers of the parcels. The original developer shall be required to have obtained the original VSMP permit, maintained all permit documentation, and completed all of his obligations, and any remaining undeveloped parcels within the common plan of development shall have been sold or transferred in order for the transition to occur.

b. A General Permit for Discharges of Stormwater from Construction Activities that shall not include a requirement that the permittee supply information regarding post-construction standards for water quality where such information is otherwise required by VSMP regulations.

c. Reciprocity with programs in other states for the certification of proprietary best management practices.

§ 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.

D. Where land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a permit may be substituted for a Virginia Stormwater Management Program permit if executed by the VSMP authority.