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**SENATE BILL NO. 469**

Offered January 8, 2014

Prefiled January 8, 2014

A *BILL to amend and reenact §§ 62.1-44.15:24, 62.1-44.15:27, 62.1-44.15:28, 62.1-44.15:30, 62.1-44.15:34, 62.1-44.15:35, 62.1-44.15:52, 62.1-44.15:55, 62.1-44.15:57, and 62.1-44.15:72 of the Code of Virginia, relating to delaying the implementation by local governments of Stormwater Management Programs.*

Patrons—Smith, Carrico and Puckett

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, 62.1-44.15:27, 62.1-44.15:28, 62.1-44.15:30, 62.1-44.15:34, 62.1-44.15:35, 62.1-44.15:52, 62.1-44.15:55, 62.1-44.15:57, and 62.1-44.15:72 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:

"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.

"Locality with a minimal Bay watershed" means a locality in which less than 11 percent of the land area drains to the Chesapeake Bay.

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

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

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

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

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

113 2. Provide technical assistance and training.

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

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

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

1. Consistency with regulations adopted in accordance with provisions of this article;
2. Provisions for long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff; and
3. Provisions for the integration of the VSMP with local erosion and sediment control, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing construction in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

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

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

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

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

J. Upon the development of an online reporting system by the Department, but no later than July 1, 2014, *or July 1, 2015, in a locality with a minimal Bay watershed*, a VSMP authority shall then be required to obtain evidence of state VSMP permit coverage where it is required prior to providing approval to begin land disturbance.

K. Any VSMP adopted pursuant to and consistent with this article shall be considered to meet the stormwater management requirements under the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and attendant regulations, and effective July 1, 2014, *or July 1, 2015, in a locality with a minimal Bay watershed*, shall not be subject to local program review under the stormwater management provisions of 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, *or July 1, 2015, in a locality with a minimal Bay watershed*, 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;

182 5. Establish by regulations a statewide permit fee schedule to cover all costs associated with the  
183 implementation of a VSMP related to land-disturbing activities of one acre or greater. Such fee attributes  
184 include the costs associated with plan review, VSMP registration statement review, permit issuance,  
185 state-coverage verification, inspections, reporting, and compliance activities associated with the  
186 land-disturbing activities as well as program oversight costs. The fee schedule shall also include a  
187 provision for a reduced fee for land-disturbing activities between 2,500 square feet and up to one acre in  
188 Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) localities. The fee schedule shall be governed  
189 by the following:

190 a. The revenue generated from the statewide stormwater permit fee shall be collected utilizing, where  
191 practicable, an online payment system, and the Department's portion shall be remitted to the State  
192 Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to §  
193 62.1-44.15:29. However, whenever the Board has approved a VSMP, no more than 30 percent of the  
194 total revenue generated by the statewide stormwater permit fees collected shall be remitted to the State  
195 Treasurer for deposit in the Virginia Stormwater Management Fund, with the balance going to the  
196 VSMP authority.

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

207 c. Until July 1, 2014, *or July 1, 2015, in a locality with a minimal Bay watershed*, the fee for  
208 coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by  
209 the Board, or where the Board has issued an individual permit or coverage under the General Permit for  
210 Discharges of Stormwater from Construction Activities for an entity for which it has approved annual  
211 standards and specifications, shall be \$750 for each large construction activity with sites or common  
212 plans of development equal to or greater than five acres and \$450 for each small construction activity  
213 with sites or common plans of development equal to or greater than one acre and less than five acres.  
214 On and after July 1, 2014, *or July 1, 2015, in a locality with a minimal Bay watershed*, such fees shall  
215 only apply where coverage has been issued under the Board's General Permit for Discharges of  
216 Stormwater from Construction Activities to a state agency or federal entity for which it has approved  
217 annual standards and specifications. After establishment, such fees may be modified in the future  
218 through regulatory actions.

219 d. Until July 1, 2014, *or July 1, 2015, in a locality with a minimal Bay watershed*, the Department is  
220 authorized to assess a \$125 reinspection fee for each visit to a project site that was necessary to check  
221 on the status of project site items noted to be in noncompliance and documented as such on a prior  
222 project inspection.

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

225 6. Establish statewide standards for stormwater management from land-disturbing activities of one  
226 acre or greater, except as specified otherwise within this article, and allow for the consolidation in the  
227 permit of a comprehensive approach to addressing stormwater management and erosion and sediment  
228 control, consistent with the provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et  
229 seq.) and this article. However, such standards shall also apply to land-disturbing activity exceeding an  
230 area of 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay  
231 Preservation Area Designation and Management Regulations;

232 7. Require that VSMPs maintain after-development runoff rate of flow and characteristics that  
233 replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology,  
234 or improve upon the contributing share of the existing predevelopment runoff characteristics and site  
235 hydrology if stream channel erosion or localized flooding is an existing predevelopment condition.  
236 Except where more stringent requirements are necessary to address total maximum daily load  
237 requirements or to protect exceptional state waters, any land-disturbing activity that provides for  
238 stormwater management shall satisfy the conditions of this subsection if the practices are designed to (i)  
239 detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour  
240 period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable  
241 peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less  
242 than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved  
243 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.

**§ 62.1-44.15:30. 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, *or July 1, 2015, in a locality with a minimal Bay watershed*, 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.

**§ 62.1-44.15:34. 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, *or July 1, 2015, in a locality with a minimal Bay watershed*, 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, *or July 1, 2015, in a locality with a minimal Bay watershed*, 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, *or July 1, 2015, in a locality with a minimal Bay watershed*, 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 § 62.1-44.15:24 and includes, until July 1, 2014, *or July 1, 2015, in a locality with a minimal Bay watershed*, 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 used.

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

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

I. The VSMP authority shall require that nutrient credits and other offsite options approved by the Department or applicable state board, including locality pollutant loading pro rata share programs established pursuant to § 15.2-2243, achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity. A pollutant loading pro rata share program established by a locality pursuant to § 15.2-2243 and approved by the Department or applicable state board prior to January 1, 2011, including those that may achieve nutrient reductions after the commencement of the land-disturbing activity, may continue to operate in the approved manner for a transition period ending July 1, 2014, *or July 1, 2015, in a locality with a minimal Bay watershed*. The applicant shall have the right to select between the use of nutrient credits or other offsite options, except during the transition period in those localities to which the transition period applies. The locality may use funds collected for nutrient reductions pursuant to a locality pollutant loading pro rata share program under § 15.2-2243 for nutrient reductions in the same tributary within the same locality as the land-disturbing activity or for the acquisition of nutrient credits. In the case of a phased project, the applicant may acquire or achieve the offsite nutrient reductions prior to the commencement of each phase of the land-disturbing activity in an amount sufficient for each such phase.

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

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

L. To the extent available, with the consent of the applicant, the VSMP authority, the Board or the Department may include the use of nutrient credits or other offsite measures in resolving enforcement

actions to compensate for (i) nutrient control deficiencies occurring during the period of noncompliance and (ii) permanent nutrient control deficiencies.

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

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

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

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

A. The Board shall develop a program and adopt regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) for the effective control of soil erosion, sediment deposition, and nonagricultural runoff that shall be met in any control program to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. Stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or § 62.1-44.15:54 or 62.1-44.15:65. Any plan approved prior to July 1, 2014, *or July 1, 2015, in a locality with a minimal Bay watershed*, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one-year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-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 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, *or July 1, 2015, in a locality with a minimal Bay watershed*, 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.

**§ 62.1-44.15:55. 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, *or July 1, 2015, in a locality with a minimal Bay watershed*, 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 the person authorized to proceed with the proposed activity. The VESCP authority shall act on any erosion and sediment control plan that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.

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

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

551 agreed to by the VESCP authority and the person responsible for carrying out the plan.

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

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

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

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

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

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

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

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

594 **§ 62.1-44.15:57. Approved plan required for issuance of grading, building, or other permits;  
595 security for performance.**

596 Agencies authorized under any other law to issue grading, building, or other permits for activities  
597 involving land-disturbing activities regulated under this article shall not issue any such permit unless the  
598 applicant submits with his application an approved erosion and sediment control plan and certification  
599 that the plan will be followed and, upon the development of an online reporting system by the  
600 Department but no later than July 1, 2014, *or July 1, 2015, in a locality with a minimal Bay watershed,*  
601 evidence of Virginia Stormwater Management Program permit coverage where it is required. Prior to  
602 issuance of any permit, the agency may also require an applicant to submit a reasonable performance  
603 bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement  
604 acceptable to the agency, to ensure that measures could be taken by the agency at the applicant's  
605 expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate  
606 conservation action that may be required of him by the approved plan as a result of his land-disturbing  
607 activity. The amount of the bond or other security for performance shall not exceed the total of the  
608 estimated cost to initiate and maintain appropriate conservation action based on unit price for new public  
609 or private sector construction in the locality and a reasonable allowance for estimated administrative  
610 costs and inflation, which shall not exceed 25 percent of the estimated cost of the conservation action. If  
611 the agency takes such conservation action upon such failure by the permittee, the agency may collect  
612 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.

**§ 62.1-44.15:72. Board to develop criteria.**

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

B. In developing and amending the criteria, the Board shall consider all factors relevant to the protection of water quality from significant degradation as a result of the use and development of land. The criteria shall incorporate measures such as performance standards, best management practices, and various planning and zoning concepts to protect the quality of state waters while allowing use and development of land consistent with the provisions of this chapter. The criteria adopted by the Board, operating in conjunction with other state water quality programs, shall encourage and promote (i) protection of existing high quality state waters and restoration of all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (ii) safeguarding 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, *or July 1, 2015, in a locality with a minimal Bay watershed*, 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.