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SENATE BILL NO. 726

Offered January 22, 2016

A BILL to amend and reenact § 62.1-44.15:55 of the Code of Virginia, relating to erosion and sediment control plan; utility company projects.

Patron—Edwards

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.15:55 of the Code of Virginia is amended and reenacted as follows:

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

A. Except as provided in § 62.1-44.15:56 for state agency and federal entity land-disturbing activities, no person shall engage in any land-disturbing activity until he has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved. Upon the development of an online reporting system by the Department, but no later than July 1, 2014, a VESCP authority shall then be required to obtain evidence of Virginia Stormwater Management Program permit coverage where it is required prior to providing approval to begin land disturbance. Where land-disturbing activities involve lands under the jurisdiction of more than one VESCP, an erosion and sediment control plan may, at the request of one or all of the VESCP authorities, be submitted to the Department for review and approval rather than to each jurisdiction concerned. The Department may charge the jurisdictions requesting the review a fee sufficient to cover the cost associated with conducting the review. A VESCP may enter into an agreement with an adjacent VESCP regarding the administration of multijurisdictional projects whereby the jurisdiction that contains the greater portion of the project shall be responsible for all or part of the administrative procedures. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP authority.

B. The VESCP authority shall review erosion and sediment control plans submitted to it and grant written approval within 60 days of the receipt of the plan if it determines that the plan meets the requirements of this article and the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and shall comply with the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence to the VESCP authority, as provided by § 62.1-44.15:52, who will be in charge of and responsible for carrying out the land-disturbing activity. However, any VESCP authority may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single-family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by § 62.1-44.15:52. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this article.

When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify the modifications, terms, and conditions that will permit approval of the plan. If no action is taken by the VESCP authority within the time specified in this subsection, the plan shall be deemed approved and 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 agreed to by the VESCP authority and the person responsible for carrying out the plan.

D. Electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline

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59 companies, and railroad companies shall, and authorities created pursuant to § 15.2-5102 may, file
60 general erosion and sediment control standards and specifications annually with the Department for
61 review and approval. Such standards and specifications shall be consistent with the requirements of this
62 article and associated regulations and the Stormwater Management Act (§ 62.1-44.15:24 et seq.) and
63 associated regulations where applicable. The specifications shall apply to:

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

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

68 *The specifications shall not apply to any land-disturbing activity that disturbs 50 acres or more in*
69 *any one locality. Such an activity shall require the submission of an erosion and sediment control plan.*

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

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

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

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

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