

17102328D

**HOUSE BILL NO. 2008**

Offered January 11, 2017

Prefiled January 10, 2017

A *BILL to amend and reenact §§ 62.1-44.15:24, as it is currently effective, 62.1-44.15:27, as it shall become effective, 62.1-44.15:28 and 62.1-44.15:34, as they are currently effective and as they shall become effective, 62.1-44.15:48, as it shall become effective, 62.1-44.15:51, as it is currently effective, and 62.1-44.15:55, as it shall become effective, of the Code of Virginia, relating to stormwater; erosion and sediment control; Chesapeake Bay Preservation Act; land-disturbing activity.*

Patron—Hodges

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, as it is currently effective, 62.1-44.15:27, as it shall become effective, 62.1-44.15:28 and 62.1-44.15:34, as they are currently effective and as they shall become effective, 62.1-44.15:48, as it shall become effective, 62.1-44.15:51, as it is currently effective, and 62.1-44.15:55, as it shall become effective, of the Code of Virginia are amended and reenacted as follows:**

**§ 62.1-44.15:24. (For expiration date, see Acts 2016, cc. 68 and 758) 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 or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a single-family residence; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.

"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~~ 10,000 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.

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59 "Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorus, hydrocarbons,  
60 heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land  
61 surface in a diffuse manner by stormwater runoff.

62 "Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a  
63 particular location.

64 "Permit" or "VSMP authority permit" means an approval to conduct a land-disturbing activity issued  
65 by the VSMP authority for the initiation of a land-disturbing activity after evidence of state VSMP  
66 general permit coverage has been provided where applicable.

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

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

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

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

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

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

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

88 "Virginia Stormwater Management Program authority" or "VSMP authority" means an authority  
89 approved by the Board after September 13, 2011, to operate a Virginia Stormwater Management  
90 Program or the Department. An authority may include a locality; state entity, including the Department;  
91 federal entity; or, for linear projects subject to annual standards and specifications in accordance with  
92 subsection B of § 62.1-44.15:31, electric, natural gas, and telephone utility companies, interstate and  
93 intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to  
94 § 15.2-5102.

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

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

101 **§ 62.1-44.15:27. (For effective date, see Acts 2016, cc. 68 and 758) Virginia Programs for**  
102 **Erosion Control and Stormwater Management.**

103 A. Any locality that operates a regulated MS4 or that administers a Virginia Stormwater Management  
104 Program (VSMP) as of July 1, 2017, shall be required to adopt and administer a VESMP consistent  
105 with the provisions of this article that regulates any land-disturbing activity that ~~(i) disturbs 10,000~~  
106 ~~square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a~~  
107 ~~Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et~~  
108 ~~seq.). The VESMP shall be adopted according to a process established by the Department.~~

109 B. Any locality that does not operate a regulated MS4 and for which the Department administers a  
110 VSMP as of July 1, 2017, shall choose one of the following options and shall notify the Department of  
111 its choice according to a process established by the Department:

112 1. Adopt and administer a VESMP consistent with the provisions of this article that regulates any  
113 land-disturbing activity that ~~(i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or~~  
114 ~~more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the~~  
115 ~~Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.);~~

116 2. Adopt and administer a VESMP consistent with the provisions of this article that regulates any  
117 land-disturbing activity that ~~(i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or~~  
118 ~~more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the~~  
119 ~~Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.), except that the Department shall provide the~~  
120 locality with review of the plan required by § 62.1-44.15:34 and provide a recommendation to the

locality on the plan's compliance with the water quality and water quantity technical criteria; or

3. Adopt and administer a VESCP pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.) that regulates any land-disturbing activity that ~~(i)~~ disturbs 10,000 square feet or more ~~or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.).~~ For such a land-disturbing activity in a Chesapeake Bay Preservation Area, the VESCP authority also shall adopt requirements set forth in this article and attendant regulations as required to regulate those activities in accordance with §§ 62.1-44.15:28 and 62.1-44.15:34.

The Board shall administer a VSMP on behalf of each VESCP authority for any land-disturbing activity that ~~(a)~~ (i) disturbs one acre or more of land or ~~(b)~~ (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or greater of land disturbance.

C. Any town that is required to or elects to adopt and administer a VSMP or VESCP, as applicable, may choose one of the following options and shall notify the Department of its choice according to a process established by the Department:

1. Any town, including a town that operates a regulated MS4, lying within a county may enter into an agreement with the county to become subject to the county's VSMP. If a town lies within the boundaries of more than one county, it may enter into an agreement with any of those counties that operates a VSMP.

2. Any town that chooses not to adopt and administer a VSMP pursuant to subdivision B 3 and that lies within a county may enter into an agreement with the county to become subject to the county's VSMP or VESCP, as applicable. If a town lies within the boundaries of more than one county, it may enter into an agreement with any of those counties.

3. Any town that is subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) may enter into an agreement with a county pursuant to subdivision C 1 or 2 only if the county administers a VSMP for land-disturbing activities that disturb ~~2,500~~ 10,000 square feet or more.

D. Any locality that chooses not to implement a VSMP pursuant to subdivision B 3 may notify the Department at any time that it has chosen to implement a VSMP pursuant to subdivision B 1 or 2. Any locality that chooses to implement a VSMP pursuant to subdivision B 2 may notify the Department at any time that it has chosen to implement a VSMP pursuant to subdivision B 1. A locality may petition the Board at any time for approval to change from fully administering a VSMP pursuant to subdivision B 1 to administering a VSMP in coordination with the Department pursuant to subdivision B 2 due to a significant change in economic conditions or other fiscal emergency in the locality. The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall govern any appeal of the Board's decision.

E. In support of VSMP authorities, the Department shall provide technical assistance and training and general assistance to localities in the establishment and administration of their individual or regional programs.

F. The Department shall develop a model ordinance for establishing a VSMP consistent with this article.

G. Each locality that operates a regulated MS4 or that chooses to administer a VSMP shall, by ordinance, establish a VSMP that shall be administered in conjunction with a local MS4 management program, if applicable, and which shall include the following:

1. Ordinances, policies, and technical materials consistent with regulations adopted in accordance with this article;

2. Requirements for land-disturbance approvals;

3. Requirements for plan review, inspection, and enforcement consistent with the requirements of this article, including provisions requiring periodic inspections of the installation of stormwater management measures. A VSMP authority may require monitoring and reports from the person responsible for meeting the permit conditions to ensure compliance with the permit and to determine whether the measures required in the permit provide effective stormwater management;

4. Provisions charging each applicant a reasonable fee to defray the cost of program administration for a regulated land-disturbing activity that does not require permit coverage. Such fee may be in addition to any fee charged pursuant to the statewide fee schedule established in accordance with subdivision 9 of § 62.1-44.15:28, although payment of fees may be consolidated in order to provide greater convenience and efficiency for those responsible for compliance with the program. A VSMP authority shall hold a public hearing prior to establishing such fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VSMP authority's expense involved;

5. Provisions for long-term responsibility for and maintenance of stormwater management control

182 devices and other techniques specified to manage the quality and quantity of runoff; and

183 6. Provisions for the coordination of the VESMP with flood insurance, flood plain management, and  
184 other programs requiring compliance prior to authorizing land disturbance in order to make the  
185 submission and approval of plans, issuance of land-disturbance approvals, payment of fees, and  
186 coordination of inspection and enforcement activities more convenient and efficient both for the local  
187 governments and those responsible for compliance with the programs.

188 H. The Board shall approve a VESMP when it deems a program consistent with this article and  
189 associated regulations.

190 I. A VESMP authority may enter into agreements or contracts with the Department, soil and water  
191 conservation districts, adjacent localities, planning district commissions, or other public or private  
192 entities to carry out or assist with plan review and inspections.

193 J. A VESMP authority shall be required to obtain evidence of permit coverage from the Department's  
194 online reporting system, where such coverage is required, prior to providing land-disturbance approval.

195 K. The VESMP authority responsible for regulating the land-disturbing activity shall require  
196 compliance with its applicable ordinances and the conditions of its land-disturbance approval and plan  
197 specifications. The Board shall enforce permits and require compliance with its applicable regulations,  
198 including when serving as a VSMP authority in a locality that chose not to adopt a VESMP in  
199 accordance with subdivision B 3.

200 **§ 62.1-44.15:28. (For expiration date, see Acts 2016, cc. 68 and 758) Development of regulations.**

201 A. The Board is authorized to adopt regulations that specify minimum technical criteria and  
202 administrative procedures for Virginia Stormwater Management Programs. The regulations shall:

203 1. Establish standards and procedures for administering a VSMP;

204 2. Establish minimum design criteria for measures to control nonpoint source pollution and localized  
205 flooding, and incorporate the stormwater management regulations adopted pursuant to the Erosion and  
206 Sediment Control Law (§ 62.1-44.15:51 et seq.), as they relate to the prevention of stream channel  
207 erosion. These criteria shall be periodically modified as required in order to reflect current engineering  
208 methods;

209 3. Require the provision of long-term responsibility for and maintenance of stormwater management  
210 control devices and other techniques specified to manage the quality and quantity of runoff;

211 4. Require as a minimum the inclusion in VSMPs of certain administrative procedures that include,  
212 but are not limited to, specifying the time period within which a VSMP authority shall grant  
213 land-disturbing activity approval, the conditions and processes under which approval shall be granted,  
214 the procedures for communicating disapproval, the conditions under which an approval may be changed,  
215 and requirements for inspection of approved projects;

216 5. Establish by regulations a statewide permit fee schedule to cover all costs associated with the  
217 implementation of a VSMP related to land-disturbing activities of one acre or greater. Such fee attributes  
218 include the costs associated with plan review, VSMP registration statement review, permit issuance,  
219 state-coverage verification, inspections, reporting, and compliance activities associated with the  
220 land-disturbing activities as well as program oversight costs. The fee schedule shall also include a  
221 provision for a reduced fee for land-disturbing activities between 2,500 10,000 square feet and up to one  
222 acre in Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) localities. The fee schedule shall be  
223 governed by the following:

224 a. The revenue generated from the statewide stormwater permit fee shall be collected utilizing, where  
225 practicable, an online payment system, and the Department's portion shall be remitted to the State  
226 Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to §  
227 62.1-44.15:29. However, whenever the Board has approved a VSMP, no more than 30 percent of the  
228 total revenue generated by the statewide stormwater permit fees collected shall be remitted to the State  
229 Treasurer for deposit in the Virginia Stormwater Management Fund, with the balance going to the  
230 VSMP authority.

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

241 c. Until July 1, 2014, the fee for coverage under the General Permit for Discharges of Stormwater  
242 from Construction Activities issued by the Board, or where the Board has issued an individual permit or  
243 coverage under the General Permit for Discharges of Stormwater from Construction Activities for an

entity for which it has approved annual standards and specifications, shall be \$750 for each large construction activity with sites or common plans of development equal to or greater than five acres and \$450 for each small construction activity with sites or common plans of development equal to or greater than one acre and less than five acres. On and after July 1, 2014, such fees shall only apply where coverage has been issued under the Board's General Permit for Discharges of Stormwater from Construction Activities to a state agency or federal entity for which it has approved annual standards and specifications. After establishment, such fees may be modified in the future through regulatory actions.

d. Until July 1, 2014, the Department is authorized to assess a \$125 reinspection fee for each visit to a project site that was necessary to check on the status of project site items noted to be in noncompliance and documented as such on a prior project inspection.

e. In establishing the fee schedule under this subdivision, the Department shall ensure that the VSMP authority portion of the statewide permit fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities for small construction activity involving a single family detached residential structure with a site or area, within or outside a common plan of development or sale, that is equal to or greater than one acre but less than five acres shall be no greater than the VSMP authority portion of the fee for coverage of sites or areas with a land-disturbance acreage of less than one acre within a common plan of development or sale.

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

6. Establish statewide standards for stormwater management from land-disturbing activities of one acre or greater, except as specified otherwise within this article, and allow for the consolidation in the permit of a comprehensive approach to addressing stormwater management and erosion and sediment control, consistent with the provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and this article. However, such standards shall also apply to land-disturbing activity exceeding an area of 2,500 10,000 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations;

7. Establish a procedure by which a stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners;

8. Notwithstanding the provisions of subdivision A 5, establish a procedure by which neither a registration statement nor payment of the Department's portion of the statewide permit fee established pursuant to that subdivision shall be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale;

9. Provide for reciprocity with programs in other states for the certification of proprietary best management practices;

10. Require that VSMPs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition. Except where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters, any land-disturbing activity that provides for stormwater management shall satisfy the conditions of this subsection 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 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;

11. Encourage low-impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater;

12. 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;

13. Establish procedures to be followed when a locality that operates a VSMP wishes to transfer administration of the VSMP to the Department;

14. Establish a statewide permit fee schedule for stormwater management related to municipal

305 separate storm sewer system permits; and

306 15. Provide for the evaluation and potential inclusion of emerging or innovative stormwater control  
307 technologies that may prove effective in reducing nonpoint source pollution.

308 B. The Board may integrate and consolidate components of the regulations implementing the Erosion  
309 and Sediment Control program and the Chesapeake Bay Preservation Area Designation and Management  
310 program with the regulations governing the Virginia Stormwater Management Program (VSMP) Permit  
311 program or repeal components so that these programs may be implemented in a consolidated manner  
312 that provides greater consistency, understanding, and efficiency for those regulated by and administering  
313 a VSMP.

314 **§ 62.1-44.15:28. (For effective date, see Acts 2016, cc. 68 and 758) Development of regulations.**

315 The Board is authorized to adopt regulations that establish requirements for the effective control of  
316 soil erosion, sediment deposition, and stormwater, including nonagricultural runoff, that shall be met in  
317 any VESMP to prevent the unreasonable degradation of properties, stream channels, waters, and other  
318 natural resources, and that specify minimum technical criteria and administrative procedures for  
319 VESMPs. The regulations shall:

320 1. Establish standards and procedures for administering a VESMP;

321 2. Establish minimum standards of effectiveness of the VESMP and criteria and procedures for  
322 reviewing and evaluating its effectiveness. The minimum standards of program effectiveness established  
323 by the Board shall provide that (i) no soil erosion control and stormwater management plan shall be  
324 approved until it is reviewed by a plan reviewer certified pursuant to § 62.1-44.15:30, (ii) each  
325 inspection of a land-disturbing activity shall be conducted by an inspector certified pursuant to  
326 § 62.1-44.15:30, and (iii) each VESMP shall contain a program administrator, a plan reviewer, and an  
327 inspector, each of whom is certified pursuant to § 62.1-44.15:30 and all of whom may be the same  
328 person;

329 3. Be based upon relevant physical and developmental information concerning the watersheds and  
330 drainage basins of the Commonwealth, including data relating to land use, soils, hydrology, geology,  
331 size of land area being disturbed, proximate water bodies and their characteristics, transportation, and  
332 public facilities and services;

333 4. Include any survey of lands and waters as the Board deems appropriate or as any applicable law  
334 requires to identify areas, including multijurisdictional and watershed areas, with critical soil erosion and  
335 sediment problems;

336 5. Contain conservation standards for various types of soils and land uses, which shall include  
337 criteria, techniques, and methods for the control of soil erosion and sediment resulting from  
338 land-disturbing activities;

339 6. Establish water quality and water quantity technical criteria. These criteria shall be periodically  
340 modified as required in order to reflect current engineering methods;

341 7. Require the provision of long-term responsibility for and maintenance of stormwater management  
342 control devices and other techniques specified to manage the quality and quantity of runoff;

343 8. Require as a minimum the inclusion in VESMPs of certain administrative procedures that include,  
344 but are not limited to, specifying the time period within which a VESMP authority shall grant  
345 land-disturbance approval, the conditions and processes under which such approval shall be granted, the  
346 procedures for communicating disapproval, the conditions under which an approval may be changed, and  
347 requirements for inspection of approved projects;

348 9. Establish a statewide fee schedule to cover all costs associated with the implementation of a  
349 VESMP related to land-disturbing activities where permit coverage is required, and for land-disturbing  
350 activities where the Board serves as a VESMP authority or VSMP authority. Such fee attributes include  
351 the costs associated with plan review, permit registration statement review, permit issuance, permit  
352 coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing  
353 activities as well as program oversight costs. The fee schedule shall also include a provision for a  
354 reduced fee for a land-disturbing activity that disturbs ~~2,500~~ 10,000 square feet or more but less than  
355 one acre in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the  
356 Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). The fee schedule shall be governed by the  
357 following:

358 a. The revenue generated from the statewide fee shall be collected utilizing, where practicable, an  
359 online payment system, and the Department's portion shall be remitted to the State Treasurer for deposit  
360 in the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29. However,  
361 whenever the Board has approved a VESMP, no more than 30 percent of the total revenue generated by  
362 the statewide fees collected shall be remitted to the State Treasurer for deposit in the Virginia  
363 Stormwater Management Fund, with the balance going to the VESMP authority;

364 b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made  
365 to the Department or other supporting revenue from a VESMP; however, the fees shall be set at a level  
366 sufficient for the Department, the Board, and the VESMP to fully carry out their responsibilities under

this article and local ordinances or standards and specifications where applicable. When establishing a VESMP, the VESMP authority shall assess the statewide fees pursuant to the schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in the regulations as available to the Department for program oversight responsibilities pursuant to subdivision a. A VESMP's portion of the fees shall be used solely to carry out the VESMP's responsibilities under this article and associated ordinances;

c. In establishing the fee schedule under this subdivision, the Department shall ensure that the VESMP authority portion of the statewide fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities for small construction activity involving a single-family detached residential structure with a site or area, within or outside a common plan of development or sale, that is equal to or greater than one acre but less than five acres shall be no greater than the VESMP authority portion of the fee for coverage of sites or areas with a land-disturbance acreage of less than one acre within a common plan of development or sale;

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

e. Notwithstanding the other provisions of this subdivision 9, establish a procedure by which neither a registration statement nor payment of the Department's portion of the statewide fee established pursuant to this subdivision 9 shall be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale;

10. Establish statewide standards for soil erosion control and stormwater management from land-disturbing activities;

11. Establish a procedure by which a soil erosion control and stormwater management plan or stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners;

12. Provide for reciprocity with programs in other states for the certification of proprietary best management practices;

13. Require that VESMPs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition.

a. Except where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters, any land-disturbing activity that was subject to the water quantity requirements that were in effect pursuant to this article prior to July 1, 2014, shall be deemed to satisfy the conditions of this subsection if the practices are designed to (i) detain the water volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project 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. Any land-disturbing activity that complies with these requirements 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;

b. Any stream restoration or relocation project that incorporates natural channel design concepts is not a man-made channel 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 article;

14. Encourage low-impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater;

15. 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;

16. Establish procedures to be followed when a locality chooses to change the type of program it administers pursuant to subsection D of § 62.1-44.15:27;

17. Establish a statewide permit fee schedule for stormwater management related to MS4 permits; and

18. Provide for the evaluation and potential inclusion of emerging or innovative stormwater control

technologies that may prove effective in reducing nonpoint source pollution.

**§ 62.1-44.15:34. (For expiration date, see Acts 2016, cc. 68 and 758) 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, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance. A locality that is not a VSMP authority shall provide a general notice to applicants of the state permit coverage requirement and report all approvals pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) to begin land disturbance of one acre or greater to the Department at least monthly. 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 state 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.

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~~ 10,000 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~~ 10,000 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.

**§ 62.1-44.15:34. (For effective date, see Acts 2016, cc. 68 and 758) Regulated activities; submission and approval of a permit application; security for performance; exemptions.**

A. A person shall not conduct any land-disturbing activity until (i) he has submitted to the appropriate VSMP authority an application that includes a permit registration statement, if required, a soil erosion control and stormwater management plan or an executed agreement in lieu of a plan, if required, and (ii) the VSMP authority has issued its land-disturbance approval. In addition, as a prerequisite to engaging in an approved land-disturbing activity, the name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber certificate pursuant to § 62.1-44.15:30 shall be submitted to the VSMP authority. Any VSMP authority may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan for construction of a single-family detached residential structure; however, if a violation occurs during the land-disturbing activity for the single-family detached residential structure, then the owner shall correct the violation and provide the name of the individual holding a Responsible Land Disturber certificate as provided by § 62.1-14:30. Failure to provide the name of an individual holding a Responsible Land Disturber certificate prior to engaging in land-disturbing activities may result in revocation of the land-disturbance approval and shall subject the owner to the penalties provided in this article.

1. A VSMP authority that is implementing its program pursuant to subsection A of § 62.1-44.15:27 or subdivision B 1 of § 62.1-44.15:27 shall determine the completeness of any application within 15 days after receipt, and shall act on any application within 60 days after it has been determined by the VSMP authority to be complete. The VSMP authority shall issue either land-disturbance approval or denial and provide written rationale for any denial. Prior to issuing a land-disturbance approval, a VSMP authority shall be required to obtain evidence of permit coverage when such coverage is required. The VSMP authority also shall determine whether any resubmittal of a previously disapproved application is complete within 15 days after receipt and shall act on the resubmitted application within 45 days after receipt.

2. A VSMP authority implementing its program in coordination with the Department pursuant to subdivision B 2 of § 62.1-44.15:27 shall determine the completeness of any application within 15 days after receipt, and shall act on any application within 60 days after it has been determined by the VSMP authority to be complete. The VSMP authority shall forward a soil erosion control and stormwater management plan to the Department for review within five days of receipt. If the plan is incomplete, the Department shall return the plan to the locality immediately and the application process shall start over. If the plan is complete, the Department shall review it for compliance with the water quality and water quantity technical criteria and provide its recommendation to the VSMP authority. The VSMP authority shall either (i) issue the land-disturbance approval or (ii) issue a denial and provide a written rationale for the denial. In no case shall a locality have more than 60 days for its decision on an application after it has been determined to be complete. Prior to issuing a land-disturbance approval, a VSMP authority shall be required to obtain evidence of permit coverage when such coverage is required.

The VSMP authority also shall forward to the Department any resubmittal of a previously disapproved application within five days after receipt, and the VSMP authority shall determine whether the plan is complete within 15 days of its receipt of the plan. The Department shall review the plan for compliance with the water quality and water quantity technical criteria and provide its recommendation to the VSMP authority, and the VSMP authority shall act on the resubmitted application within 45 days after receipt.

3. When a state agency or federal entity submits a soil erosion control and stormwater management plan for a project, land disturbance shall not commence until the Board has reviewed and approved the plan and has issued permit coverage when it is required.

a. The Board shall not approve a soil erosion control and stormwater management plan submitted by a state agency or federal entity for a project involving a land-disturbing activity (i) in any locality that has not adopted a local program with more stringent ordinances than those of the state program or (ii) in multiple jurisdictions with separate local programs, unless the plan is consistent with the requirements of the state program.

b. The Board shall not approve a soil erosion control and stormwater management plan submitted by

551 a state agency or federal entity for a project involving a land-disturbing activity in one locality with a  
552 local program with more stringent ordinances than those of the state program, unless the plan is  
553 consistent with the requirements of the local program.

554 c. If onsite changes occur, the state agency or federal entity shall submit an amended soil erosion  
555 control and stormwater management plan to the Department.

556 d. The state agency or federal entity responsible for the land-disturbing activity shall ensure  
557 compliance with the approved plan. As necessary, the Board shall provide project oversight and  
558 enforcement.

559 4. Prior to issuance of any land-disturbance approval, the VESMP authority may also require an  
560 applicant, excluding state agencies and federal entities, to submit a reasonable performance bond with  
561 surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable  
562 to the VESMP authority, to ensure that measures could be taken by the VESMP authority at the  
563 applicant's expense should he fail, after proper notice, within the time specified to comply with the  
564 conditions imposed by the VESMP authority as a result of his land-disturbing activity. If the VESMP  
565 authority takes such action upon such failure by the applicant, the VESMP authority may collect from  
566 the applicant the difference should the amount of the reasonable cost of such action exceed the amount  
567 of the security held. Within 60 days of the completion of the VESMP authority's conditions, such bond,  
568 cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion  
569 thereof, shall be refunded to the applicant or terminated.

570 B. The VESMP authority may require changes to an approved soil erosion control and stormwater  
571 management plan in the following cases:

572 1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations or  
573 ordinances; or

574 2. Where the owner finds that because of changed circumstances or for other reasons the plan cannot  
575 be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this  
576 article, are agreed to by the VESMP authority and the owner.

577 C. In order to prevent further erosion, a VESMP authority may require approval of a soil erosion  
578 control and stormwater management plan for any land identified as an erosion impact area by the  
579 VESMP authority.

580 D. A VESMP authority may enter into an agreement with an adjacent VESMP authority regarding  
581 the administration of multijurisdictional projects, specifying who shall be responsible for all or part of  
582 the administrative procedures. Should adjacent VESMP authorities fail to reach such an agreement, each  
583 shall be responsible for administering the area of the multijurisdictional project that lies within its  
584 jurisdiction.

585 E. The following requirements shall apply to land-disturbing activities in the Commonwealth:

586 1. Any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than one  
587 acre of land and is part of a larger common plan of development or sale that results in one acre or  
588 greater of land disturbance may, in accordance with regulations adopted by the Board, be required to  
589 obtain permit coverage.

590 2. For a land-disturbing activity occurring in an area not designated as a Chesapeake Bay  
591 Preservation Area subject to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.):

592 a. Soil erosion control requirements and water quantity technical criteria adopted pursuant to this  
593 article shall apply to any activity that disturbs 10,000 square feet or more, although the locality may  
594 reduce this regulatory threshold to a smaller area of disturbed land. A plan addressing these  
595 requirements shall be submitted to the VESMP authority in accordance with subsection A. This  
596 subdivision shall also apply to additions or modifications to existing single-family detached residential  
597 structures.

598 b. Soil erosion control requirements and water quantity and water quality technical criteria shall  
599 apply to any activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land  
600 and is part of a larger common plan of development or sale that results in one acre or greater of land  
601 disturbance, although the locality may reduce this regulatory threshold to a smaller area of disturbed  
602 land. A plan addressing these requirements shall be submitted to the VESMP authority in accordance  
603 with subsection A.

604 3. For a land-disturbing activity occurring in an area designated as a Chesapeake Bay Preservation  
605 Area subject to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.):

606 a. Soil erosion control and water quantity and water quality technical criteria shall apply to any  
607 land-disturbing activity that disturbs ~~2,500~~ 10,000 square feet or more of land, other than a single-family  
608 detached residential structure. However, the governing body of any affected locality may reduce this  
609 regulatory threshold to a smaller area of disturbed land. A plan addressing these requirements shall be  
610 submitted to the VESMP authority in accordance with subsection A.

611 b. For land-disturbing activities for single-family detached residential structures, soil erosion control  
612 and water quantity technical criteria shall apply to any land-disturbing activity that disturbs ~~2,500~~ 10,000

square feet or more of land, and the locality also may require compliance with the water quality technical criteria. A plan addressing these requirements shall be submitted to the VESMP authority in accordance with subsection A.

F. Notwithstanding any other provisions of this article, the following activities are not required to comply with the requirements of this article unless otherwise required by federal law:

1. Minor land-disturbing activities, including home gardens and individual home landscaping, repairs, and maintenance work;

2. Installation, maintenance, or repair of any individual service connection;

3. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;

4. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;

5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1;

6. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including 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; or as additionally set forth by the Board in regulations. 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;

7. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

8. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto;

9. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;

10. 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 VESMP 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; and

11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity.

G. Notwithstanding any other provision of this article, the following activities are required to comply with the soil erosion control requirements but are not required to comply with the water quantity and water quality technical criteria, unless otherwise required by federal law:

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

2. 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

3. Discharges from a land-disturbing activity to a sanitary sewer or a combined sewer system.

**§ 62.1-44.15:48. (For effective date, see Acts 2016, cc. 68 and 758) Penalties, injunctions, and other legal actions.**

A. For a land-disturbing activity that disturbs ~~2,500~~ 10,000 square feet or more of land in an area of a locality that is designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.), or that disturbs one acre or more of land or is part of a larger common plan of development or sale that disturbs one acre or more of land anywhere else in the Commonwealth:

1. Any person who violates any applicable provision of this article or of any regulation, permit, or standard and specification adopted or approved by the Board hereunder, or who fails, neglects, or refuses to comply with any order of the Board, or a court, issued as herein provided, shall be subject to

674 a civil penalty pursuant to § 62.1-44.32. The court shall direct that any penalty be paid into the state  
675 treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established  
676 pursuant to § 62.1-44.15:29.1.

677 2. Any person who violates any applicable provision of this article, or any ordinance adopted  
678 pursuant to this article, including those adopted pursuant to the conditions of an MS4 permit, or any  
679 condition of a local land-disturbance approval, or who fails, neglects, or refuses to comply with any  
680 order of a locality serving as a VESMP authority or a court, issued as herein provided, shall be subject  
681 to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day  
682 of violation of each requirement shall constitute a separate offense. Such civil penalties shall be paid  
683 into the treasury of the locality in which the violation occurred and are to be used solely for stormwater  
684 management capital projects, including (i) new stormwater best management practices; (ii) stormwater  
685 best management practice maintenance, inspection, or retrofitting; (iii) stream restoration; (iv) low-impact  
686 development projects; (v) buffer restoration; (vi) pond retrofitting; and (vii) wetlands restoration.

687 Where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into  
688 the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund  
689 established pursuant to § 62.1-44.15:29.1.

690 B. For a land-disturbing activity that disturbs an area measuring not less than 10,000 square feet but  
691 less than one acre in an area that is not designated as a Chesapeake Bay Preservation Area pursuant to  
692 the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and is not part of a larger common plan  
693 of development or sale that disturbs one acre or more of land:

694 1. Any person who violates any applicable provision of this article or of any regulation or order of  
695 the Board issued pursuant to this article, or any condition of a land-disturbance approval issued by the  
696 Board, or fails to obtain a required land-disturbance approval, shall be subject to a civil penalty not to  
697 exceed \$5,000 for each violation with a limit of \$50,000 within the discretion of the court in a civil  
698 action initiated by the Board. Each day during which the violation is found to have existed shall  
699 constitute a separate offense. In no event shall a series of specified violations arising from the same  
700 operative set of facts result in civil penalties that exceed a total of \$50,000. The court shall direct the  
701 penalty to be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local  
702 Assistance Fund established pursuant to § 62.1-44.15:29.1.

703 2. Any locality serving as a VESMP authority shall adopt an ordinance providing that a violation of  
704 any ordinance or provision of its program adopted pursuant to this article, or any condition of a  
705 land-disturbance approval, shall be subject to a civil penalty. Such ordinance shall provide that any  
706 person who violates any applicable provision of this article or any ordinance or order of a locality issued  
707 pursuant to this article, or any condition of a land-disturbance approval issued by the locality, or fails to  
708 obtain a required land-disturbance approval, shall be subject to a civil penalty not to exceed \$5,000 for  
709 each violation with a limit of \$50,000 within the discretion of the court in a civil action initiated by the  
710 locality. Each day during which the violation is found to have existed shall constitute a separate offense.  
711 In no event shall a series of specified violations arising from the same operative set of facts result in  
712 civil penalties that exceed a total of \$50,000. Any civil penalties assessed by a court shall be paid into  
713 the treasury of the locality wherein the land lies and used pursuant to subdivision A 2, except that where  
714 the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state  
715 treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established  
716 pursuant to § 62.1-44.15:29.1.

717 C. The violation of any provision of this article may also result in the following sanctions:

718 1. The Board may seek an injunction, mandamus, or other appropriate remedy pursuant to  
719 § 62.1-44.23. A locality serving as a VESMP authority may apply to the appropriate court in any  
720 jurisdiction wherein the land lies to enjoin a violation or a threatened violation of the provisions of a  
721 local ordinance or order or the conditions of a local land-disturbance approval. Any person violating or  
722 failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to  
723 this article shall be subject, in the discretion of the court, to a civil penalty that shall be assessed and  
724 used in accordance with the provisions of subsection A or B, as applicable.

725 2. The Board or a locality serving as a VESMP authority may use the criminal provisions provided  
726 in § 62.1-44.32.

727 **§ 62.1-44.15:51. (For expiration date, see Acts 2016, cc. 68 and 758) Definitions.**

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

729 "Agreement in lieu of a plan" means a contract between the plan-approving authority and the owner  
730 that specifies conservation measures that must be implemented in the construction of a single-family  
731 residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

732 "Applicant" means any person submitting an erosion and sediment control plan for approval or  
733 requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

734 "Certified inspector" means an employee or agent of a VESCP authority who (i) holds a certificate of  
735 competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training

program for project inspection and successfully completes such program within one year after enrollment.

"Certified plan reviewer" means an employee or agent of a VESCP authority who (i) holds a certificate of competence from the Board in the area of plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, landscape architect, land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1, or professional soil scientist as defined in § 54.1-2200.

"Certified program administrator" means an employee or agent of a VESCP authority who (i) holds a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"District" or "soil and water conservation district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of Chapter 5 of Title 10.1.

"Erosion and sediment control plan" or "plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"Erosion impact area" means an area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

"Land-disturbing activity" means any man-made change to the land surface that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting, and filling of land, except that the term shall not include:

1. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;

2. Individual service connections;

3. Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;

4. Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;

5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1;

6. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Board in regulation, 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.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

7. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;

8. Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (§ 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;

9. Disturbed land areas of less than 10,000 square feet in size or 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations; however, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;

797 10. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or  
798 poles;

799 11. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are  
800 within the regulatory authority of and approved by local wetlands boards, the Marine Resources  
801 Commission, or the United States Army Corps of Engineers; however, any associated land that is  
802 disturbed outside of this exempted area shall remain subject to this article and the regulations adopted  
803 pursuant thereto; and

804 12. Emergency work to protect life, limb, or property, and emergency repairs; however, if the  
805 land-disturbing activity would have required an approved erosion and sediment control plan, if the  
806 activity were not an emergency, then the land area disturbed shall be shaped and stabilized in  
807 accordance with the requirements of the VESCP authority.

808 "Natural channel design concepts" means the utilization of engineering analysis and fluvial  
809 geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the  
810 purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and  
811 allows larger flows to access its bankfull bench and its floodplain.

812 "Owner" means the owner or owners of the freehold of the premises or lesser estate therein,  
813 mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person,  
814 firm, or corporation in control of a property.

815 "Peak flow rate" means the maximum instantaneous flow from a given storm condition at a particular  
816 location.

817 "Permittee" means the person to whom the local permit authorizing land-disturbing activities is issued  
818 or the person who certifies that the approved erosion and sediment control plan will be followed.

819 "Person" means any individual, partnership, firm, association, joint venture, public or private  
820 corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county,  
821 city, town, or other political subdivision of the Commonwealth, governmental body, including a federal  
822 or state entity as applicable, any interstate body, or any other legal entity.

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

825 "Town" means an incorporated town.

826 "Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the  
827 Board that has been established by a VESCP authority for the effective control of soil erosion, sediment  
828 deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the  
829 unreasonable degradation of properties, stream channels, waters, and other natural resources and shall  
830 include such items where applicable as local ordinances, rules, permit requirements, annual standards  
831 and specifications, policies and guidelines, technical materials, and requirements for plan review,  
832 inspection, enforcement where authorized in this article, and evaluation consistent with the requirements  
833 of this article and its associated regulations.

834 "Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an  
835 authority approved by the Board to operate a Virginia Erosion and Sediment Control Program. An  
836 authority may include a state entity, including the Department; a federal entity; a district, county, city, or  
837 town; or for linear projects subject to annual standards and specifications, electric, natural gas, and  
838 telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies,  
839 or authorities created pursuant to § 15.2-5102.

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

842 **§ 62.1-44.15:55. (For effective date, see Acts 2016, cc. 68 and 758) Regulated land-disturbing**  
843 **activities; submission and approval of erosion and sediment control plan.**

844 A. Except as provided in § 62.1-44.15:31 for a land-disturbing activity conducted by a state agency,  
845 federal entity, or other specified entity, no person shall engage in any land-disturbing activity until he  
846 has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing  
847 activity and the plan has been reviewed and approved. Where Virginia Pollutant Discharge Elimination  
848 System permit coverage is required, a VESCP authority shall be required to obtain evidence of such  
849 coverage from the Department's online reporting system prior to approving the erosion and sediment  
850 control plan. A VESCP authority may enter into an agreement with an adjacent VESCP or VESMP  
851 authority regarding the administration of multijurisdictional projects specifying who shall be responsible  
852 for all or part of the administrative procedures. Should adjacent authorities fail to come to such an  
853 agreement, each shall be responsible for administering the area of the multijurisdictional project that lies  
854 within its jurisdiction. Where the land-disturbing activity results from the construction of a single-family  
855 residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if  
856 executed by the VESCP authority.

857 B. The VESCP authority shall review erosion and sediment control plans submitted to it and grant  
858 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 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 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, as provided by § 62.1-44.15:52. Failure to provide the name of an individual holding a certificate 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. In order to prevent further erosion, a VESCP authority may require approval of an erosion and sediment control plan for any land identified by the VESCP authority as an erosion impact area.

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

F. Notwithstanding any other provisions of this article, the following activities are not required to comply with the requirements of this article unless otherwise required by federal law:

1. Disturbance of a land area of less than 10,000 square feet in size ~~or less than 2,500 square feet in an area designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.)~~. However, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;

2. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;

3. Installation, maintenance, or repair of any individual service connection;

4. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;

5. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;

6. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1;

7. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including 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; or as additionally set forth by the Board in regulations. 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.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

8. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

9. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are

920 within the regulatory authority of and approved by local wetlands boards, the Marine Resources  
921 Commission, or the United States Army Corps of Engineers; however, any associated land that is  
922 disturbed outside of this exempted area shall remain subject to this article and the regulations adopted  
923 pursuant thereto;

924 10. Land-disturbing activities in response to a public emergency where the related work requires  
925 immediate authorization to avoid imminent endangerment to human health or the environment. In such  
926 situations, the VESMP authority shall be advised of the disturbance within seven days of commencing  
927 the land-disturbing activity, and compliance with the administrative requirements of subsection A is  
928 required within 30 days of commencing the land-disturbing activity;

929 11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing  
930 activity; and

931 12. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other  
932 related structures and facilities of a railroad company.