

17102332D

**HOUSE BILL NO. 2012**

Offered January 11, 2017

Prefiled January 10, 2017

*A BILL to amend and reenact § 62.1-44.15:24, as it is currently effective and as it shall become effective, of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 62.1-44.15:33.1, relating to stormwater; failed best management practice.*

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 and as it shall become effective, of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 62.1-44.15:33.1 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.

"Best management practice," "practice," or "BMP" means a structural practice, nonstructural practice, or other management practice used to prevent or reduce nutrient loads associated with stormwater from reaching surface waters or the adverse effects thereof.

"Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal to or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to the regulations adopted pursuant to the Chesapeake Bay Preservation provisions of this chapter.

"CWA" means the federal Clean Water Act (33 U.S.C. § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, P.L. 92-500, as amended by P.L. 95-217, P.L. 95-576, P.L. 96-483, and P.L. 97-117, or any subsequent revisions thereto.

"Department" means the Department of Environmental Quality.

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

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body, or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

"Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in § 62.1-44.15:34.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system or "MS4," including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains:

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;

2. Designed or used for collecting or conveying stormwater;

3. That is not a combined sewer; and

4. That is not part of a publicly owned treatment works.

"Municipal Separate Storm Sewer System Management Program" means a management program covering the duration of a state permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations, and this article and its attendant regulations, using management practices, control techniques, and system, design, and engineering methods, and such other provisions that are appropriate.

"Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorus, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land

INTRODUCED

HB2012

59 surface in a diffuse manner by stormwater runoff.

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

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

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

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

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

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

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

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

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

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

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

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

99 **§ 62.1-44.15:24. (For effective date, see Acts 2016, cc. 68 and 758) Definitions.**

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

101 "Agreement in lieu of a plan" means a contract between the VSMP authority or the Board acting as  
102 a VSMP authority and the owner or permittee that specifies methods that shall be implemented to  
103 comply with the requirements of this article for the construction of a single-family detached residential  
104 structure; such contract may be executed by the VSMP authority in lieu of a soil erosion control and  
105 stormwater management plan or by the Board acting as a VSMP authority in lieu of a stormwater  
106 management plan.

107 "Applicant" means any person submitting a soil erosion control and stormwater management plan to  
108 a VSMP authority, or a stormwater management plan to the Board when it is serving as a VSMP  
109 authority, for approval in order to obtain authorization to commence a land-disturbing activity.

110 "Best management practice," "practice," or "BMP" means a structural practice, nonstructural  
111 practice, or other management practice used to prevent or reduce nutrient loads associated with  
112 stormwater from reaching surface waters or the adverse effects thereof.

113 "CWA" means the federal Clean Water Act (33 U.S.C. § 1251 et seq.), formerly referred to as the  
114 Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, P.L.  
115 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  
116 revisions thereto.

117 "Department" means the Department of Environmental Quality.

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

119 "Erosion impact area" means an area of land that is not associated with a current land-disturbing  
120 activity but is 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 any shoreline where the erosion results from wave action or other coastal processes.

"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 may result in soil erosion or has the potential to change its runoff characteristics, including construction activity such as the clearing, grading, excavating, or filling of land.

"Land-disturbance approval" means the same as that term is defined in § 62.1-44.3.

"Municipal separate storm sewer" or "MS4" means the same as that term is defined in § 62.1-44.3.

"Municipal Separate Storm Sewer System Management Program" means a management program covering the duration of a 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.

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

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

"Owner" means the same as that term is defined in § 62.1-44.3. For a regulated land-disturbing activity that does not require a permit, "owner" also means the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

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

"Permit" means a Virginia Pollutant Discharge Elimination System (VPDES) permit issued by the Board pursuant to § 62.1-44.15 for stormwater discharges from a land-disturbing activity or MS4.

"Permittee" means the person to whom the permit is issued.

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

"Soil erosion" means the movement of soil by wind or water into state waters or onto lands in the Commonwealth.

"Soil Erosion Control and Stormwater Management plan" or "plan" means a document describing methods for controlling soil erosion and managing stormwater in accordance with the requirements adopted pursuant to this article.

"Stormwater," for the purposes of this article, means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

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

"Subdivision" means the same as that term is defined in § 15.2-2201.

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the Board that is established by a VESCP authority pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.) for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. The VESCP shall include, where applicable, such items as local ordinances, rules, policies and guidelines, technical materials, and requirements for plan review, inspection, and evaluation consistent with the requirements of Article 2.4 (§ 62.1-44.15:51 et seq.).

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means a locality that is approved by the Board to operate a Virginia Erosion and Sediment Control Program in accordance with Article 2.4 (§ 62.1-44.15:51 et seq.). Only a locality for which the Department administered a Virginia Stormwater Management Program as of July 1, 2017, is authorized to choose to operate a VESCP pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.).

"Virginia Erosion and Stormwater Management Program" or "VESMP" means a program established by a VESMP authority for the effective control of soil erosion and sediment deposition and the

182 management of the quality and quantity of runoff resulting from land-disturbing activities to prevent the  
183 unreasonable degradation of properties, stream channels, waters, and other natural resources. The  
184 program shall include such items as local ordinances, rules, requirements for permits and  
185 land-disturbance approvals, policies and guidelines, technical materials, and requirements for plan  
186 review, inspection, and enforcement consistent with the requirements of this article.

187 "Virginia Erosion and Stormwater Management Program authority" or "VESMP authority" means the  
188 Board or a locality approved by the Board to operate a Virginia Erosion and Stormwater Management  
189 Program. For state agency or federal entity land-disturbing activities and land-disturbing activities  
190 subject to approved standards and specifications, the Board shall serve as the VESMP authority.

191 "Virginia Stormwater Management Program" or "VSMP" means a program established by the Board  
192 pursuant to § 62.1-44.15:27.1 on behalf of a locality on or after July 1, 2014, to manage the quality and  
193 quantity of runoff resulting from any land-disturbing activity that (i) disturbs one acre or more of land  
194 or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale  
195 that results in one acre or more of land disturbance.

196 "Virginia Stormwater Management Program authority" or "VSMP authority" means the Board when  
197 administering a VSMP on behalf of a locality that, pursuant to subdivision B 3 of § 62.1-44.15:27, has  
198 chosen not to adopt and administer a VESMP.

199 "Water quality technical criteria" means standards set forth in regulations adopted pursuant to this  
200 article that establish minimum design criteria for measures to control nonpoint source pollution.

201 "Water quantity technical criteria" means standards set forth in regulations adopted pursuant to this  
202 article that establish minimum design criteria for measures to control localized flooding and stream  
203 channel erosion.

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

208 **§ 62.1-44.15:33.1. Failed best management practice; Department enforcement; regulations.**

209 *The Board shall adopt regulations that:*

210 *1. Define a failed best management practice (Failed BMP) to include any BMP that cannot perform*  
211 *its intended function during a significant part of its intended life span because of inadequate operation*  
212 *or maintenance;*

213 *2. Establish criteria for determining whether a particular installed BMP qualifies as a Failed BMP;*  
214 *and*

215 *3. Direct the Department, at the request of the locality in which the Failed BMP is located, to*  
216 *assume, by contract with the locality, the responsibility for enforcing the operation and maintenance*  
217 *obligations of the owner of a Failed BMP.*