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HOUSE BILL NO. 2076

House Amendments in [] — January 27, 2017

A *BILL to amend and reenact § 62.1-44.15:28, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to stormwater management programs; regulations.*

Patron Prior to Engrossment—Delegate Wilt

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.15:28, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

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

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

1. Establish standards and procedures for administering a VSMP;

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

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

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

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

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

b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department or other supporting revenue from a VSMP; however, the fees shall be set at a level sufficient for the Department and the VSMP to fully carry out their responsibilities under this article and its attendant regulations and local ordinances or standards and specifications where applicable. When establishing a VSMP, the VSMP authority shall assess the statewide fee 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 5 a. A VSMP's portion of the fees shall be used solely to carry out the VSMP's responsibilities under this article and its attendant regulations, ordinances, or annual standards and specifications.

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

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59 than one acre and less than five acres. On and after July 1, 2014, such fees shall only apply where
60 coverage has been issued under the Board's General Permit for Discharges of Stormwater from
61 Construction Activities to a state agency or federal entity for which it has approved annual standards
62 and specifications. After establishment, such fees may be modified in the future through regulatory
63 actions.

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

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

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

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

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

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

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

93 10. Require that VSMPs maintain after-development runoff rate of flow and characteristics that
94 replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology,
95 or improve upon the contributing share of the existing predevelopment runoff characteristics and site
96 hydrology if stream channel erosion or localized flooding is an existing predevelopment condition.
97 Except where more stringent requirements are necessary to address total maximum daily load
98 requirements or to protect exceptional state waters, any land-disturbing activity that provides for
99 stormwater management shall satisfy the conditions of this subsection if the practices are designed to (i)
100 detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour
101 period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable
102 peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less
103 than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved
104 through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff
105 volume from the site when it was in a good forested condition divided by the runoff volume from the
106 site in its proposed condition, and shall be exempt from any flow rate capacity and velocity
107 requirements for natural or man-made channels as defined in any regulations promulgated pursuant to
108 this section or any ordinances adopted pursuant to § 62.1-44.15:27 or 62.1-44.15:33;

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

111 12. Promote the reclamation and reuse of stormwater for uses other than potable water in order to
112 protect state waters and the public health and to minimize the direct discharge of pollutants into state
113 waters;

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

116 14. Establish a statewide permit fee schedule for stormwater management related to municipal
117 separate storm sewer system permits; ~~and~~

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

120 16. *Require that all [final] plan elements, specifications, or calculations whose preparation requires*

121 a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately
122 signed and sealed by a professional who is licensed to engage in practice in the Commonwealth.
123 Nothing in this subdivision shall authorize any person to engage in practice outside his area of
124 professional competence.

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

131 **§ 62.1-44.15:28. (For effective date, see Acts 2016, cc. 68 & 758) Development of regulations.**

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

- 137 1. Establish standards and procedures for administering a VESMP;
- 138 2. Establish minimum standards of effectiveness of the VESMP and criteria and procedures for
139 reviewing and evaluating its effectiveness. The minimum standards of program effectiveness established
140 by the Board shall provide that (i) no soil erosion control and stormwater management plan shall be
141 approved until it is reviewed by a plan reviewer certified pursuant to § 62.1-44.15:30, (ii) each
142 inspection of a land-disturbing activity shall be conducted by an inspector certified pursuant to
143 § 62.1-44.15:30, and (iii) each VESMP shall contain a program administrator, a plan reviewer, and an
144 inspector, each of whom is certified pursuant to § 62.1-44.15:30 and all of whom may be the same
145 person;
- 146 3. Be based upon relevant physical and developmental information concerning the watersheds and
147 drainage basins of the Commonwealth, including data relating to land use, soils, hydrology, geology,
148 size of land area being disturbed, proximate water bodies and their characteristics, transportation, and
149 public facilities and services;
- 150 4. Include any survey of lands and waters as the Board deems appropriate or as any applicable law
151 requires to identify areas, including multijurisdictional and watershed areas, with critical soil erosion and
152 sediment problems;
- 153 5. Contain conservation standards for various types of soils and land uses, which shall include
154 criteria, techniques, and methods for the control of soil erosion and sediment resulting from
155 land-disturbing activities;
- 156 6. Establish water quality and water quantity technical criteria. These criteria shall be periodically
157 modified as required in order to reflect current engineering methods;
- 158 7. Require the provision of long-term responsibility for and maintenance of stormwater management
159 control devices and other techniques specified to manage the quality and quantity of runoff;
- 160 8. Require as a minimum the inclusion in VESMPs of certain administrative procedures that include,
161 but are not limited to, specifying the time period within which a VESMP authority shall grant
162 land-disturbance approval, the conditions and processes under which such approval shall be granted, the
163 procedures for communicating disapproval, the conditions under which an approval may be changed, and
164 requirements for inspection of approved projects;
- 165 9. Establish a statewide fee schedule to cover all costs associated with the implementation of a
166 VESMP related to land-disturbing activities where permit coverage is required, and for land-disturbing
167 activities where the Board serves as a VESMP authority or VSMP authority. Such fee attributes include
168 the costs associated with plan review, permit registration statement review, permit issuance, permit
169 coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing
170 activities as well as program oversight costs. The fee schedule shall also include a provision for a
171 reduced fee for a land-disturbing activity that disturbs 2,500 square feet or more but less than one acre
172 in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake
173 Bay Preservation Act (§ 62.1-44.15:67 et seq.). The fee schedule shall be governed by the following:
 - 174 a. The revenue generated from the statewide fee shall be collected utilizing, where practicable, an
175 online payment system, and the Department's portion shall be remitted to the State Treasurer for deposit
176 in the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29. However,
177 whenever the Board has approved a VESMP, no more than 30 percent of the total revenue generated by
178 the statewide fees collected shall be remitted to the State Treasurer for deposit in the Virginia
179 Stormwater Management Fund, with the balance going to the VESMP authority;
 - 180 b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made
181 to the Department or other supporting revenue from a VESMP; however, the fees shall be set at a level

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

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

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

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

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

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

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

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

216 a. Except where more stringent requirements are necessary to address total maximum daily load
217 requirements or to protect exceptional state waters, any land-disturbing activity that was subject to the
218 water quantity requirements that were in effect pursuant to this article prior to July 1, 2014, shall be
219 deemed to satisfy the conditions of this subsection if the practices are designed to (i) detain the water
220 volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land
221 development project and to release it over 48 hours; (ii) detain and release over a 24-hour period the
222 expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow
223 rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or
224 equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through
225 multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume
226 from the site when it was in a good forested condition divided by the runoff volume from the site in its
227 proposed condition. Any land-disturbing activity that complies with these requirements shall be exempt
228 from any flow rate capacity and velocity requirements for natural or man-made channels as defined in
229 any regulations promulgated pursuant to this section or any ordinances adopted pursuant to
230 § 62.1-44.15:27 or 62.1-44.15:33;

231 b. Any stream restoration or relocation project that incorporates natural channel design concepts is
232 not a man-made channel and shall be exempt from any flow rate capacity and velocity requirements for
233 natural or man-made channels as defined in any regulations promulgated pursuant to this article;

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

236 15. Promote the reclamation and reuse of stormwater for uses other than potable water in order to
237 protect state waters and the public health and to minimize the direct discharge of pollutants into state
238 waters;

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

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

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

244 technologies that may prove effective in reducing nonpoint source pollution; and
245 *19. Require that all [final] plan elements, specifications, or calculations whose preparation requires*
246 *a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately*
247 *signed and sealed by a professional who is licensed to engage in practice in the Commonwealth.*
248 *Nothing in this subdivision shall authorize any person to engage in practice outside his area of*
249 *professional competence.*

250 **2. That the State Water Control Board (the Board) shall adopt regulations to implement the**
251 **requirements of this act to be effective no later than July 1, 2018. The adoption of such**
252 **regulations shall be exempt from the requirements of Article 2 (§ 2.2-4006 et seq.) of the**
253 **Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). However, the Department**
254 **shall (i) provide a Notice of Intended Regulatory Action and (ii) provide for a 60-day public**
255 **comment period prior to the Board's adoption of the regulations.**

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