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SENATE BILL NO. 1127

Offered January 11, 2017

Prefiled January 9, 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—Obenshain

Referred to Committee on Agriculture, Conservation 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

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59 \$450 for each small construction activity with sites or common plans of development equal to or greater
60 than one acre and less than five acres. On and after July 1, 2014, such fees shall only apply where
61 coverage has been issued under the Board's General Permit for Discharges of Stormwater from
62 Construction Activities to a state agency or federal entity for which it has approved annual standards
63 and specifications. After establishment, such fees may be modified in the future through regulatory
64 actions.

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

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

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

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

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

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

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

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

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

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

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

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

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

16. *Require that all plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing in this subdivision shall authorize any person to engage in practice outside his area of professional competence.*

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

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

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

1. Establish standards and procedures for administering a VESMP;
2. Establish minimum standards of effectiveness of the VESMP and criteria and procedures for reviewing and evaluating its effectiveness. The minimum standards of program effectiveness established by the Board shall provide that (i) no soil erosion control and stormwater management plan shall be approved until it is reviewed by a plan reviewer certified pursuant to § 62.1-44.15:30, (ii) each inspection of a land-disturbing activity shall be conducted by an inspector certified pursuant to § 62.1-44.15:30, and (iii) each VESMP shall contain a program administrator, a plan reviewer, and an inspector, each of whom is certified pursuant to § 62.1-44.15:30 and all of whom may be the same person;
3. Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the Commonwealth, including data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;
4. Include any survey of lands and waters as the Board deems appropriate or as any applicable law requires to identify areas, including multijurisdictional and watershed areas, with critical soil erosion and sediment problems;
5. Contain conservation standards for various types of soils and land uses, which shall include criteria, techniques, and methods for the control of soil erosion and sediment resulting from land-disturbing activities;
6. Establish water quality and water quantity technical criteria. These criteria shall be periodically modified as required in order to reflect current engineering methods;
7. 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;
8. Require as a minimum the inclusion in VESMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VESMP authority shall grant land-disturbance approval, the conditions and processes under which such 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;
9. Establish a statewide fee schedule to cover all costs associated with the implementation of a VESMP related to land-disturbing activities where permit coverage is required, and for land-disturbing activities where the Board serves as a VESMP authority or VSMP authority. Such fee attributes include the costs associated with plan review, permit registration statement review, permit issuance, permit 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 a land-disturbing activity that disturbs 2,500 square feet or more but less than one acre 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.). The fee schedule shall be governed by the following:
 - a. The revenue generated from the statewide 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 VESMP, no more than 30 percent of the total revenue generated by the statewide fees collected shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund, with the balance going to the VESMP authority;
 - b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made

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

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

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

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

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

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

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

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

217 a. Except where more stringent requirements are necessary to address total maximum daily load
218 requirements or to protect exceptional state waters, any land-disturbing activity that was subject to the
219 water quantity requirements that were in effect pursuant to this article prior to July 1, 2014, shall be
220 deemed to satisfy the conditions of this subsection if the practices are designed to (i) detain the water
221 volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land
222 development project and to release it over 48 hours; (ii) detain and release over a 24-hour period the
223 expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow
224 rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or
225 equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through
226 multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume
227 from the site when it was in a good forested condition divided by the runoff volume from the site in its
228 proposed condition. Any land-disturbing activity that complies with these requirements shall be exempt
229 from any flow rate capacity and velocity requirements for natural or man-made channels as defined in
230 any regulations promulgated pursuant to this section or any ordinances adopted pursuant to §
231 62.1-44.15:27 or 62.1-44.15:33;

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

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

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

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

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

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

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

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