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SENATE BILL NO. 1376

Offered January 11, 2023

Prefiled January 11, 2023

A *BILL to amend and reenact §§ 62.1-44.15:24 and 62.1-44.15:28, as they are currently effective and as they may become effective, 62.1-44.15:34, as it may become effective, and 62.1-44.15:51, 62.1-44.15:55, and 62.1-44.15:58, as they are currently effective and as they may become effective, of the Code of Virginia, relating to stormwater management; streamlining; federal conformity.*

Patron—Vogel

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.15:24 and 62.1-44.15:28, as they are currently effective and as they may become effective, 62.1-44.15:34, as it may become effective, and 62.1-44.15:51, 62.1-44.15:55, and 62.1-44.15:58, as they are currently effective and as they may 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, as amended by Acts 2017, c. 345) **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 (i) single-family residence or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent; 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 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.

"Farm building or structure" means the same as that term is defined in § 36-97.

"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

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59 engineering methods, and such other provisions that are appropriate.

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

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

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

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

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

71 "Rural Tidewater locality" means any locality that is (i) subject to the provisions of the Chesapeake
72 Bay Preservation Act (§ 62.1-44.15:67 et seq.) and (ii) eligible to join the Rural Coastal Virginia
73 Community Enhancement Authority established by Chapter 76 (§ 15.2-7600 et seq.) of Title 15.2.

74 "Small construction activity" means:

75 1. A construction activity, including clearing, grading, or excavating, that results in land disturbance
76 of equal to or greater than one acre and less than five acres. "Small construction activity" also includes
77 the disturbance of less than one acre of total land area that is part of a larger common plan of
78 development or sale if the larger common plan will ultimately disturb an area equal to or greater than
79 one acre and less than five acres. "Small construction activity" does not include routine maintenance
80 that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the
81 facility.

82 The Board may waive the otherwise applicable requirements in a general permit for a stormwater
83 discharge from construction activities that disturb less than five acres where stormwater controls are not
84 needed based on an approved total maximum daily load (TMDL) that addresses the pollutants of
85 concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines
86 allocations for small construction sites for the pollutants of concern or that determines that such
87 allocations are not needed to protect water quality based on consideration of existing in-stream
88 concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For
89 the purpose of this subdivision, the pollutants of concern include sediment or a parameter that addresses
90 sediment, such as total suspended solids, turbidity, or siltation, and any other pollutant that has been
91 identified as a cause of impairment of any water body that will receive a discharge from the
92 construction activity. The operator shall certify to the Board that the construction activity will take
93 place, and that stormwater discharges will occur, within the drainage area addressed by the TMDL or
94 provide an equivalent analysis.

95 As of the start date in the table of start dates for electronic submissions of Virginia Pollutant
96 Discharge Elimination System (VPDES) information within the regulation governing the implementation
97 of electronic reporting requirements for certain VPDES permittees, facilities, and entities, all
98 certifications submitted in support of such waiver shall be submitted electronically by the owner or
99 operator to the Department in compliance with (i) this subdivision; (ii) 40 C.F.R. Part 3, including, in
100 all cases, 40 C.F.R. Part 3 Subpart D; (iii) the regulation addressing signatories to state permit
101 applications and reports; and (iv) regulations addressing the VPDES electronic reporting requirements.
102 Such regulations addressing the VPDES electronic reporting requirements shall not undo existing
103 requirements for electronic reporting. Prior to such date, and independent of the regulations addressing
104 the VPDES electronic reporting requirements, a permittee shall be required to report electronically if
105 specified by a particular permit.

106 2. Any other construction activity designated by either the Board or the Regional Administrator of
107 the U.S. Environmental Protection Agency, based on the potential for contribution to a violation of a
108 water quality standard or for significant contribution of pollutants to surface waters.

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

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

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

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

120 "Virginia Stormwater Management Program" or "VSMP" means a program approved by the Soil and

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

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

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

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

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

§ 62.1-44.15:24. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Definitions.

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

"Agreement in lieu of a plan" means a contract between the VESMP authority or the Board acting as a VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of this article for the construction of a (i) single-family detached residential structure or (ii) *farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent*; such contract may be executed by the VESMP authority in lieu of a soil erosion control and stormwater management plan or by the Board acting as a VSMP authority in lieu of a stormwater management plan.

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

"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.

"Erosion impact area" means an area of land that is not associated with a current land-disturbing 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.

"Farm building or structure" means the same as that term is defined in § 36-97.

"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

182 attendant regulations, using management practices, control techniques, and system, design, and
183 engineering methods, and such other provisions that are appropriate.

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

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

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

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

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

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

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

202 "Rural Tidewater locality" means any locality that is (i) subject to the provisions of the Chesapeake
203 Bay Preservation Act (§ 62.1-44.15:67 et seq.) and (ii) eligible to join the Rural Coastal Virginia
204 Community Enhancement Authority established by Chapter 76 (§ 15.2-7600 et seq.) of Title 15.2.

205 "Small construction activity" means:

206 1. A construction activity, including clearing, grading, or excavating, that results in land disturbance
207 of equal to or greater than one acre and less than five acres. "Small construction activity" also includes
208 the disturbance of less than one acre of total land area that is part of a larger common plan of
209 development or sale if the larger common plan will ultimately disturb an area equal to or greater than
210 one acre and less than five acres. "Small construction activity" does not include routine maintenance
211 that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the
212 facility.

213 The Board may waive the otherwise applicable requirements in a general permit for a stormwater
214 discharge from construction activities that disturb less than five acres where stormwater controls are not
215 needed based on an approved total maximum daily load (TMDL) that addresses the pollutants of
216 concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines
217 allocations for small construction sites for the pollutants of concern or that determines that such
218 allocations are not needed to protect water quality based on consideration of existing in-stream
219 concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For
220 the purpose of this subdivision, the pollutants of concern include sediment or a parameter that addresses
221 sediment, such as total suspended solids, turbidity, or siltation, and any other pollutant that has been
222 identified as a cause of impairment of any water body that will receive a discharge from the
223 construction activity. The operator shall certify to the Board that the construction activity will take
224 place, and that stormwater discharges will occur, within the drainage area addressed by the TMDL or
225 provide an equivalent analysis.

226 As of the start date in the table of start dates for electronic submissions of Virginia Pollutant
227 Discharge Elimination System (VPDES) information within the regulation governing the implementation
228 of electronic reporting requirements for certain VPDES permittees, facilities, and entities, all
229 certifications submitted in support of such waiver shall be submitted electronically by the owner or
230 operator to the Department in compliance with (i) this subdivision; (ii) 40 C.F.R. Part 3, including, in
231 all cases, 40 C.F.R. Part 3 Subpart D; (iii) the regulation addressing signatories to state permit
232 applications and reports; and (iv) regulations addressing the VPDES electronic reporting requirements.
233 Such regulations addressing the VPDES electronic reporting requirements shall not undo existing
234 requirements for electronic reporting. Prior to such date, and independent of the regulations addressing
235 the VPDES electronic reporting requirements, a permittee shall be required to report electronically if
236 specified by a particular permit.

237 2. Any other construction activity designated by either the Board or the Regional Administrator of
238 the U.S. Environmental Protection Agency, based on the potential for contribution to a violation of a
239 water quality standard or for significant contribution of pollutants to surface waters.

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

242 "Soil Erosion Control and Stormwater Management plan" or "plan" means a document describing
243 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 "VЕСP" means a program approved by the Board that is established by a VЕСP 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 VЕСP 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 "VЕСP 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 VЕСP pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.).

"Virginia Erosion and Stormwater Management Program" or "VЕСMP" means a program established by a VЕСMP authority for the effective control of soil erosion and sediment deposition and the management of the quality and quantity of runoff resulting from land-disturbing activities to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. The program shall include such items as local ordinances, rules, requirements for permits and land-disturbance approvals, policies and guidelines, technical materials, and requirements for plan review, inspection, and enforcement consistent with the requirements of this article.

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

"Virginia Stormwater Management Program" or "VSMP" means a program established by the Board pursuant to § 62.1-44.15:27.1 on behalf of a locality on or after July 1, 2014, to manage the quality and quantity of runoff resulting from any land-disturbing activity that (i) disturbs one acre or more of land or (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 more of land disturbance.

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

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

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

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

§ 62.1-44.15:28. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) 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 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 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 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 *not* 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 the certification and use of a proprietary best management practice only if another state, regional, or national program has verified its nutrient or sediment removal effectiveness and all of such program's established test protocol requirements were met or exceeded. As used in this subdivision and any regulations or guidance adopted pursuant to this subdivision, "certification" means a determination by the Department that a proprietary best management practice is approved for use in accordance with this article;

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 separate storm sewer system permits;

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

16. Require the owner of property that is zoned for residential use and on which is located a privately owned stormwater management facility serving one or more residential properties to record the long-term maintenance and inspection requirements for such facility with the deed for the owner's property; and

17. Require that all final 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; and

18. Establish a procedure by which a registration statement shall not be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for a small construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale.

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 and 758, as amended by Acts 2017, c. 345) 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

428 natural resources, and that specify minimum technical criteria and administrative procedures for
429 VESMPs. The regulations shall:

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

431 2. Establish minimum standards of effectiveness of the VESMP and criteria and procedures for
432 reviewing and evaluating its effectiveness. The minimum standards of program effectiveness established
433 by the Board shall provide that (i) no soil erosion control and stormwater management plan shall be
434 approved until it is reviewed by a plan reviewer certified pursuant to § 62.1-44.15:30, (ii) each
435 inspection of a land-disturbing activity shall be conducted by an inspector certified pursuant to
436 § 62.1-44.15:30, and (iii) each VESMP shall contain a program administrator, a plan reviewer, and an
437 inspector, each of whom is certified pursuant to § 62.1-44.15:30 and all of whom may be the same
438 person;

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

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

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

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

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

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

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

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

473 b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made
474 to the Department or other supporting revenue from a VESMP; however, the fees shall be set at a level
475 sufficient for the Department, the Board, and the VESMP to fully carry out their responsibilities under
476 this article and local ordinances or standards and specifications where applicable. When establishing a
477 VESMP, the VESMP authority shall assess the statewide fees pursuant to the schedule and shall have
478 the authority to reduce or increase such fees, and to consolidate such fees with other program-related
479 charges, but in no case shall such fee changes affect the amount established in the regulations as
480 available to the Department for program oversight responsibilities pursuant to subdivision a. A VESMP's
481 portion of the fees shall be used solely to carry out the VESMP's responsibilities under this article and
482 associated ordinances;

483 c. In establishing the fee schedule under this subdivision, the Department shall ensure that the
484 VESMP authority portion of the statewide fee for coverage under the General Permit for Discharges of
485 Stormwater from Construction Activities for small construction activity involving a single-family
486 detached residential structure with a site or area, within or outside a common plan of development or
487 sale, that is equal to or greater than one acre but less than five acres shall be no greater than the
488 VESMP authority portion of the fee for coverage of sites or areas with a land-disturbance acreage of
489 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 *not* 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;

f. Establish a procedure by which a registration statement shall not be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for a small 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 the certification and use of a proprietary best management practice only if another state, regional, or national program has verified its nutrient or sediment removal effectiveness and all of such program's established test protocol requirements were met or exceeded. As used in this subdivision and any regulations or guidance adopted pursuant to this subdivision, "certification" means a determination by the Department that a proprietary best management practice is approved for use in accordance with this article;

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;

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

19. Require the owner of property that is zoned for residential use and on which is located a privately owned stormwater management facility serving one or more residential properties to record the long-term maintenance and inspection requirements for such facility with the deed for the owner's property; and

20. Require that all final 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.

§ 62.1-44.15:34. (For effective date, see notes) 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 VESMP 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 VESMP 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 VESMP authority. Any VESMP 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 VESMP 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 VESMP authority to be complete. The VESMP authority shall issue either land-disturbance approval or denial and provide written rationale for any denial. Prior to issuing a land-disturbance approval, a VESMP authority shall be required to obtain evidence of permit coverage when such coverage is required. The VESMP 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 VESMP 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 VESMP authority to be complete. The VESMP 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 VESMP authority. The VESMP 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 VESMP authority shall be required to obtain evidence of permit coverage when such coverage is required.

The VESMP authority also shall forward to the Department any resubmittal of a previously disapproved application within five days after receipt, and the VESMP 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 VESMP authority, and the VESMP 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 a state agency or federal entity for a project involving a land-disturbing activity in one locality with a local program with more stringent ordinances than those of the state program, unless the plan is consistent with the requirements of the local program.

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

d. The state agency or federal entity responsible for the land-disturbing activity shall ensure

compliance with the approved plan. As necessary, the Board shall provide project oversight and enforcement.

4. Prior to issuance of any land-disturbance approval, the VESMP authority may also require an applicant, excluding state agencies 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 VESMP authority, to ensure that measures could be taken by the VESMP authority at the applicant's expense should he fail, after proper notice, within the time specified to comply with the conditions imposed by the VESMP authority as a result of his land-disturbing activity. If the VESMP authority takes such action upon such failure by the applicant, the VESMP 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 VESMP authority's 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.

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

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

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

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

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

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

1. Any land-disturbing activity that (i) disturbs one acre or more of land or (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 may, in accordance with regulations adopted by the Board, be required to obtain permit coverage.

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

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

b. Soil erosion control requirements and water quantity and water quality technical criteria shall apply to any activity that (i) disturbs one acre or more of land or (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, although the locality may reduce this regulatory threshold to a smaller area of disturbed land. A plan addressing these requirements shall be submitted to the VESMP authority in accordance with subsection A.

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

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

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

- 674 1. Minor land-disturbing activities, including home gardens and individual home landscaping, repairs,
675 and maintenance work;
- 676 2. Installation, maintenance, or repair of any individual service connection;
- 677 3. Installation, maintenance, or repair of any underground utility line when such activity occurs on an
678 existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the
679 area of the road, street, or sidewalk that is hard surfaced;
- 680 4. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an
681 overall plan for land-disturbing activity relating to construction of the building to be served by the septic
682 tank system;
- 683 5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects
684 conducted pursuant to Title 45.2;
- 685 6. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting,
686 or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural
687 engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins,
688 dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land
689 drainage, and land irrigation; or as additionally set forth by the Board in regulations. However, this
690 exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is
691 reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.)
692 or is converted to bona fide agricultural or improved pasture use as described in subsection B of §
693 10.1-1163;
- 694 7. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or
695 poles;
- 696 8. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are
697 within the regulatory authority of and approved by local wetlands boards, the Marine Resources
698 Commission, or the United States Army Corps of Engineers; however, any associated land that is
699 disturbed outside of this exempted area shall remain subject to this article and the regulations adopted
700 pursuant thereto;
- 701 9. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other
702 related structures and facilities of a railroad company;
- 703 10. Land-disturbing activities in response to a public emergency where the related work requires
704 immediate authorization to avoid imminent endangerment to human health or the environment. In such
705 situations, the VESMP authority shall be advised of the disturbance within seven days of commencing
706 the land-disturbing activity, and compliance with the administrative requirements of subsection A is
707 required within 30 days of commencing the land-disturbing activity; and
- 708 11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing
709 activity.
- 710 G. Notwithstanding any other provision of this article, the following activities are required to comply
711 with the soil erosion control requirements but are not required to comply with the water quantity and
712 water quality technical criteria, unless otherwise required by federal law:
- 713 1. Activities under a state or federal reclamation program to return an abandoned property to an
714 agricultural or open land use;
- 715 2. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity,
716 or original construction of the project. The paving of an existing road with a compacted or impervious
717 surface and reestablishment of existing associated ditches and shoulders shall be deemed routine
718 maintenance if performed in accordance with this subsection; and
- 719 3. Discharges from a land-disturbing activity to a sanitary sewer or a combined sewer system.
- 720 **§ 62.1-44.15:51. (For expiration date, see notes) Definitions.**
- 721 As used in this article, unless the context requires a different meaning:
- 722 "Agreement in lieu of a plan" means a contract between the plan-approving authority and the owner
723 that specifies conservation measures that must be implemented in the construction of a (i) single-family
724 residence or (ii) farm building or structure on a parcel of land with a total impervious cover
725 percentage, including the impervious cover from the farm building or structure to be constructed, of less
726 than five percent; this contract may be executed by the plan-approving authority in lieu of a formal site
727 plan.
- 728 "Applicant" means any person submitting an erosion and sediment control plan for approval or
729 requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.
- 730 "Certified inspector" means an employee or agent of a VESCP authority who (i) holds a certificate of
731 competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training
732 program for project inspection and successfully completes such program within one year after
733 enrollment.
- 734 "Certified plan reviewer" means an employee or agent of a VESCP authority who (i) holds a
735 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.

"Farm building or structure" means the same as that term is defined in § 36-97.

"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 45.2;
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;
10. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
11. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are

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

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

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

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

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

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

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

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

822 "Town" means an incorporated town.

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

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

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

839 **§ 62.1-44.15:51. (For effective date, see notes) Definitions.**

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

841 "Agreement in lieu of a plan" means a contract between the VESCP authority and the owner that
842 specifies conservation measures that must be implemented in the construction of a (i) single-family
843 detached residential structure or (ii) farm building or structure on a parcel of land with a total
844 impervious cover percentage, including the impervious cover from the farm building or structure to be
845 constructed, of less than five percent; this contract may be executed by the VESCP authority in lieu of a
846 formal site plan.

847 "Applicant" means any person submitting an erosion and sediment control plan for approval in order
848 to obtain authorization for land-disturbing activities to commence.

849 "Certified inspector" means an employee or agent of a VESCP authority who (i) holds a certification
850 from the Board in the area of project inspection or (ii) is enrolled in the Board's training program for
851 project inspection and successfully completes such program within one year after enrollment.

852 "Certified plan reviewer" means an employee or agent of a VESCP authority who (i) holds a
853 certification from the Board in the area of plan review, (ii) is enrolled in the Board's training program
854 for plan review and successfully completes such program within one year after enrollment, or (iii) is
855 licensed as a professional engineer, architect, landscape architect, land surveyor pursuant to Article 1
856 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1, or professional soil scientist as defined in § 54.1-2200.

857 "Certified program administrator" means an employee or agent of a VESCP authority who (i) holds a
858 certification 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 that is not associated with a current land-disturbing 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 to shorelines where the erosion results from wave action or other coastal processes.

"Farm building or structure" means the same as that term is defined in § 36-97.

"Land disturbance" or "land-disturbing activity" means any man-made change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including the clearing, grading, excavating, transporting, and filling of land.

"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.

"Owner" means the same as provided in § 62.1-44.3. For a land-disturbing activity that is regulated under this article, "owner" also includes 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 given storm condition at a particular location.

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

"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.

"Town" means an incorporated town.

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the Board that has been established by a VESCP authority 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 and shall include such items where applicable as local ordinances, rules, policies and guidelines, technical materials, and requirements for plan review, inspection, and evaluation consistent with the requirements of this article.

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means a locality approved by the Board to operate a Virginia Erosion and Sediment Control Program. A locality that has chosen not to establish a Virginia Erosion and Stormwater Management Program pursuant to subdivision B 3 of § 62.1-44.15:27 is required to become a VESCP authority in accordance with this article.

"Virginia Stormwater Management Program" or "VSMP" means a program established by the Board pursuant to § 62.1-44.15:27.1 on behalf of a locality on or after July 1, 2014, to manage the quality and quantity of runoff resulting from any land-disturbing activity that (i) disturbs one acre or more of land or (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.

§ 62.1-44.15:55. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Regulated land-disturbing activities; submission and approval of erosion and sediment control plan.

A. Except as provided in § 62.1-44.15:56 for state agency and federal entity land-disturbing activities,

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

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

When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify the modifications, terms, and conditions that will permit approval of the plan. If no action is taken by the VESCP authority within the time specified in this subsection, the plan shall be deemed approved and the person authorized to proceed with the proposed activity. The VESCP authority shall act on any erosion and sediment control plan that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.

C. The VESCP authority may require changes to an approved plan in the following cases:

1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or
2. Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article and associated regulations, are agreed to by the VESCP authority and the person responsible for carrying out the plan.

D. Electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies shall, and authorities created pursuant to § 15.2-5102 may, file general erosion and sediment control standards and specifications annually with the Department for review and approval. Such standards and specifications shall be consistent with the requirements of this article and associated regulations and the Stormwater Management Act (§ 62.1-44.15:24 et seq.) and associated regulations where applicable. The specifications shall apply to:

1. Construction, installation, or maintenance of electric transmission, natural gas, and telephone utility lines and pipelines, and water and sewer lines; and
2. Construction of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of the railroad company.

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

costs associated with standard and specification review and approval, project inspections, and compliance.

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

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

F. 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.

G. 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.

§ 62.1-44.15:55. (For effective date, see notes) Regulated land-disturbing activities; submission and approval of erosion and sediment control plan.

A. Except as provided in § 62.1-44.15:31 for a land-disturbing activity conducted by a state agency, federal entity, or other specified entity, no person shall engage in any land-disturbing activity until he has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved. Where Virginia Pollutant Discharge Elimination System permit coverage is required, a VESCP authority shall be required to obtain evidence of such coverage from the Department's online reporting system prior to approving the erosion and sediment control plan. A VESCP authority may enter into an agreement with an adjacent VESCP or VESMP authority regarding the administration of multijurisdictional projects specifying who shall be responsible for all or part of the administrative procedures. Should adjacent authorities fail to come to such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction. Where the land-disturbing activity results from the construction of a (i) single-family residence or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP authority.

B. The VESCP authority shall review erosion and sediment control plans submitted to it and grant written approval within 60 days of the receipt of the plan if it determines that the plan meets the requirements of this article and the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and shall comply with the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate 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 45.2;

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 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;

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;

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

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

§ 62.1-44.15:58. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Monitoring, reports, and inspections.

A. The VESCP authority (i) shall provide for periodic inspections of the land-disturbing activity and

require that an individual holding a certificate of competence, as provided by § 62.1-44.15:52, who will be in charge of and responsible for carrying out the land-disturbing activity and (ii) may require monitoring and reports from the person responsible for carrying out the erosion and sediment control plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. However, any VESCP authority may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single-family residence. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection. If the VESCP authority, where authorized to enforce this article, or the Department determines that there is a failure to comply with the plan following an inspection, notice shall be served upon the permittee or person responsible for carrying out the plan by mailing with confirmation of delivery to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, the permit may be revoked and the VESCP authority, where authorized to enforce this article, the Department, or the Board may pursue enforcement as provided by § 62.1-44.15:63.

B. Notwithstanding the provisions of subsection A, a VESCP authority is authorized to enter into agreements or contracts with districts, adjacent localities, or other public or private entities to assist with the responsibilities of this article, including but not limited to the review and determination of adequacy of erosion and sediment control plans submitted for land-disturbing activities as well as monitoring, reports, inspections, and enforcement where an authority is granted such powers by this article.

C. Upon issuance of an inspection report denoting a violation of this section, § 62.1-44.15:55 or 62.1-44.15:56, in conjunction with or subsequent to a notice to comply as specified in subsection A, a VESCP authority, where authorized to enforce this article, or the Department may issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved plan as provided in § 62.1-44.15:55, requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved erosion and sediment control plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply as specified in subsection A. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply. The order for noncompliance with a plan shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the VESCP authority, the Department, or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. The order for disturbance without an approved plan or permits shall be served upon the owner by mailing with confirmation of delivery to the address specified in the land records of the locality, shall be posted on the site where the disturbance is occurring, and shall remain in effect until such time as permits and plan approvals are secured, except in such situations where an agricultural exemption applies. If the alleged violator has not obtained an approved erosion and sediment control plan or any required permit within seven days from the date of service of the order, the Department or the chief administrative officer or his designee on behalf of the VESCP authority may issue a subsequent order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved erosion and sediment control plan and any required permits have been obtained. The subsequent order shall be served upon the owner by mailing with confirmation of delivery to the address specified in the permit application or the land records of the locality in which the site is located. The owner may appeal the issuance of any order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. Any person violating or failing, neglecting, or refusing to obey an order issued by the Department or the chief administrative officer or his designee on behalf of the VESCP authority may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted. Nothing in this section shall prevent the Department, the Board, or the chief administrative officer or his designee on behalf of the VESCP authority from taking any other action specified in § 62.1-44.15:63.

§ 62.1-44.15:58. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Monitoring, reports, and inspections.

A. The VESCP authority (i) shall provide for periodic inspections of the land-disturbing activity and

1166 require that an individual holding a certificate, as provided by § 62.1-44.15:52, will be in charge of and
1167 responsible for carrying out the land-disturbing activity and (ii) may require monitoring and reports from
1168 the person responsible for carrying out the erosion and sediment control plan, to ensure compliance with
1169 the approved plan and to determine whether the measures required in the plan are effective in
1170 controlling erosion and sediment. However, any VESCP authority may waive the certificate requirement
1171 for an agreement in lieu of a plan for construction of a single-family detached residential structure. The
1172 owner shall be given notice of the inspection. When the VESCP authority or the Board determines that
1173 there is a failure to comply with the conditions of land-disturbance approval or to obtain an approved
1174 plan or a land-disturbance approval prior to commencing land-disturbing activity, the VESCP authority
1175 or the Board may serve a notice to comply upon the owner or person responsible for carrying out the
1176 land-disturbing activity. Such notice to comply shall be served by delivery by facsimile, e-mail, or other
1177 technology; by mailing with confirmation of delivery to the address specified in the plan or
1178 land-disturbance application, if available, or in the land records of the locality; or by delivery at the site
1179 to a person previously identified to the VESCP authority by the owner. The notice to comply shall
1180 specify the measures needed to comply with the land-disturbance approval conditions or shall identify
1181 the plan approval or land-disturbance approval needed to comply with this article and shall specify a
1182 reasonable time within which such measures shall be completed. In any instance in which a required
1183 land-disturbance approval has not been obtained, the VESCP authority or the Board may require
1184 immediate compliance. In any other case, the VESCP authority or the Board may establish the time for
1185 compliance by taking into account the risk of damage to natural resources and other relevant factors.
1186 Notwithstanding any other provision in this subsection, a VESCP authority or the Board may count any
1187 days of noncompliance as days of violation should the VESCP authority or the Board take an
1188 enforcement action. The issuance of a notice to comply by the Board shall not be considered a case
1189 decision as defined in § 2.2-4001. Upon failure to comply within the time specified, any plan approval
1190 or land-disturbance approval may be revoked and the VESCP authority or the Board may pursue
1191 enforcement as provided by § 62.1-44.15:63.

1192 B. Notwithstanding the provisions of subsection A, a VESCP authority is authorized to enter into
1193 agreements or contracts with districts, adjacent localities, or other public or private entities to assist with
1194 the responsibilities of this article, including but not limited to the review and determination of adequacy
1195 of erosion and sediment control plans submitted for land-disturbing activities as well as monitoring,
1196 reports, inspections, and enforcement.

1197 C. Upon issuance of an inspection report denoting a violation of this section or § 62.1-44.15:55, in
1198 conjunction with or subsequent to a notice to comply as specified in subsection A, a VESCP authority
1199 or the Board may issue a stop work order requiring that all or part of the land-disturbing activities on
1200 the site be stopped until the specified corrective measures have been taken or, if land-disturbing
1201 activities have commenced without an approved plan as provided in § 62.1-44.15:55, requiring that all of
1202 the land-disturbing activities be stopped until an approved plan is obtained. When such an order is
1203 issued by the Board, it shall be issued in accordance with the procedures of the Administrative Process
1204 Act (§ 2.2-4000 et seq.). Where the alleged noncompliance is causing or is in imminent danger of
1205 causing harmful erosion of lands or sediment deposition in waters within the watersheds of the
1206 Commonwealth, or where the land-disturbing activities have commenced without an approved erosion
1207 and sediment control plan, such a stop work order may be issued whether or not the alleged violator has
1208 been issued a notice to comply as specified in subsection A. Otherwise, such an order may be issued
1209 only after the alleged violator has failed to comply with a notice to comply. The order for
1210 noncompliance with a plan shall be served in the same manner as a notice to comply, and shall remain
1211 in effect for seven days from the date of service pending application by the VESCP authority, the
1212 Board, or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the
1213 violation was alleged to have occurred or other appropriate court. The stop work order for disturbance
1214 without an approved plan shall be served upon the owner by mailing with confirmation of delivery to
1215 the address specified in the land records of the locality, shall be posted on the site where the disturbance
1216 is occurring, and shall remain in effect until such time as plan approvals are secured, except in such
1217 situations where an agricultural exemption applies. If the alleged violator has not obtained an approved
1218 erosion and sediment control plan within seven days from the date of service of the stop work order, the
1219 Board or the chief administrative officer or his designee on behalf of the VESCP authority may issue a
1220 subsequent order to the owner requiring that all construction and other work on the site, other than
1221 corrective measures, be stopped until an approved erosion and sediment control plan has been obtained.
1222 The subsequent order shall be served upon the owner by mailing with confirmation of delivery to the
1223 address specified in the plan or the land records of the locality in which the site is located. The owner
1224 may appeal the issuance of any order to the circuit court of the jurisdiction wherein the violation was
1225 alleged to have occurred or other appropriate court. Any person violating or failing, neglecting, or
1226 refusing to obey an order issued by the Board or the chief administrative officer or his designee on
1227 behalf of the VESCP authority may be compelled in a proceeding instituted in the circuit court of the

1228 jurisdiction wherein the violation was alleged to have occurred or other appropriate court to obey same
1229 and to comply therewith by injunction, mandamus, or other appropriate remedy. Upon completion and
1230 approval of corrective action or obtaining an approved plan, the order shall immediately be lifted.
1231 Nothing in this section shall prevent the Board or the chief administrative officer or his designee on
1232 behalf of the VESCP authority from taking any other action specified in § 62.1-44.15:63.

INTRODUCED

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