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SENATE BILL NO. 1279

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources on February 6, 2013)

(Patron Prior to Substitute—Senator Hanger)

A BILL to amend and reenact §§ 2.2-4006, 3.2-409, 3.2-410, 3.2-3602, 10.1-104.1, 10.1-659, 10.1-2123, 15.2-1129.2, 15.2-2114, 15.2-2295.1, 15.2-2403.3, 33.1-70.1, 36-55.64, 58.1-3660.1, 58.1-3851, 62.1-44.5, 62.1-44.9, 62.1-44.14, 62.1-44.15, 62.1-44.19:13, 62.1-44.19:15, 62.1-44.19:20, 62.1-44.23, 62.1-44.32, 62.1-44.44, 62.1-73, 62.1-195.1, and 62.1-229.4 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 3.1 of Title 62.1 articles numbered 2.3, 2.4, and 2.5, consisting of sections numbered 62.1-44.15:24 through 62.1-44.15:79, and by adding in Article 4.02 of Chapter 3.1 of Title 62.1 sections numbered 62.1-44.19:21, 62.1-44.19:22, and 62.1-44.19:23; and to repeal Article 4 of Chapter 5 (§§ 10.1-560 through 10.1-571), Articles 1.1 and 1.1:1 (§§ 10.1-603.1 through 10.1-603.15:5) of Chapter 6, and Chapter 21 (§§ 10.1-2100 through 10.1-2115) of Title 10.1 of the Code of Virginia, relating to transfer of responsibility for administration of water quality programs.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4006, 3.2-409, 3.2-410, 3.2-3602, 10.1-104.1, 10.1-659, 10.1-2123, 15.2-1129.2, 15.2-2114, 15.2-2295.1, 15.2-2403.3, 33.1-70.1, 36-55.64, 58.1-3660.1, 58.1-3851, 62.1-44.5, 62.1-44.9, 62.1-44.14, 62.1-44.15, 62.1-44.19:13, 62.1-44.19:15, 62.1-44.19:20, 62.1-44.23, 62.1-44.32, 62.1-44.44, 62.1-73, 62.1-195.1, and 62.1-229.4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3.1 of Title 62.1 articles numbered 2.3, 2.4, and 2.5, consisting of sections numbered 62.1-44.15:24 through 62.1-44.15:79, and by adding in Article 4.02 of Chapter 3.1 of Title 62.1 sections numbered 62.1-44.19:21, 62.1-44.19:22, and 62.1-44.19:23, as follows:

§ 2.2-4006. Exemptions from requirements of this article.

A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:

1. Agency orders or regulations fixing rates or prices.

2. Regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority.

3. Regulations that consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.

4. Regulations that are:

a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. However, such regulations shall be filed with the Registrar within 90 days of the law's effective date;

b. Required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or

c. Necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing. Notice of the proposed adoption of these regulations and the Registrar's determination shall be published in the Virginia Register not less than 30 days prior to the effective date of the regulation.

5. Regulations of the Board of Agriculture and Consumer Services adopted pursuant to subsection B of § 3.2-3929 or clause (v) or (vi) of subsection C of § 3.2-3931 after having been considered at two or more Board meetings and one public hearing.

6. Regulations of the regulatory boards served by (i) the Department of Labor and Industry pursuant to Title 40.1 and (ii) the Department of Professional and Occupational Regulation or the Department of Health Professions pursuant to Title 54.1 that are limited to reducing fees charged to regulants and applicants.

7. The development and issuance of procedural policy relating to risk-based mine inspections by the Department of Mines, Minerals and Energy authorized pursuant to §§ 45.1-161.82 and 45.1-161.292:55.

8. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, (c) Virginia Soil and Water Conservation Board pursuant to the Virginia Stormwater Management Act (§ 10.1-603.1 et seq.) of Title 10.1 pursuant to the Dam Safety Act (§ 10.1-604 et

60 *seq.*), and (d) the development and issuance of general wetlands permits by the Marine Resources
 61 Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission (i)
 62 provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01,
 63 (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action
 64 forms a technical advisory committee composed of relevant stakeholders, including potentially affected
 65 citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral
 66 and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the
 67 proposed general permit.

68 9. The development and issuance by the Board of Education of guidelines on constitutional rights
 69 and restrictions relating to the recitation of the pledge of allegiance to the American flag in public
 70 schools pursuant to § 22.1-202.

71 10. Regulations of the Board of the Virginia College Savings Plan adopted pursuant to § 23-38.77.

72 11. Regulations of the Marine Resources Commission.

73 12. Regulations adopted by the Board of Housing and Community Development pursuant to (i)
 74 Statewide Fire Prevention Code (§ 27-94 et seq.), (ii) the Industrialized Building Safety Law (§ 36-70 et
 75 seq.), (iii) the Uniform Statewide Building Code (§ 36-97 et seq.), and (iv) § 36-98.3, provided the
 76 Board (a) provides a Notice of Intended Regulatory Action in conformance with the provisions of
 77 § 2.2-4007.01, (b) publishes the proposed regulation and provides an opportunity for oral and written
 78 comments as provided in § 2.2-4007.03, and (c) conducts at least one public hearing as provided in
 79 §§ 2.2-4009 and 36-100 prior to the publishing of the proposed regulations. Notwithstanding the
 80 provisions of this subdivision, any regulations promulgated by the Board shall remain subject to the
 81 provisions of § 2.2-4007.06 concerning public petitions, and §§ 2.2-4013 and 2.2-4014 concerning
 82 review by the Governor and General Assembly.

83 13. Amendments to the list of drugs susceptible to counterfeiting adopted by the Board of Pharmacy
 84 pursuant to subsection B of § 54.1-3307.

85 B. Whenever regulations are adopted under this section, the agency shall state as part thereof that it
 86 will receive, consider and respond to petitions by any interested person at any time with respect to
 87 reconsideration or revision. The effective date of regulations adopted under this subsection shall be in
 88 accordance with the provisions of § 2.2-4015, except in the case of emergency regulations, which shall
 89 become effective as provided in subsection B of § 2.2-4012.

90 C. A regulation for which an exemption is claimed under this section or § 2.2-4002 or 2.2-4011 and
 91 that is placed before a board or commission for consideration shall be provided at least two days in
 92 advance of the board or commission meeting to members of the public that request a copy of that
 93 regulation. A copy of that regulation shall be made available to the public attending such meeting.

94 **§ 3.2-409. Ordinances.**

95 A. Any locality may adopt an ordinance creating a complaint, investigation, and agricultural
 96 stewardship plan development program. Ordinances adopted hereunder may contain only provisions that
 97 parallel §§ 3.2-401 and 3.2-402. No such ordinance shall provide for the imposition of civil or criminal
 98 sanctions against an operator or owner who fails to implement a plan. If an owner or operator fails to
 99 implement a plan, the local governing body shall submit a complaint to the Commissioner as provided
 100 in § 3.2-402.

101 B. This section shall not apply to any ordinance: (i) in existence on July 1, 1996; or (ii) adopted
 102 pursuant to the Chesapeake Bay Preservation Act (§ ~~10.1-2100~~ 62.1-44.15:67 et seq.).

103 **§ 3.2-410. Construction of chapter.**

104 Nothing in this chapter shall be construed as duplicative of regulations governing agricultural
 105 practices under the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.).

106 **§ 3.2-3602. Local government regulation of fertilizer.**

107 No locality shall regulate the registration, packaging, labeling, sale, use, application, storage or
 108 distribution of fertilizers except by ordinance as provided for in the requirements of the Chesapeake Bay
 109 Preservation Act (§ ~~10.1-2100~~ 62.1-44.15:67 et seq.), the Erosion and Sediment Control Law (§
 110 ~~10.1-560~~ 62.1-44.15:51 et seq.), the Stormwater Management Act (§ ~~10.1-603.1~~ 62.1-44.15:24 et seq.)
 111 or other nonpoint source regulations adopted by the Department of Conservation and Recreation
 112 *Environmental Quality* or the ~~Soil and Water Conservation~~ *State Water Control* Board. The provisions
 113 of this section shall not preempt the adoption, amendment, or enforcement of the Statewide Fire
 114 Prevention Code pursuant to § 27-97 and the Uniform Statewide Building Code pursuant to § 36-98.

115 **§ 10.1-104.1. Department to assist in the nonpoint source pollution management program.**

116 A. The Department, with the advice of the Board of Conservation and Recreation and the Virginia
 117 Soil and Water Conservation Board and in cooperation with other agencies, organizations, and the public
 118 as appropriate, shall ~~have the lead responsibility for~~ *assist in* the Commonwealth's nonpoint source
 119 pollution management program. ~~This responsibility includes coordination of the nonpoint source control~~
 120 ~~elements of programs developed pursuant to certain state and federal laws including § 319 of the Clean~~
 121 ~~Water Act and § 6217 of the Coastal Zone Management Act. Further responsibilities include, but are not~~

122 limited to, the distribution of assigned funds, the identification and establishment of priorities of
123 nonpoint source related water quality problems, and the administration of the Statewide Nonpoint Source
124 Advisory Committee.

125 B. The Department shall be assisted in performing its nonpoint source pollution management
126 responsibilities by Virginia's soil and water conservation districts. Assistance by the soil and water
127 conservation districts in the delivery of local programs and services may include (i) the provision of
128 technical assistance to advance adoption of conservation management services, (ii) delivery of
129 educational initiatives targeted at youth and adult groups to further awareness and understanding of
130 water quality issues and solutions, and (iii) promotion of incentives to encourage voluntary actions by
131 landowners and land managers in order to minimize nonpoint source pollution contributions to state
132 waters.

133 The provisions of this section shall not limit the powers and duties of other state agencies.

134 **§ 10.1-659. Flood protection programs; coordination.**

135 The provisions of this chapter shall be coordinated with federal, state and local flood prevention and
136 water quality programs to minimize loss of life, property damage and negative impacts on the
137 environment. This program coordination shall include but not be limited to the following: flood
138 prevention, flood plain management, small watershed protection, dam safety, and soil conservation,
139 stormwater management and erosion and sediment control programs of the Department of Conservation
140 and Recreation; the construction activities of the Department of Transportation which result in
141 hydrologic modification of rivers, streams and flood plains; the water quality, Chesapeake Bay
142 Preservation Area criteria, stormwater management, erosion and sediment control, and other water
143 management programs of the State Water Control Board; forested watershed management programs of
144 the Department of Forestry; the statewide building code and other land use control programs of the
145 Department of Housing and Community Development; the habitat management programs of the Virginia
146 Marine Resources Commission; the hazard mitigation planning and disaster response programs of the
147 Department of Emergency Management; the fish habitat protection programs of the Department of Game
148 and Inland Fisheries; the mineral extraction regulatory program of the Department of Mines, Minerals
149 and Energy; the flood plain restrictions of the Department of Virginia Waste Management Board; the
150 Chesapeake Bay Preservation Area criteria and local government assistance programs of the Virginia
151 Soil and Water Conservation Board. The Department shall also coordinate and cooperate with localities
152 in rendering assistance to such localities in their efforts to comply with the planning, subdivision of land
153 and zoning provisions of Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2. The Department shall cooperate
154 with other public and private agencies having flood plain management programs, and shall coordinate its
155 responsibilities under this article and any other law. These activities shall constitute the Commonwealth's
156 flood prevention and protection program.

157 **§ 10.1-2123. Definitions.**

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

159 "Board" means the State Water Control Board of Conservation and Recreation.

160 "Department" means the Department of Conservation and Recreation Environmental Quality.

161 "Director" means the Director of the Department of Conservation and Recreation Environmental
162 Quality.

163 **§ 15.2-1129.2. Creation of local economic revitalization zones.**

164 A. Any city may establish by ordinance one or more economic revitalization zones for the purpose of
165 providing incentives to private entities to purchase real property and interests in real property to
166 assemble parcels suitable for economic development. Each city establishing an economic revitalization
167 zone may grant incentives and provide regulatory flexibility. Such zones shall be reasonably compact,
168 shall not encompass the entire city, and shall constitute one or more tax parcels not commonly owned.
169 Properties that are acquired through the use of eminent domain shall not be eligible for the incentives
170 and regulatory flexibility provided by the ordinance.

171 B. The incentives may include, but not be limited to: (i) reduction of permit fees, (ii) reduction of
172 user fees, (iii) reduction of any type of gross receipts tax, and (iv) waiver of tax liens to facilitate the
173 sale of property.

174 C. Incentives established pursuant to this section may extend for a period of up to 10 years from the
175 date of initial establishment of the economic revitalization zone; however, the extent and duration of any
176 incentive shall conform to the requirements of applicable federal and state law.

177 D. The regulatory flexibility provided in an economic revitalization zone may include (i) special
178 zoning for the district, (ii) the use of a special permit process, (iii) exemption from certain specified
179 ordinances, excluding ordinances or provisions of ordinances adopted pursuant to the requirements of the
180 Chesapeake Bay Preservation Act (§ ~~10.1-2100~~ 62.1-44.15:67 et seq.), the Erosion and Sediment Control
181 Law (§ ~~10.1-560~~ 62.1-44.15:51 et seq.), and the Virginia Stormwater Management Act (§ ~~10.1-603.1~~
182 62.1-44.15:24 et seq.), and (iv) any other incentives adopted by ordinance, which shall be binding upon

183 the locality for a period of up to 10 years.

184 E. The governing body may establish a service district for the provision of additional public services
185 pursuant to Chapter 24 (§ 15.2-2400 et seq.) of Title 15.2.

186 F. This section shall not authorize any local government powers that are not expressly granted herein.

187 G. Prior to adopting or amending any ordinance pursuant to this section, a locality shall provide for
188 notice and public hearing in accordance with subsection A of § 15.2-2204.

189 **§ 15.2-2114. Regulation of stormwater.**

190 A. Any locality, by ordinance, may establish a utility or enact a system of service charges to support
191 a local stormwater management program consistent with ~~Article 1-1 (§ 10.1-603.1 et seq.) of Chapter 6~~
192 ~~of Title 10 Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1~~ or any other state or federal
193 regulation governing stormwater management. Income derived from a utility or system of charges shall
194 be dedicated special revenue, may not exceed the actual costs incurred by a locality operating under the
195 provisions of this section, and may be used only to pay or recover costs for the following:

196 1. The acquisition, as permitted by § 15.2-1800, of real and personal property, and interest therein,
197 necessary to construct, operate and maintain stormwater control facilities;

198 2. The cost of administration of such programs;

199 3. Planning, design, engineering, construction, and debt retirement for new facilities and enlargement
200 or improvement of existing facilities, including the enlargement or improvement of dams, levees,
201 floodwalls, and pump stations, whether publicly or privately owned, that serve to control stormwater;

202 4. Facility operation and maintenance, including the maintenance of dams, levees, floodwalls, and
203 pump stations, whether publicly or privately owned, that serve to control the stormwater;

204 5. Monitoring of stormwater control devices and ambient water quality monitoring; and

205 6. Other activities consistent with the state or federal regulations or permits governing stormwater
206 management, including, but not limited to, public education, watershed planning, inspection and
207 enforcement activities, and pollution prevention planning and implementation.

208 B. The charges may be assessed to property owners or occupants, including condominium unit
209 owners or tenants (when the tenant is the party to whom the water and sewer service is billed), and
210 shall be based upon an analysis that demonstrates the rational relationship between the amount charged
211 and the services provided. Prior to adopting such a system, a public hearing shall be held after giving
212 notice as required by charter or by publishing a descriptive notice once a week for two successive weeks
213 prior to adoption in a newspaper with a general circulation in the locality. The second publication shall
214 not be sooner than one calendar week after the first publication. However, prior to adoption of any
215 ordinance pursuant to this section related to the enlargement, improvement, or maintenance of privately
216 owned dams, a locality shall comply with the notice provisions of § 15.2-1427 and hold a public
217 hearing.

218 C. A locality adopting such a system shall provide for full waivers of charges to the following:

219 1. A federal, state, or local government, or public entity, that holds a permit to discharge stormwater
220 from a municipal separate storm sewer system; except that the waiver of charges shall apply only to
221 property covered by any such permit; and

222 2. Public roads and street rights-of-way that are owned and maintained by state or local agencies
223 including property rights-of-way acquired through the acquisitions process.

224 D. A locality adopting such a system shall provide for full or partial waivers of charges to any
225 person who installs, operates, and maintains a stormwater management facility that achieves a permanent
226 reduction in stormwater flow or pollutant loadings. The locality shall base the amount of the waiver in
227 part on the percentage reduction in stormwater flow or pollutant loadings, or both, from pre-installation
228 to post-installation of the facility. No locality shall provide a waiver to any person who does not obtain
229 a stormwater permit from ~~the Department of Conservation and Recreation~~ or the Department of
230 Environmental Quality when such permit is required by statute or regulation.

231 E. A locality adopting such a system may provide for full or partial waivers of charges to cemeteries,
232 property owned or operated by the locality administering the program, and public or private entities that
233 implement or participate in strategies, techniques, or programs that reduce stormwater flow or pollutant
234 loadings, or decrease the cost of maintaining or operating the public stormwater management system.

235 F. Any locality may issue general obligation bonds or revenue bonds in order to finance the cost of
236 infrastructure and equipment for a stormwater control program. Infrastructure and equipment shall
237 include structural and natural stormwater control systems of all types, including, without limitation,
238 retention basins, sewers, conduits, pipelines, pumping and ventilating stations, and other plants,
239 structures, and real and personal property used for support of the system. The procedure for the issuance
240 of any such general obligation bonds or revenue bonds pursuant to this section shall be in conformity
241 with the procedure for issuance of such bonds as set forth in the Public Finance Act (§ 15.2-2600 et
242 seq.).

243 G. In the event charges are not paid when due, interest thereon shall at that time accrue at the rate,
244 not to exceed the maximum amount allowed by law, determined by the locality until such time as the

245 overdue payment and interest are paid. Charges and interest may be recovered by the locality by action
 246 at law or suit in equity and shall constitute a lien against the property, ranking on a parity with liens for
 247 unpaid taxes. The locality may combine the billings for stormwater charges with billings for water or
 248 sewer charges, real property tax assessments, or other billings; in such cases, the locality may establish
 249 the order in which payments will be applied to the different charges. No locality shall combine its
 250 billings with those of another locality or political subdivision, including an authority operating pursuant
 251 to Chapter 51 (§ 15.2-5100 et seq.) of Title 15.2, unless such locality or political subdivision has given
 252 its consent by duly adopted resolution or ordinance.

253 H. Any two or more localities may enter into cooperative agreements concerning the management of
 254 stormwater.

255 **§ 15.2-2295.1. Regulation of mountain ridge construction.**

256 A. As used in this section, unless the context requires a different meaning:

257 "Construction" means the building, alteration, repair, or improvement of any building or structure.

258 "Crest" means the uppermost line of a mountain or chain of mountains from which the land falls
 259 away on at least two sides to a lower elevation or elevations.

260 "Protected mountain ridge" means a ridge with (i) an elevation of 2,000 feet or more and (ii) an
 261 elevation of 500 feet or more above the elevation of an adjacent valley floor.

262 "Ridge" means the elongated crest or series of crests at the apex or uppermost point of intersection
 263 between two opposite slopes or sides of a mountain and includes all land within 100 feet below the
 264 elevation of any portion of such line or surface along the crest.

265 "Tall buildings or structures" means any building, structure or unit within a multi-unit building with
 266 a vertical height of more than ~~forty~~ 40 feet measured from the top of the natural finished grade of the
 267 crest or the natural finished grade of the high side of the slope of a ridge to the uppermost point of the
 268 building, structure or unit. "Tall buildings or structures" do not include (i) water, radio,
 269 telecommunications or television towers or any equipment for the transmission of electricity, telephone
 270 or cable television; (ii) structures of a relatively slender nature and minor vertical projections of a parent
 271 building, including, but not limited to, chimneys, flagpoles, flues, spires, steeples, belfries, cupolas,
 272 antennas, poles, wires or windmills; or (iii) any building or structure designated as a historic landmark,
 273 building or structure by the United States or by the Board of Historic Resources.

274 B. Determinations by the governing body of heights and elevations under this section shall be
 275 conclusive.

276 C. Any locality in which a protected mountain ridge is located may, by ordinance, provide for the
 277 regulation of the height and location of tall buildings or structures on protected mountain ridges. The
 278 ordinance may be designed and adopted by the locality as an overlay zone superimposed on any
 279 preexisting base zone.

280 D. An ordinance adopted under this section may include criteria for the granting or denial of permits
 281 for the construction of tall buildings or structures on protected mountain ridges. Any such ordinance
 282 shall provide that permit applications shall be denied if a permit application fails to provide for (i)
 283 adequate sewerage, water, and drainage facilities, including, but not limited to, facilities for drinking
 284 water and the adequate supply of water for fire protection and (ii) compliance with the Erosion and
 285 Sediment Control Law (§ ~~10.1-560~~ 62.1-44.15:51 et seq.).

286 E. Any locality that adopts an ordinance providing for the regulation of the height and location of
 287 tall buildings or structures on protected mountain ridges shall send a copy of the ordinance to the
 288 Secretary of Natural Resources.

289 F. Nothing in this section shall be construed to affect or impair a governing body's authority under
 290 this chapter to define and regulate uses in any existing zoning district or to adopt overlay districts
 291 regulating uses on mountainous areas as defined by the governing body.

292 **§ 15.2-2403.3. Stormwater service districts; allocation of revenues.**

293 Any town located within a stormwater service district created pursuant to this chapter shall be
 294 entitled to any revenues collected within the town pursuant to subdivision 6 of § 15.2-2403, subject to
 295 the limitations set forth therein, so long as the town maintains its own MS4 permit issued pursuant to §
 296 ~~10.1-603.2:2~~ 62.1-44.15:26 or maintains its own stormwater service district.

297 **§ 33.1-70.1. Requesting Department to hard-surface secondary roads; paving of certain
 298 secondary roads within existing rights-of-way; designation as Rural Rustic Road.**

299 A. Whenever the governing body of any county, after consultation with personnel of the Department
 300 of Transportation, adopts a resolution requesting the Department of Transportation to hard-surface any
 301 secondary road in such county that carries 50 or more vehicles per day with a hard surface of width and
 302 strength adequate for such traffic volume, the Department of Transportation shall give consideration to
 303 such resolution in establishing priority in expending the funds allocated to such county. The Department
 304 shall consider the paving of roads with a right-of-way width of less than 40 feet under this subsection
 305 when land is, has been, or can be acquired by gift for the purpose of constructing a hard-surface road.

306 B. Notwithstanding the provisions of subsection A of this section, any unpaved secondary road that
 307 carries at least 50 but no more than 750 vehicles per day may be paved or improved and paved within
 308 its existing right-of-way or within a wider right-of-way that is less than 40 feet wide if the following
 309 conditions are met:

310 1. The governing body of the county in which the road is located has requested paving of such road
 311 as part of the six-year plan for the county under § 33.1-70.01 and transmitted that request to the
 312 Commissioner of Highways.

313 2. The Commissioner of Highways, after having considered only (i) the safety of such road in its
 314 current condition and in its paved or improved condition, including the desirability of reduced speed
 315 limits and installation of other warning signs or devices, (ii) the views of the residents and owners of
 316 property adjacent to or served by such road, (iii) the views of the governing body making the request,
 317 (iv) the historical and aesthetic significance of such road and its surroundings, (v) the availability of any
 318 additional land that has been or may be acquired by gift or other means for the purpose of paving such
 319 road within its existing right-of-way or within a wider right-of-way that is less than 40 feet wide, and
 320 (vi) environmental considerations, shall grant or deny the request for the paving of such road under this
 321 subsection.

322 C. Notwithstanding the provisions of subsections A and B, the governing body of any county, in
 323 consultation with the Department, may designate a road or road segment as a Rural Rustic Road
 324 provided such road or road segment is located in a low-density development area and has an average
 325 daily traffic volume of no more than 1,500 vehicles per day. For a road or road segment so designated,
 326 improvements shall utilize a paved surface width based on reduced and flexible standards that leave
 327 trees, vegetation, side slopes and open drainage abutting the roadway undisturbed to the maximum
 328 extent possible without compromising public safety. Any road designated as a Rural Rustic Road shall
 329 be subject to § ~~40.1-603.8~~ 62.1-44.15:34. The Department, in consultation with the affected local
 330 governing body, shall first consider the paving of a road or road segment meeting the criteria for a
 331 Rural Rustic Road in accordance with this subsection before making a decision to pave it to another
 332 standard as set forth in this section. The provisions of this subsection shall become effective July 1,
 333 2003.

334 D. The Commonwealth, its agencies, instrumentalities, departments, officers, and employees acting
 335 within the scope of their duties and authority shall be immune for damages by reason of actions taken in
 336 conformity with the provisions of this section. Immunity for the governing body of any political
 337 subdivision requesting paving under this section and the officers and employees of any such political
 338 subdivision shall be limited to that immunity provided pursuant to § 15.2-1405.

339 **§ 36-55.64. Creation of local housing rehabilitation zones.**

340 A. Any city, county, or town may establish, by ordinance, one or more housing rehabilitation zones
 341 for the purpose of providing incentives and regulatory flexibility in such zone.

342 B. The incentives provided in a housing rehabilitation zone may include, but not be limited to (i)
 343 reduction of permit fees, (ii) reduction of user fees, and (iii) waiver of tax liens to facilitate the sale of
 344 property that will be substantially renovated, rehabilitated or replaced.

345 C. Incentives established pursuant to this section may extend for a period of up to 10 years from the
 346 date of initial establishment of the housing rehabilitation zone; however, the extent and duration of any
 347 incentive shall conform to the requirements of applicable federal and state law.

348 D. The regulatory flexibility provided in a housing rehabilitation zone may include, but not be
 349 limited to (i) special zoning for the district, (ii) the use of a special permit process, (iii) exemption from
 350 certain specified ordinances, excluding ordinances or provisions of ordinances adopted pursuant to the
 351 requirements of the Chesapeake Bay Preservation Act (§ ~~40.1-2100~~ 62.1-44.15:67 et seq.), the Erosion
 352 and Sediment Control Law (§ ~~40.1-560~~ 62.1-44.15:51 et seq.), and the Virginia Stormwater Management
 353 Act (§ ~~40.1-603.1~~ 62.1-44.15:24 et seq.), and (iv) any other incentives adopted by ordinance, which
 354 shall be binding upon the locality for a period of up to 10 years.

355 E. The governing body may establish a service district for the provision of additional public services
 356 pursuant to Chapter 24 (§ 15.2-2400 et seq.) of Title 15.2.

357 F. Each locality establishing a housing rehabilitation zone pursuant to this section may also apply for
 358 the designation of a housing revitalization zone pursuant to Chapter 11 (§ 36-159 et seq.) of Title 36.
 359 Nothing in this chapter shall preclude such dual designation.

360 G. Any housing rehabilitation zone established pursuant to this chapter shall be deemed to meet the
 361 requirements for designation of housing revitalization eligible to be financed as an economically mixed
 362 project pursuant to § 36-55.30:2.

363 H. This section shall not authorize any local government powers that are not expressly granted
 364 herein.

365 **§ 58.1-3660.1. Certified stormwater management developments and property.**

366 A. Certified stormwater management developments and property, as defined herein, are hereby
 367 declared to be a separate class of property and shall constitute a classification for local taxation separate

368 from other such classifications of real property. The governing body of any county, city or town may,
369 by ordinance, exempt or partially exempt such property from local taxation.

370 B. As used in this section, "certified stormwater management developments and property" means any
371 real estate improvements constructed from permeable material, such as, but not limited to, roads, parking
372 lots, patios, and driveways, which are otherwise constructed of impermeable materials, and which the
373 Department of ~~Conservation and Recreation~~ *Environmental Quality* has certified to be designed,
374 constructed, or reconstructed for the primary purpose of abating or preventing pollution of the
375 atmosphere or waters of the Commonwealth by minimizing stormwater runoff. Permeable material shall
376 be used for at least seventy percent of the surface areas that would otherwise be covered by
377 impermeable materials.

378 **§ 58.1-3851. Creation of local tourism zones.**

379 A. Any city, county, or town may establish, by ordinance, one or more tourism zones. Each locality
380 may grant tax incentives and provide certain regulatory flexibility in a tourism zone.

381 B. The tax incentives may be provided for up to 20 years and may include, but not be limited to (i)
382 reduction of permit fees, (ii) reduction of user fees, and (iii) reduction of any type of gross receipts tax.
383 The extent and duration of such incentive proposals shall conform to the requirements of the
384 Constitutions of Virginia and of the United States.

385 C. The governing body may also provide for regulatory flexibility in such zone that may include, but
386 not be limited to (i) special zoning for the district, (ii) permit process reform, (iii) exemption from
387 ordinances, excluding ordinances or provisions of ordinances adopted pursuant to the requirements of the
388 Chesapeake Bay Preservation Act (§ ~~40.1-2100~~ *62.1-44.15:67* et seq.), the Erosion and Sediment Control
389 Law (§ ~~40.1-560~~ *62.1-44.15:51* et seq.), or the Virginia Stormwater Management Act (§ ~~40.1-603.1~~
390 *62.1-44.15:24* et seq.), and (iv) any other incentive adopted by ordinance, which shall be binding upon
391 the locality for a period of up to 10 years.

392 D. The establishment of a tourism zone shall not preclude the area from also being designated as an
393 enterprise zone.

394 **§ 62.1-44.5. Prohibition of waste discharges or other quality alterations of state waters except as**
395 **authorized by permit; notification required.**

396 A. Except in compliance with a certificate *or permit* issued by the Board *or other entity authorized*
397 *by the Board to issue a certificate or permit pursuant to this chapter*, it shall be unlawful for any person
398 to:

399 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious
400 substances;

401 2. Excavate in a wetland;

402 3. Otherwise alter the physical, chemical or biological properties of state waters and make them
403 detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic
404 or industrial consumption, or for recreation, or for other uses; or

405 4. On and after October 1, 2001, conduct the following activities in a wetland:

406 a. New activities to cause draining that significantly alters or degrades existing wetland acreage or
407 functions;

408 b. Filling or dumping;

409 c. Permanent flooding or impounding; or

410 d. New activities that cause significant alteration or degradation of existing wetland acreage or
411 functions.

412 5. Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land
413 disturbing activities ~~unless in compliance with a permit issued pursuant to Article 1.1 (§ 40.1-603.1 et~~
414 ~~seq.) of Chapter 6 of Title 40.1.~~

415 B. Any person in violation of the provisions of subsection A who discharges or causes or allows (i)
416 a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or
417 upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon
418 learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the Director of
419 the Department of Environmental Quality, or the coordinator of emergency services appointed pursuant
420 to § 44-146.19 for the political subdivision reasonably expected to be affected by the discharge. Written
421 notice to the Director of the Department of Environmental Quality shall follow initial notice within the
422 time frame specified by the federal Clean Water Act.

423 **§ 62.1-44.9. Qualifications of members.**

424 A. Members of the Board shall be citizens of the Commonwealth; shall be selected from the
425 Commonwealth at large for merit without regard to political affiliation; and shall, by character and
426 reputation, reasonably be expected to inspire the highest degree of cooperation and confidence in the
427 work of the Board. Members shall, by their education, training, or experience, be knowledgeable of
428 water quality control and regulation and shall be fairly representative of conservation, public health,

429 business, *land development*, and agriculture. No person shall become a member of the Board who
430 receives, or during the previous two years has received, a significant portion of his income directly or
431 indirectly from certificate or permit holders or applicants for a certificate or permit.

432 For the purposes of this section, "significant portion of income" means 10 percent or more of gross
433 personal income for a calendar year, except that it means 50 percent or more of gross personal income
434 for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement,
435 pension, or similar arrangement. Income includes retirement benefits, consultant fees, and stock
436 dividends. Income is not received directly or indirectly from certificate or permit holders or applicants
437 for certificates or permits when it is derived from mutual fund payments, or from other diversified
438 investments for which the recipient does not know the identity of the primary sources of income.

439 B. Notwithstanding any other provision of this section relating to Board membership, the
440 qualifications for Board membership shall not be more strict than those that are required by federal
441 statute or regulations of the United States Environmental Protection Agency.

442 **§ 62.1-44.14. Chairman; Executive Director; employment of personnel; supervision; budget**
443 **preparation.**

444 The Board shall elect its chairman, and the Executive Director shall be appointed as set forth in
445 § 2.2-106. The Executive Director shall serve as executive officer and devote his whole time to the
446 performance of his duties, and he shall have such administrative powers as are conferred upon him by
447 the Board; and, further, the Board may delegate to its Executive Director any of the powers and duties
448 invested in it by this chapter except the adoption and promulgation of standards, rules and regulations;
449 and the revocation of certificates. The Executive Director is authorized to issue, modify or revoke orders
450 in cases of emergency as described in §§ 62.1-44.15 (8b) and 62.1-44.34:20 of this chapter. The
451 Executive Director is further authorized to employ such consultants and full-time technical and clerical
452 workers as are necessary and within the available funds to carry out the purposes of this chapter.

453 It shall be the duty of the Executive Director to exercise general supervision and control over the
454 quality and management of all state waters and to administer and enforce this chapter, and all
455 certificates, standards, policies, rules, regulations, rulings and special orders promulgated by the Board.
456 The Executive Director shall prepare, approve, and submit all requests for appropriations and be
457 responsible for all expenditures pursuant to appropriations. *The Executive Director shall be vested with*
458 *all the authority of the Board when it is not in session, except for the Board's authority to consider*
459 *permits pursuant to § 62.1-44.15:02 and to issue special orders pursuant to subdivisions (8a) and (8b)*
460 *of § 62.1-44.15 and subject to such regulations as may be prescribed by the Board. In no event shall the*
461 *Executive Director have the authority to adopt or promulgate any regulation.*

462 **§ 62.1-44.15. Powers and duties; civil penalties.**

463 It shall be the duty of the Board and it shall have the authority:

464 (1) [Repealed.]

465 (2) To study and investigate all problems concerned with the quality of state waters and to make
466 reports and recommendations.

467 (2a) To study and investigate methods, procedures, devices, appliances, and technologies that could
468 assist in water conservation or water consumption reduction.

469 (2b) To coordinate its efforts toward water conservation with other persons or groups, within or
470 without the Commonwealth.

471 (2c) To make reports concerning, and formulate recommendations based upon, any such water
472 conservation studies to ensure that present and future water needs of the citizens of the Commonwealth
473 are met.

474 (3a) To establish such standards of quality and policies for any state waters consistent with the
475 general policy set forth in this chapter, and to modify, amend or cancel any such standards or policies
476 established and to take all appropriate steps to prevent quality alteration contrary to the public interest or
477 to standards or policies thus established, except that a description of provisions of any proposed standard
478 or policy adopted by regulation which are more restrictive than applicable federal requirements, together
479 with the reason why the more restrictive provisions are needed, shall be provided to the standing
480 committee of each house of the General Assembly to which matters relating to the content of the
481 standard or policy are most properly referable. The Board shall, from time to time, but at least once
482 every three years, hold public hearings pursuant to § 2.2-4007.01 but, upon the request of an affected
483 person or upon its own motion, hold hearings pursuant to § 2.2-4009, for the purpose of reviewing the
484 standards of quality, and, as appropriate, adopting, modifying, or canceling such standards. Whenever
485 the Board considers the adoption, modification, amendment or cancellation of any standard, it shall give
486 due consideration to, among other factors, the economic and social costs and benefits which can
487 reasonably be expected to obtain as a consequence of the standards as adopted, modified, amended or
488 cancelled. The Board shall also give due consideration to the public health standards issued by the
489 Virginia Department of Health with respect to issues of public health policy and protection. If the Board
490 does not follow the public health standards of the Virginia Department of Health, the Board's reason for

491 any deviation shall be made in writing and published for any and all concerned parties.

492 (3b) Except as provided in subdivision (3a), such standards and policies are to be adopted or
493 modified, amended or cancelled in the manner provided by the Administrative Process Act (§ 2.2-4000
494 et seq.).

495 (4) To conduct or have conducted scientific experiments, investigations, studies, and research to
496 discover methods for maintaining water quality consistent with the purposes of this chapter. To this end
497 the Board may cooperate with any public or private agency in the conduct of such experiments,
498 investigations and research and may receive in behalf of the Commonwealth any moneys that any such
499 agency may contribute as its share of the cost under any such cooperative agreement. Such moneys shall
500 be used only for the purposes for which they are contributed and any balance remaining after the
501 conclusion of the experiments, investigations, studies, and research, shall be returned to the contributors.

502 (5) To issue, revoke or amend certificates under prescribed conditions for: (a) the discharge of
503 sewage, industrial wastes and other wastes into or adjacent to state waters; (b) the alteration otherwise of
504 the physical, chemical or biological properties of state waters; (c) excavation in a wetland; or (d) on and
505 after October 1, 2001, the conduct of the following activities in a wetland: (i) new activities to cause
506 draining that significantly alters or degrades existing wetland acreage or functions, (ii) filling or
507 dumping, (iii) permanent flooding or impounding, or (iv) new activities that cause significant alteration
508 or degradation of existing wetland acreage or functions. However, to the extent allowed by federal law,
509 any person holding a certificate issued by the Board that is intending to upgrade the permitted facility
510 by installing technology, control equipment, or other apparatus that the permittee demonstrates to the
511 satisfaction of the Director will result in improved energy efficiency, reduction in the amount of
512 nutrients discharged, and improved water quality shall not be required to obtain a new, modified, or
513 amended permit. The permit holder shall provide the demonstration anticipated by this subdivision to the
514 Department no later than 30 days prior to commencing construction.

515 (5a) All certificates issued by the Board under this chapter shall have fixed terms. The term of a
516 Virginia Pollution Discharge Elimination System permit shall not exceed five years. The term of a
517 Virginia Water Protection Permit shall be based upon the projected duration of the project, the length of
518 any required monitoring, or other project operations or permit conditions; however, the term shall not
519 exceed 15 years. The term of a Virginia Pollution Abatement permit shall not exceed 10 years, except
520 that the term of a Virginia Pollution Abatement permit for confined animal feeding operations shall be
521 10 years. The Department of Environmental Quality shall inspect all facilities for which a Virginia
522 Pollution Abatement permit has been issued to ensure compliance with statutory, regulatory, and permit
523 requirements. Department personnel performing inspections of confined animal feeding operations shall
524 be certified under the voluntary nutrient management training and certification program established in
525 § 10.1-104.2. The term of a certificate issued by the Board shall not be extended by modification
526 beyond the maximum duration and the certificate shall expire at the end of the term unless an
527 application for a new permit has been timely filed as required by the regulations of the Board and the
528 Board is unable, through no fault of the permittee, to issue a new permit before the expiration date of
529 the previous permit.

530 (5b) Any certificate issued by the Board under this chapter may, after notice and opportunity for a
531 hearing, be amended or revoked on any of the following grounds or for good cause as may be provided
532 by the regulations of the Board:

533 1. The owner has violated any regulation or order of the Board, any condition of a certificate, any
534 provision of this chapter, or any order of a court, where such violation results in a release of harmful
535 substances into the environment or poses a substantial threat of release of harmful substances into the
536 environment or presents a hazard to human health or the violation is representative of a pattern of
537 serious or repeated violations which, in the opinion of the Board, demonstrates the owner's disregard for
538 or inability to comply with applicable laws, regulations, or requirements;

539 2. The owner has failed to disclose fully all relevant material facts or has misrepresented a material
540 fact in applying for a certificate, or in any other report or document required under this law or under the
541 regulations of the Board;

542 3. The activity for which the certificate was issued endangers human health or the environment and
543 can be regulated to acceptable levels by amendment or revocation of the certificate; or

544 4. There exists a material change in the basis on which the permit was issued that requires either a
545 temporary or a permanent reduction or elimination of any discharge controlled by the certificate
546 necessary to protect human health or the environment.

547 (5c) Any certificate issued by the Board under this chapter relating to dredging projects governed
548 under Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 may be
549 conditioned upon a demonstration of financial responsibility for the completion of compensatory
550 mitigation requirements. Financial responsibility may be demonstrated by a letter of credit, a certificate
551 of deposit or a performance bond executed in a form approved by the Board. If the U.S. Army Corps of

552 Engineers requires demonstration of financial responsibility for the completion of compensatory
553 mitigation required for a particular project, then the mechanism and amount approved by the U.S. Army
554 Corps of Engineers shall be used to meet this requirement.

555 (6) To make investigations and inspections, to ensure compliance with any certificates, standards,
556 policies, rules, regulations, rulings and special orders which it may adopt, issue or establish and to
557 furnish advice, recommendations, or instructions for the purpose of obtaining such compliance. In
558 recognition of §§ 32.1-164 and 62.1-44.18, the Board and the State Department of Health shall enter into
559 a memorandum of understanding establishing a common format to consolidate and simplify inspections
560 of sewage treatment plants and coordinate the scheduling of the inspections. The new format shall
561 ensure that all sewage treatment plants are inspected at appropriate intervals in order to protect water
562 quality and public health and at the same time avoid any unnecessary administrative burden on those
563 being inspected.

564 (7) To adopt rules governing the procedure of the Board with respect to: (a) hearings; (b) the filing
565 of reports; (c) the issuance of certificates and special orders; and (d) all other matters relating to
566 procedure; and to amend or cancel any rule adopted. Public notice of every rule adopted under this
567 section shall be by such means as the Board may prescribe.

568 (8a) ~~To~~ *Except as otherwise provided in Articles 2.4 (§ 62.1-44.15:51 et seq.) and 2.5*
569 *(§ 62.1-44.15:67 et seq.)* issue special orders to owners (i) who are permitting or causing the pollution,
570 as defined by § 62.1-44.3, of state waters to cease and desist from such pollution, (ii) who have failed to
571 construct facilities in accordance with final approved plans and specifications to construct such facilities
572 in accordance with final approved plans and specifications, (iii) who have violated the terms and
573 provisions of a certificate issued by the Board to comply with such terms and provisions, (iv) who have
574 failed to comply with a directive from the Board to comply with such directive, (v) who have
575 contravened duly adopted and promulgated water quality standards and policies to cease and desist from
576 such contravention and to comply with such water quality standards and policies, (vi) who have violated
577 the terms and provisions of a pretreatment permit issued by the Board or by the owner of a publicly
578 owned treatment works to comply with such terms and provisions or (vii) who have contravened any
579 applicable pretreatment standard or requirement to comply with such standard or requirement; and also
580 to issue such orders to require any owner to comply with the provisions of this chapter and any decision
581 of the Board. ~~Orders~~ *Except as otherwise provided by a separate article, orders* issued pursuant to this
582 subsection may include civil penalties of up to \$32,500 per violation, not to exceed \$100,000 per order.
583 The Board may assess penalties under this subsection if (a) the person has been issued at least two
584 written notices of alleged violation by the Department for the same or substantially related violations at
585 the same site, (b) such violations have not been resolved by demonstration that there was no violation,
586 by an order issued by the Board or the Director, or by other means, (c) at least 130 days have passed
587 since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations
588 have occurred after a hearing conducted in accordance with subdivision (8b). The actual amount of any
589 penalty assessed shall be based upon the severity of the violations, the extent of any potential or actual
590 environmental harm, the compliance history of the facility or person, any economic benefit realized from
591 the noncompliance, and the ability of the person to pay the penalty. The Board shall provide the person
592 with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order
593 that assesses penalties pursuant to this subsection. The issuance of a notice of alleged violation by the
594 Department shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged
595 violation shall include a description of each violation, the specific provision of law violated, and
596 information on the process for obtaining a final decision or fact finding from the Department on whether
597 or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a
598 determination. Such civil penalties shall be paid into the state treasury and deposited by the State
599 Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.), except that
600 civil penalties assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or Article 11 (§ 62.1-44.34:14
601 et seq.) shall be paid into the Virginia Petroleum Storage Tank Fund in accordance with § 62.1-44.34:11,
602 *and except that civil penalties assessed for violations of Article 2.3 (§ 62.1-44.15:24 et seq.) shall be*
603 *paid in accordance with the provisions of § 62.1-44.15:48.*

604 (8b) Such special orders are to be issued only after a hearing before a hearing officer appointed by
605 the Supreme Court in accordance with § 2.2-4020 or, if requested by the person, before a quorum of the
606 Board with at least 30 days' notice to the affected owners, of the time, place and purpose thereof, and
607 they shall become effective not less than 15 days after service as provided in § 62.1-44.12; provided that
608 if the Board finds that any such owner is grossly affecting or presents an imminent and substantial
609 danger to (i) the public health, safety or welfare, or the health of animals, fish or aquatic life; (ii) a
610 public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, it
611 may issue, without advance notice or hearing, an emergency special order directing the owner to cease
612 such pollution or discharge immediately, and shall provide an opportunity for a hearing, after reasonable
613 notice as to the time and place thereof to the owner, to affirm, modify, amend or cancel such emergency

614 special order. If an owner who has been issued such a special order or an emergency special order is not
615 complying with the terms thereof, the Board may proceed in accordance with § 62.1-44.23, and where
616 the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction
617 compelling compliance with the emergency special order pending a hearing by the Board. If an
618 emergency special order requires cessation of a discharge, the Board shall provide an opportunity for a
619 hearing within 48 hours of the issuance of the injunction.

620 (8c) The provisions of this section notwithstanding, the Board may proceed directly under
621 § 62.1-44.32 for any past violation or violations of any provision of this chapter or any regulation duly
622 promulgated hereunder.

623 (8d) With the consent of any owner who has violated or failed, neglected or refused to obey any
624 regulation or order of the Board, any condition of a permit or any provision of this chapter, the Board
625 may provide, in an order issued by the Board against such person, for the payment of civil charges for
626 past violations in specific sums not to exceed the limit specified in § 62.1-44.32 (a). Such civil charges
627 shall be instead of any appropriate civil penalty which could be imposed under § 62.1-44.32 (a) and
628 shall not be subject to the provisions of § 2.2-514. Such civil charges shall be paid into the state
629 treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response
630 Fund (§ 10.1-2500 et seq.), excluding civil charges assessed for violations of Article 9 (§ 62.1-44.34:8 et
631 seq.) or 10 (§ 62.1-44.34:10 et seq.) of Chapter 3.1, or a regulation, administrative or judicial order, or
632 term or condition of approval relating to or issued under those articles, *or civil charges assessed for*
633 *violations of Article 2.3 (§ 62.1-44.15:24 et seq.), or a regulation, administrative or judicial order, or*
634 *term or condition of approval relating to or issued under that article.*

635 The amendments to this section adopted by the 1976 Session of the General Assembly shall not be
636 construed as limiting or expanding any cause of action or any other remedy possessed by the Board
637 prior to the effective date of said amendments.

638 (8e) The Board shall develop and provide an opportunity for public comment on guidelines and
639 procedures that contain specific criteria for calculating the appropriate penalty for each violation based
640 upon the severity of the violations, the extent of any potential or actual environmental harm, the
641 compliance history of the facility or person, any economic benefit realized from the noncompliance, and
642 the ability of the person to pay the penalty.

643 (8f) Before issuing a special order under subdivision (8a) or by consent under (8d), with or without
644 an assessment of a civil penalty, to an owner of a sewerage system requiring corrective action to prevent
645 or minimize overflows of sewage from such system, the Board shall provide public notice of and
646 reasonable opportunity to comment on the proposed order. Any such order under subdivision (8d) may
647 impose civil penalties in amounts up to the maximum amount authorized in § 309(g) of the Clean Water
648 Act. Any person who comments on the proposed order shall be given notice of any hearing to be held
649 on the terms of the order. In any hearing held, such person shall have a reasonable opportunity to be
650 heard and to present evidence. If no hearing is held before issuance of an order under subdivision (8d),
651 any person who commented on the proposed order may file a petition, within 30 days after the issuance
652 of such order, requesting the Board to set aside such order and provide a formal hearing thereon. If the
653 evidence presented by the petitioner in support of the petition is material and was not considered in the
654 issuance of the order, the Board shall immediately set aside the order, provide a formal hearing, and
655 make such petitioner a party. If the Board denies the petition, the Board shall provide notice to the
656 petitioner and make available to the public the reasons for such denial, and the petitioner shall have the
657 right to judicial review of such decision under § 62.1-44.29 if he meets the requirements thereof.

658 (9) To make such rulings under §§ 62.1-44.16, 62.1-44.17, and 62.1-44.19 as may be required upon
659 requests or applications to the Board, the owner or owners affected to be notified by certified mail as
660 soon as practicable after the Board makes them and such rulings to become effective upon such
661 notification.

662 (10) To adopt such regulations as it deems necessary to enforce the general water quality
663 management program of the Board in all or part of the Commonwealth, except that a description of
664 provisions of any proposed regulation which are more restrictive than applicable federal requirements,
665 together with the reason why the more restrictive provisions are needed, shall be provided to the
666 standing committee of each house of the General Assembly to which matters relating to the content of
667 the regulation are most properly referable.

668 (11) To investigate any large-scale killing of fish.

669 (a) Whenever the Board shall determine that any owner, whether or not he shall have been issued a
670 certificate for discharge of waste, has discharged sewage, industrial waste, or other waste into state
671 waters in such quantity, concentration or manner that fish are killed as a result thereof, it may effect
672 such settlement with the owner as will cover the costs incurred by the Board and by the Department of
673 Game and Inland Fisheries in investigating such killing of fish, plus the replacement value of the fish
674 destroyed, or as it deems proper, and if no such settlement is reached within a reasonable time, the

675 Board shall authorize its executive secretary to bring a civil action in the name of the Board to recover
676 from the owner such costs and value, plus any court or other legal costs incurred in connection with
677 such action.

678 (b) If the owner is a political subdivision of the Commonwealth, the action may be brought in any
679 circuit court within the territory embraced by such political subdivision. If the owner is an
680 establishment, as defined in this chapter, the action shall be brought in the circuit court of the city or the
681 circuit court of the county in which such establishment is located. If the owner is an individual or group
682 of individuals, the action shall be brought in the circuit court of the city or circuit court of the county in
683 which such person or any of them reside.

684 (c) For the purposes of this subsection the State Water Control Board shall be deemed the owner of
685 the fish killed and the proceedings shall be as though the State Water Control Board were the owner of
686 the fish. The fact that the owner has or held a certificate issued under this chapter shall not be raised as
687 a defense in bar to any such action.

688 (d) The proceeds of any recovery had under this subsection shall, when received by the Board, be
689 applied, first, to reimburse the Board for any expenses incurred in investigating such killing of fish. The
690 balance shall be paid to the Board of Game and Inland Fisheries to be used for the fisheries'
691 management practices as in its judgment will best restore or replace the fisheries' values lost as a result
692 of such discharge of waste, including, where appropriate, replacement of the fish killed with game fish
693 or other appropriate species. Any such funds received are hereby appropriated for that purpose.

694 (e) Nothing in this subsection shall be construed in any way to limit or prevent any other action
695 which is now authorized by law by the Board against any owner.

696 (f) Notwithstanding the foregoing, the provisions of this subsection shall not apply to any owner who
697 adds or applies any chemicals or other substances that are recommended or approved by the State
698 Department of Health to state waters in the course of processing or treating such waters for public water
699 supply purposes, except where negligence is shown.

700 (12) To administer programs of financial assistance for planning, construction, operation, and
701 maintenance of water quality control facilities for political subdivisions in the Commonwealth.

702 (13) To establish policies and programs for effective area-wide or basin-wide water quality control
703 and management. The Board may develop comprehensive pollution abatement and water quality control
704 plans on an area-wide or basin-wide basis. In conjunction with this, the Board, when considering
705 proposals for waste treatment facilities, is to consider the feasibility of combined or joint treatment
706 facilities and is to ensure that the approval of waste treatment facilities is in accordance with the water
707 quality management and pollution control plan in the watershed or basin as a whole. In making such
708 determinations, the Board is to seek the advice of local, regional, or state planning authorities.

709 (14) To establish requirements for the treatment of sewage, industrial wastes and other wastes that
710 are consistent with the purposes of this chapter; however, no treatment shall be less than secondary or
711 its equivalent, unless the owner can demonstrate that a lesser degree of treatment is consistent with the
712 purposes of this chapter.

713 (15) To promote and establish requirements for the reclamation and reuse of wastewater that are
714 protective of state waters and public health as an alternative to directly discharging pollutants into waters
715 of the state. The requirements shall address various potential categories of reuse and may include
716 general permits and provide for greater flexibility and less stringent requirements commensurate with the
717 quality of the reclaimed water and its intended use. The requirements shall be developed in consultation
718 with the Department of Health and other appropriate state agencies. This authority shall not be construed
719 as conferring upon the Board any power or duty duplicative of those of the State Board of Health.

720 (16) To establish and implement policies and programs to protect and enhance the Commonwealth's
721 wetland resources. Regulatory programs shall be designed to achieve no net loss of existing wetland
722 acreage and functions. Voluntary and incentive-based programs shall be developed to achieve a net
723 resource gain in acreage and functions of wetlands. The Board shall seek and obtain advice and
724 guidance from the Virginia Institute of Marine Science in implementing these policies and programs.

725 (17) To establish additional procedures for obtaining a Virginia Water Protection Permit pursuant to
726 §§ 62.1-44.15:20 and 62.1-44.15:22 for a proposed water withdrawal involving the transfer of water
727 resources between major river basins within the Commonwealth that may impact water basins in another
728 state. Such additional procedures shall not apply to any water withdrawal in existence as of July 1,
729 2012, except where the expansion of such withdrawal requires a permit under §§ 62.1-44.15:20 and
730 62.1-44.15:22, in which event such additional procedures may apply to the extent of the expanded
731 withdrawal only. The applicant shall provide as part of the application (i) an analysis of alternatives to
732 such a transfer, (ii) a comprehensive analysis of the impacts that would occur in the source and
733 receiving basins, (iii) a description of measures to mitigate any adverse impacts that may arise, (iv) a
734 description of how notice shall be provided to interested parties, and (v) any other requirements that the
735 Board may adopt that are consistent with the provisions of this section and §§ 62.1-44.15:20 and
736 62.1-44.15:22 or regulations adopted thereunder. This subdivision shall not be construed as limiting or

737 expanding the Board's authority under §§ 62.1-44.15:20 and 62.1-44.15:22 to issue permits and impose
738 conditions or limitations on the permitted activity.

739 (18) To be the lead agency for the Commonwealth's nonpoint source pollution management program,
740 including coordination of the nonpoint source control elements of programs developed pursuant to
741 certain state and federal laws, including § 319 of the federal Clean Water Act and § 6217 of the federal
742 Coastal Zone Management Act. Further responsibilities include the adoption of regulations necessary to
743 implement a nonpoint source pollution management program in the Commonwealth, the distribution of
744 assigned funds, the identification and establishment of priorities to address nonpoint source related
745 water quality problems, the administration of the Statewide Nonpoint Source Advisory Committee, and
746 the development of a program for the prevention and control of soil erosion, sediment deposition, and
747 nonagricultural runoff to conserve Virginia's natural resources.

748 Article 2.3.

749 Stormwater Management Act.

750 § 62.1-44.15:24. Definitions.

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

752 "Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity
753 including clearing, grading, or excavation that results in a land disturbance equal to or greater than
754 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to the
755 regulations adopted pursuant to the Chesapeake Bay Preservation provisions of this chapter.

756 "CWA" means the federal Clean Water Act (33 U.S.C. § 1251 et seq.), formerly referred to as the
757 Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, P.L.
758 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
759 revisions thereto.

760 "Department" means the Department of Environmental Quality.

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

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

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

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

771 1. Owned or operated by a federal, state, city, town, county, district, association, or other public
772 body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and
773 sediment control and stormwater management, or a designated and approved management agency under
774 § 208 of the CWA that discharges to surface waters;

775 2. Designed or used for collecting or conveying stormwater;

776 3. That is not a combined sewer; and

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

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

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

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

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

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

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

796 "State permit" means an approval to conduct a land-disturbing activity issued by the Board in the
797 form of a state stormwater individual permit or coverage issued under a state general permit or an

798 approval issued by the Board for stormwater discharges from an MS4. Under these permits, the
799 Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and
800 regulations and this article and its attendant regulations.

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

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

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

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

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

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

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

828 **§ 62.1-44.15:25. Further powers and duties of the State Water Control Board.**

829 In addition to other powers and duties conferred upon the Board, it shall permit, regulate, and
830 control stormwater runoff in the Commonwealth. The Board may issue, deny, revoke, terminate, or
831 amend state stormwater individual permits or coverage issued under state general permits; adopt
832 regulations; approve and periodically review Virginia Stormwater Management Programs and
833 management programs developed in conjunction with a state municipal separate storm sewer permit;
834 enforce the provisions of this article; and otherwise act to ensure the general health, safety, and welfare
835 of the citizens of the Commonwealth as well as protect the quality and quantity of state waters from the
836 potential harm of unmanaged stormwater. The Board may:

837 1. Issue, deny, amend, revoke, terminate, and enforce state permits for the control of stormwater
838 discharges from Municipal Separate Storm Sewer Systems and land-disturbing activities.

839 2. Take administrative and legal actions to ensure compliance with the provisions of this article by
840 any person subject to state or VSMP authority permit requirements under this article, and those entities
841 with an approved Virginia Stormwater Management Program and management programs developed in
842 conjunction with a state municipal separate storm sewer system permit, including the proper
843 enforcement and implementation of, and continual compliance with, this article.

844 3. In accordance with procedures of the Administrative Process Act (§ 2.2-4000 et seq.), amend or
845 revoke any state permit issued under this article on the following grounds or for good cause as may be
846 provided by the regulations of the Board:

847 a. Any person subject to state permit requirements under this article has violated or failed, neglected,
848 or refused to obey any order or regulation of the Board, any order, notice, or requirement of the
849 Department, any condition of a state permit, any provision of this article, or any order of a court,
850 where such violation results in the unreasonable degradation of properties, water quality, stream
851 channels, and other natural resources, or the violation is representative of a pattern of serious or
852 repeated violations, including the disregard for or inability to comply with applicable laws, regulations,
853 permit conditions, orders, rules, or requirements;

854 b. Any person subject to state permit requirements under this article has failed to disclose fully all
855 relevant material facts or has misrepresented a material fact in applying for a state permit, or in any
856 other report or document required under this law or under the regulations of the Board;

857 c. The activity for which the state permit was issued causes unreasonable degradation of properties,
858 water quality, stream channels, and other natural resources; or

859 d. There exists a material change in the basis on which the state permit was issued that requires

860 *either a temporary or a permanent reduction or elimination of any discharge or land-disturbing activity*
 861 *controlled by the state permit necessary to prevent unreasonable degradation of properties, water*
 862 *quality, stream channels, and other natural resources.*

863 *4. Cause investigations and inspections to ensure compliance with any state or VSMP authority*
 864 *permits, conditions, policies, rules, regulations, rulings, and orders which it may adopt, issue, or*
 865 *establish and to furnish advice, recommendations, or instructions for the purpose of obtaining such*
 866 *compliance.*

867 *5. In accordance with procedures of the Administrative Process Act (§ 2.2-4000 et seq.), adopt rules*
 868 *governing (i) hearings, (ii) the filing of reports, (iii) the issuance of permits and special orders, and (iv)*
 869 *all other matters relating to procedure, and amend or cancel any rule adopted.*

870 *6. Issue special orders to any person subject to state or VSMP authority permit requirements under*
 871 *this article (i) who is permitting or causing the unreasonable degradation of properties, water quality,*
 872 *stream channels, and other natural resources to cease and desist from such activities; (ii) who has*
 873 *failed to construct facilities in accordance with final approved plans and specifications to construct such*
 874 *facilities; (iii) who has violated the terms and provisions of a state or VSMP authority permit issued by*
 875 *the Board or VSMP authority to comply with the provisions of the state or VSMP authority permit, this*
 876 *article, and any decision of the VSMP authority, the Department, or the Board; or (iv) who has violated*
 877 *the terms of an order issued by the court, the VSMP authority, the Department, or the Board to comply*
 878 *with the terms of such order, and also to issue orders to require any person subject to state or VSMP*
 879 *authority permit requirements under this article to comply with the provisions of this article and any*
 880 *decision of the Board.*

881 *Such special orders are to be issued in accordance with the procedures of the Administrative Process*
 882 *Act (§ 2.2-4000 et seq.) and shall become effective not less than 15 days after the date of mailing with*
 883 *confirmation of delivery of the notice to the last known address of any person subject to state or VSMP*
 884 *authority permit requirements under this article, provided that if the Board finds that any such person*
 885 *subject to state or VSMP authority permit requirements under this article is grossly affecting or presents*
 886 *an imminent and substantial danger to (i) the public health, safety, or welfare or the health of animals,*
 887 *fish, or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural,*
 888 *or other reasonable uses, it may issue, without advance notice or hearing, an emergency special order*
 889 *directing any person subject to state or VSMP authority permit requirements under this article to cease*
 890 *such pollution or discharge immediately, and shall provide an opportunity for a hearing, after*
 891 *reasonable notice as to the time and place thereof to any person subject to state or VSMP authority*
 892 *permit requirements under this article, to affirm, modify, amend, or cancel such emergency special*
 893 *order. If any person subject to state or VSMP authority permit requirements under this article who has*
 894 *been issued such a special order or an emergency special order is not complying with the terms thereof,*
 895 *the Board may proceed in accordance with § 62.1-44.15:48, and where the order is based on a finding*
 896 *of an imminent and substantial danger, the court shall issue an injunction compelling compliance with*
 897 *the emergency special order pending a hearing by the Board. If an emergency special order requires*
 898 *cessation of a discharge, the recipient of the order may appeal its issuance to the circuit court of the*
 899 *jurisdiction wherein the discharge was alleged to have occurred.*

900 *The provisions of this section notwithstanding, the Board may proceed directly under § 62.1-44.15:48*
 901 *for any past violation or violations of any provision of this article or any regulation duly adopted*
 902 *hereunder.*

903 *With the consent of any person subject to state or VSMP authority permit requirements under this*
 904 *article who has violated or failed, neglected, or refused to obey any regulation or order of the Board,*
 905 *any order, notice, or requirement of the Department or VSMP authority, any condition of a state or*
 906 *VSMP authority permit, or any provision of this article, the Board may provide, in an order issued by*
 907 *the Board against such person, for the payment of civil charges for violations in specific sums not to*
 908 *exceed the limit specified in subsection A of § 62.1-44.15:48. Such civil charges shall be collected in*
 909 *lieu of any appropriate civil penalty that could be imposed pursuant to subsection A of § 62.1-44.15:48*
 910 *and shall not be subject to the provisions of § 2.2-514. Such civil charges shall be paid into the state*
 911 *treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund*
 912 *established pursuant to § 62.1-44.15:29.*

913 **§ 62.1-44.15:26. State permits.**

914 *A. All state permits issued by the Board under this article shall have fixed terms. The term of a state*
 915 *permit shall be based upon the projected duration of the project, the length of any required monitoring,*
 916 *or other project operations or permit conditions; however, the term shall not exceed five years. The*
 917 *term of a permit issued by the Board shall not be extended by modification beyond the maximum*
 918 *duration and the permit shall expire at the end of the term unless it is administratively continued in*
 919 *accordance with Board regulations.*

920 *B. State individual construction permits shall be administered by the Department.*

921 **§ 62.1-44.15:27. Establishment of Virginia Stormwater Management Programs.**

922 A. Any locality, excluding towns, unless such town operates a regulated MS4, shall be required to
923 adopt a VSMP for land-disturbing activities consistent with the provisions of this article according to a
924 schedule set by the Board. Such schedule shall require adoption no sooner than 15 months and not
925 more than 21 months following the effective date of the regulation that establishes local program
926 criteria and delegation procedures, unless the Board deems that the Department's review of the VSMP
927 warrants an extension up to an additional 12 months, provided the locality has made substantive
928 progress. Localities subject to this subsection are authorized to coordinate plan review and inspections
929 with other entities in accordance with subsection H.

930 B. Any town lying within a county that has adopted a VSMP in accordance with subsection A may
931 adopt its own program or shall become subject to the county program. If a town lies within the
932 boundaries of more than one county, the town shall be considered to be wholly within the county in
933 which the larger portion of the town lies. Towns shall inform the Department of their decision
934 according to a schedule established by the Department. Thereafter, the Department shall provide an
935 annual schedule by which towns can submit applications to adopt a VSMP.

936 C. In support of VSMP authorities, the Department shall:

937 1. Provide assistance grants to localities not currently operating a local stormwater management
938 program to help the localities to establish their VSMP.

939 2. Provide technical assistance and training.

940 3. Provide qualified services in specified geographic areas to a VSMP to assist localities in the
941 administration of components of their programs. The Department shall actively assist localities in the
942 establishment of their programs and in the selection of a contractor or other entity that may provide
943 support to the locality or regional support to several localities.

944 D. The Department shall develop a model ordinance for establishing a VSMP consistent with this
945 article and its associated regulations, including the Virginia Stormwater Management Program (VSMP)
946 General Permit for Discharges of Stormwater from Construction Activities.

947 E. Each locality that administers an approved VSMP shall, by ordinance, establish a VSMP that
948 shall be administered in conjunction with a local MS4 program and a local erosion and sediment
949 control program if required pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.), and which shall include
950 the following:

951 1. Consistency with regulations adopted in accordance with provisions of this article;

952 2. Provisions for long-term responsibility for and maintenance of stormwater management control
953 devices and other techniques specified to manage the quality and quantity of runoff; and

954 3. Provisions for the integration of the VSMP with local erosion and sediment control, flood
955 insurance, flood plain management, and other programs requiring compliance prior to authorizing
956 construction in order to make the submission and approval of plans, issuance of permits, payment of
957 fees, and coordination of inspection and enforcement activities more convenient and efficient both for
958 the local governments and those responsible for compliance with the programs.

959 F. The Board may approve a state entity, including the Department, federal entity, or, for linear
960 projects subject to annual standards and specifications, electric, natural gas, and telephone utility
961 companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities
962 created pursuant to § 15.2-5102 to operate a Virginia Stormwater Management Program consistent with
963 the requirements of this article and its associated regulations and the VSMP authority's
964 Department-approved annual standards and specifications. For these programs, enforcement shall be
965 administered by the Department and the Board where applicable in accordance with the provisions of
966 this article.

967 G. The Board shall approve a VSMP when it deems a program consistent with this article and
968 associated regulations, including the Virginia Stormwater Management Program (VSMP) General
969 Permit for Discharges of Stormwater from Construction Activities.

970 H. A VSMP authority may enter into agreements or contracts with soil and water conservation
971 districts, adjacent localities, or other public or private entities to carry out or assist with the
972 responsibilities of this article.

973 I. Localities shall issue a consolidated stormwater management and erosion and sediment control
974 permit that is consistent with the provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51
975 et seq.). When available in accordance with subsection J, such permit, where applicable, shall also
976 include a copy of or reference to state VSMP permit coverage authorization to discharge.

977 J. Upon the development of an online reporting system by the Department, but no later than July 1,
978 2014, a VSMP authority shall then be required to obtain evidence of state VSMP permit coverage where
979 it is required prior to providing approval to begin land disturbance.

980 K. Any VSMP adopted pursuant to and consistent with this article shall be considered to meet the
981 stormwater management requirements under the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et
982 seq.) and attendant regulations, and effective July 1, 2014, shall not be subject to local program review

983 under the stormwater management provisions the Chesapeake Bay Preservation Act.
984 L. All VSMP authorities shall comply with the provisions of this article and the stormwater
985 management provisions of Article 2.4 (§ 62.1-44.15:51 et seq.) and related regulations. The VSMP
986 authority responsible for regulating the land-disturbing activity shall require compliance with the issued
987 permit, permit conditions, and plan specifications.
988 M. VSMPs adopted in accordance with this section shall become effective July 1, 2014, unless
989 otherwise specified by the Board.
990 **§ 62.1-44.15:28. Development of regulations.**
991 A. The Board is authorized to adopt regulations that specify minimum technical criteria and
992 administrative procedures for Virginia Stormwater Management Programs. The regulations shall:
993 1. Establish standards and procedures for administering a VSMP;
994 2. Establish minimum design criteria for measures to control nonpoint source pollution and localized
995 flooding, and incorporate the stormwater management regulations adopted pursuant to the Erosion and
996 Sediment Control Law (§ 62.1-44.15:51 et seq.), as they relate to the prevention of stream channel
997 erosion. These criteria shall be periodically modified as required in order to reflect current engineering
998 methods;
999 3. Require the provision of long-term responsibility for and maintenance of stormwater management
1000 control devices and other techniques specified to manage the quality and quantity of runoff;
1001 4. Require as a minimum the inclusion in VSMPs of certain administrative procedures that include,
1002 but are not limited to, specifying the time period within which a VSMP authority shall grant
1003 land-disturbing activity approval, the conditions and processes under which approval shall be granted,
1004 the procedures for communicating disapproval, the conditions under which an approval may be
1005 changed, and requirements for inspection of approved projects;
1006 5. Establish by regulations a statewide permit fee schedule to cover all costs associated with the
1007 implementation of a VSMP related to land-disturbing activities of one acre or greater. Such fee
1008 attributes include the costs associated with plan review, VSMP registration statement review, permit
1009 issuance, state-coverage verification, inspections, reporting, and compliance activities associated with
1010 the land-disturbing activities as well as program oversight costs. The fee schedule shall also include a
1011 provision for a reduced fee for land-disturbing activities between 2,500 square feet and up to one acre
1012 in Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) localities. The fee schedule shall be
1013 governed by the following:
1014 a. The revenue generated from the statewide stormwater permit fee shall be collected utilizing, where
1015 practicable, an online payment system, and the Department's portion shall be remitted to the State
1016 Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to
1017 § 62.1-44.15:29. However, whenever the Board has approved a VSMP, no more than 30 percent of the
1018 total revenue generated by the statewide stormwater permit fees collected shall be remitted to the State
1019 Treasurer for deposit in the Virginia Stormwater Management Fund, with the balance going to the
1020 VSMP authority.
1021 b. Fees collected pursuant to this section shall be in addition to any general fund appropriation
1022 made to the Department or other supporting revenue from a VSMP; however, the fees shall be set at a
1023 level sufficient for the Department and the VSMP to fully carry out their responsibilities under this
1024 article and its attendant regulations and local ordinances or standards and specifications where
1025 applicable. When establishing a VSMP, the VSMP authority shall assess the statewide fee schedule and
1026 shall have the authority to reduce or increase such fees, and to consolidate such fees with other
1027 program-related charges, but in no case shall such fee changes affect the amount established in the
1028 regulations as available to the Department for program oversight responsibilities pursuant to subdivision
1029 5 a. A VSMP's portion of the fees shall be used solely to carry out the VSMP's responsibilities under
1030 this article and its attendant regulations, ordinances, or annual standards and specifications.
1031 c. Until July 1, 2014, the fee for coverage under the General Permit for Discharges of Stormwater
1032 from Construction Activities issued by the Board, or where the Board has issued an individual permit or
1033 coverage under the General Permit for Discharges of Stormwater from Construction Activities for an
1034 entity for which it has approved annual standards and specifications, shall be \$750 for each large
1035 construction activity with sites or common plans of development equal to or greater than five acres and
1036 \$450 for each small construction activity with sites or common plans of development equal to or greater
1037 than one acre and less than five acres. On and after July 1, 2014, such fees shall only apply where
1038 coverage has been issued under the Board's General Permit for Discharges of Stormwater from
1039 Construction Activities to a state agency or federal entity for which it has approved annual standards
1040 and specifications. After establishment, such fees may be modified in the future through regulatory
1041 actions.
1042 d. Until July 1, 2014, the Department is authorized to assess a \$125 reinspection fee for each visit to
1043 a project site that was necessary to check on the status of project site items noted to be in

1044 noncompliance and documented as such on a prior project inspection.

1045 e. When any fees are collected pursuant to this section by credit cards, business transaction costs
1046 associated with processing such payments may be additionally assessed;

1047 6. Establish statewide standards for stormwater management from land-disturbing activities of one
1048 acre or greater, except as specified otherwise within this article, and allow for the consolidation in the
1049 permit of a comprehensive approach to addressing stormwater management and erosion and sediment
1050 control, consistent with the provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et
1051 seq.) and this article. However, such standards shall also apply to land-disturbing activity exceeding an
1052 area of 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay
1053 Preservation Area Designation and Management Regulations;

1054 7. Require that VSMPs maintain after-development runoff rate of flow and characteristics that
1055 replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology,
1056 or improve upon the contributing share of the existing predevelopment runoff characteristics and site
1057 hydrology if stream channel erosion or localized flooding is an existing predevelopment condition.
1058 Except where more stringent requirements are necessary to address total maximum daily load
1059 requirements or to protect exceptional state waters, any land-disturbing activity that provides for
1060 stormwater management shall satisfy the conditions of this subsection if the practices are designed to (i)
1061 detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour
1062 period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable
1063 peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less
1064 than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved
1065 through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff
1066 volume from the site when it was in a good forested condition divided by the runoff volume from the site
1067 in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for
1068 natural or man-made channels as defined in any regulations promulgated pursuant to this section or
1069 any ordinances adopted pursuant to § 62.1-44.15:27 or 62.1-44.15:33;

1070 8. Encourage low-impact development designs, regional and watershed approaches, and
1071 nonstructural means for controlling stormwater;

1072 9. Promote the reclamation and reuse of stormwater for uses other than potable water in order to
1073 protect state waters and the public health and to minimize the direct discharge of pollutants into state
1074 waters;

1075 10. Establish a statewide permit fee schedule for stormwater management related to municipal
1076 separate storm sewer system permits; and

1077 11. Provide for the evaluation and potential inclusion of emerging or innovative stormwater control
1078 technologies that may prove effective in reducing nonpoint source pollution.

1079 B. The Board may integrate and consolidate components of the regulations implementing the Erosion
1080 and Sediment Control program and the Chesapeake Bay Preservation Area Designation and
1081 Management program with the regulations governing the Virginia Stormwater Management Program
1082 (VSMP) Permit program or repeal components so that these programs may be implemented in a
1083 consolidated manner that provides greater consistency, understanding, and efficiency for those regulated
1084 by and administering a VSMP.

1085 **§ 62.1-44.15:29. Virginia Stormwater Management Fund established.**

1086 There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia
1087 Stormwater Management Fund, hereafter referred to as "the Fund." The Fund shall be established on
1088 the books of the Comptroller. All moneys collected by the Department pursuant to §§ 62.1-44.15:28,
1089 62.1-44.15:38, and 62.1-44.15:71 and all civil penalties collected pursuant to § 62.1-44.19:22 shall be
1090 paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall
1091 remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon,
1092 at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys
1093 in the Fund shall be used solely for the purposes of carrying out the Department's responsibilities under
1094 this article. Expenditures and disbursements from the Fund shall be made by the State Treasurer on
1095 warrants issued by the Comptroller upon written request signed by the Director.

1096 An accounting of moneys received by and distributed from the Fund shall be kept by the State
1097 Comptroller.

1098 **§ 62.1-44.15:30. Education and training programs.**

1099 A. The Board shall issue certificates of competence concerning the content and application of
1100 specified subject areas of this article and accompanying regulations, including program administration,
1101 plan review, and project inspection, to personnel of VSMP authorities and to any other persons who
1102 have completed training programs or in other ways demonstrated adequate knowledge to the satisfaction
1103 of the Board. As part of education and training programs authorized pursuant to subsection E of
1104 § 62.1-44.15:52, the Department shall develop or certify expanded components to address program
1105 administration, plan review, and project inspection elements of this article and attendant regulations.

1106 Reasonable fees to cover the costs of these additional components may be charged.
1107 B. Effective July 1, 2014, personnel of VSMP authorities reviewing plans or conducting inspections
1108 pursuant to this chapter shall hold a certificate of competence as provided in subsection A.
1109 Professionals registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of
1110 Title 54.1 shall be deemed to have met the provisions of this section for the purposes of renewals.

1111 § 62.1-44.15:31. Annual standards and specifications for state agencies, federal entities, and other
1112 specified entities.

1113 A. State entities, including the Department of Transportation, and for linear projects set out in
1114 subsection B, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas
1115 pipeline companies, and railroad companies shall, and federal entities and authorities created pursuant
1116 to § 15.2-5102 may, annually submit a single set of standards and specifications for Department
1117 approval that describes how land-disturbing activities shall be conducted. Such standards and
1118 specifications shall be consistent with the requirements of this article and associated regulations,
1119 including the regulations governing the General Virginia Stormwater Management Program (VSMP)
1120 Permit for Discharges of Stormwater from Construction Activities and the Erosion and Sediment Control
1121 Law (§ 62.1-44.15:51 et seq.) and associated regulations. Each project constructed in accordance with
1122 the requirements of this article, its attendant regulations, and where required standards and
1123 specifications shall obtain coverage issued under the state general permit prior to land disturbance. The
1124 standards and specifications shall include:

1125 1. Technical criteria to meet the requirements of this article and regulations developed under this
1126 article;

1127 2. Provisions for the long-term responsibility and maintenance of stormwater management control
1128 devices and other techniques specified to manage the quantity and quality of runoff;

1129 3. Provisions for erosion and sediment control and stormwater management program administration,
1130 plan design, review and approval, and construction inspection and enforcement;

1131 4. Provisions for ensuring that responsible personnel and contractors obtain certifications or
1132 qualifications for erosion and sediment control and stormwater management comparable to those
1133 required for local government;

1134 5. Implementation of a project tracking and notification system to the Department of all
1135 land-disturbing activities covered under this article; and

1136 6. Requirements for documenting onsite changes as they occur to ensure compliance with the
1137 requirements of the article.

1138 B. Linear projects subject to annual standards and specifications include:

1139 1. Construction, installation, or maintenance of electric transmission, natural gas, and telephone
1140 utility lines and pipelines, and water and sewer lines; and

1141 2. Construction of the tracks, rights-of-way, bridges, communication facilities, and other related
1142 structures and facilities of a railroad company.

1143 Linear projects not included in subdivisions 1 and 2 shall comply with the requirements of the local
1144 or state VSMP in the locality within which the project is located.

1145 C. The Department shall perform random site inspections or inspections in response to a complaint
1146 to assure compliance with this article, the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.),
1147 and regulations adopted thereunder. The Department may take enforcement actions in accordance with
1148 this article and related regulations.

1149 D. The Department shall assess an administrative charge to cover the costs of services rendered
1150 associated with its responsibilities pursuant to this section.

1151 § 62.1-44.15:32. Duties of the Department.

1152 A. The Department shall provide technical assistance, training, research, and coordination in
1153 stormwater management technology to VSMP authorities consistent with the purposes of this article.

1154 B. The Department is authorized to review the stormwater management plan for any project with
1155 real or potential interjurisdictional impacts upon the request of one or all of the involved localities to
1156 determine that the plan is consistent with the provisions of this article. Any such review shall be
1157 completed and a report submitted to each locality involved within 90 days of such request being
1158 accepted. The Department may charge a fee of the requesting locality to cover its costs for providing
1159 such services.

1160 C. The Department shall be responsible for the implementation of this article.

1161 § 62.1-44.15:33. Authorization for more stringent ordinances.

1162 A. Localities are authorized to adopt more stringent stormwater management ordinances than those
1163 necessary to ensure compliance with the Board's minimum regulations, provided that the more stringent
1164 ordinances are based upon factual findings of local or regional comprehensive watershed management
1165 studies or findings developed through the implementation of a MS4 permit or a locally adopted
1166 watershed management study and are determined by the locality to be necessary to prevent any further

1167 degradation to water resources, to address TMDL requirements, to protect exceptional state waters, or
1168 to address specific existing water pollution including nutrient and sediment loadings, stream channel
1169 erosion, depleted groundwater resources, or excessive localized flooding within the watershed and that
1170 prior to adopting more stringent ordinances a public hearing is held after giving due notice. Localities
1171 shall report to the Board when more stringent stormwater management ordinances are determined to be
1172 necessary pursuant to this section.

1173 B. Any provisions of a local stormwater management program in existence before January 1, 2005,
1174 that contains more stringent provisions than this article shall be exempt from the analysis requirements
1175 of subsection A. However, such provisions shall be reported to the Board as part of the locality's VSMP
1176 approval package.

1177 **§ 62.1-44.15:34. Regulated activities; submission and approval of a permit application; security for**
1178 **performance; exemptions.**

1179 A. A person shall not conduct any land-disturbing activity until he has submitted a permit
1180 application to the VSMP authority that includes a state VSMP permit registration statement and, after
1181 July 1, 2014, a stormwater management plan, and has obtained VSMP authority approval to begin land
1182 disturbance. Upon the development of an online reporting system by the Department, but no later than
1183 July 1, 2014, a VSMP authority shall be required to obtain evidence of VSMP permit coverage where it
1184 is required prior to providing approval to begin land disturbance. The VSMP authority shall act on any
1185 permit application within 60 days after it has been determined by the VSMP authority to be a complete
1186 application. The VSMP authority may either issue project approval or denial and shall provide written
1187 rationale for the denial. The VSMP authority shall act on any permit application that has been
1188 previously disapproved within 45 days after the application has been revised, resubmitted for approval,
1189 and deemed complete. Prior to issuance of any approval, the VSMP authority may also require an
1190 applicant, excluding state and federal entities, to submit a reasonable performance bond with surety,
1191 cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the
1192 VSMP authority, to ensure that measures could be taken by the VSMP authority at the applicant's
1193 expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate
1194 actions that may be required of him by the permit conditions as a result of his land-disturbing activity.
1195 If the VSMP authority takes such action upon such failure by the applicant, the VSMP authority may
1196 collect from the applicant the difference should the amount of the reasonable cost of such action exceed
1197 the amount of the security held. Within 60 days of the completion of the requirements of the permit
1198 conditions, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or
1199 unobligated portion thereof, shall be refunded to the applicant or terminated. These requirements are in
1200 addition to all other provisions of law relating to the issuance of permits and are not intended to
1201 otherwise affect the requirements for such permits.

1202 B. A Chesapeake Bay Preservation Act Land-Disturbing Activity shall be subject to coverage under
1203 the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater
1204 from Construction Activities until July 1, 2014, at which time it shall no longer be considered a small
1205 construction activity but shall be then regulated under the requirements of this article by a VSMP
1206 authority.

1207 C. Notwithstanding any other provisions of this article, the following activities are exempt, unless
1208 otherwise required by federal law:

1209 1. Permitted surface or deep mining operations and projects, or oil and gas operations and projects
1210 conducted under the provisions of Title 45.1;

1211 2. Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or
1212 harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally
1213 set forth by the Board in regulations, including engineering operations as follows: construction of
1214 terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister
1215 furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this
1216 exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is
1217 reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.)
1218 or is converted to bona fide agricultural or improved pasture use as described in subsection B of
1219 § 10.1-1163;

1220 3. Single-family residences separately built and disturbing less than one acre and not part of a
1221 larger common plan of development or sale, including additions or modifications to existing
1222 single-family detached residential structures. However, localities subject to the provisions of the
1223 Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) may regulate these single-family residences
1224 where land disturbance exceeds 2,500 square feet;

1225 4. Land-disturbing activities that disturb less than one acre of land area except for land-disturbing
1226 activity exceeding an area of 2,500 square feet in all areas of the jurisdictions designated as subject to
1227 the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to
1228 the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) or activities that are

1229 part of a larger common plan of development or sale that is one acre or greater of disturbance;
1230 however, the governing body of any locality that administers a VSMP may reduce this exception to a
1231 smaller area of disturbed land or qualify the conditions under which this exception shall apply;

1232 5. Discharges to a sanitary sewer or a combined sewer system;

1233 6. Activities under a state or federal reclamation program to return an abandoned property to an
1234 agricultural or open land use;

1235 7. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity,
1236 or original construction of the project. The paving of an existing road with a compacted or impervious
1237 surface and reestablishment of existing associated ditches and shoulders shall be deemed routine
1238 maintenance if performed in accordance with this subsection; and

1239 8. Conducting land-disturbing activities in response to a public emergency where the related work
1240 requires immediate authorization to avoid imminent endangerment to human health or the environment.
1241 In such situations, the VSMP authority shall be advised of the disturbance within seven days of
1242 commencing the land-disturbing activity, and compliance with the administrative requirements of
1243 subsection A is required within 30 days of commencing the land-disturbing activity.

1244 **§ 62.1-44.15:35. Nutrient credit use and additional offsite options for construction activities.**

1245 A. As used in this section:

1246 "Nutrient credit" or "credit" means a nutrient credit certified pursuant to Article 4.02
1247 (§ 62.1-44.19:12 et seq.).

1248 "Tributary" has the same meaning as in § 62.1-44.19:13. For areas outside of the Chesapeake Bay
1249 Watershed, "tributary" includes the following watersheds: Albemarle Sound, Coastal; Atlantic Ocean,
1250 Coastal; Big Sandy; Chowan; Clinch-Powell; New Holston (Upper Tennessee); New River; Roanoke;
1251 and Yadkin.

1252 "Virginia Stormwater Management Program Authority" or "VSMP authority" has the same meaning
1253 as in § 62.1-44.15:24 and includes, until July 1, 2014, any locality that has adopted a local stormwater
1254 management program.

1255 B. A VSMP authority is authorized to allow compliance with stormwater nonpoint nutrient runoff
1256 water quality criteria established pursuant to § 62.1-44.15:28, in whole or in part, through the use of
1257 the applicant's acquisition of nutrient credits in the same tributary.

1258 C. No applicant shall use nutrient credits to address water quantity control requirements. No
1259 applicant shall use nutrient credits or other offsite options in contravention of local water quality-based
1260 limitations (i) determined pursuant to subsection B of § 62.1-44.19:14, (ii) adopted pursuant to
1261 § 62.1-44.15:33 or other applicable authority, (iii) deemed necessary to protect public water supplies
1262 from demonstrated adverse nutrient impacts, or (iv) as otherwise may be established or approved by the
1263 Board. Where such a limitation exists, offsite options may be used provided that such options do not
1264 preclude or impair compliance with the local limitation.

1265 D. A VSMP authority shall allow offsite options in accordance with subsection I when:

1266 1. Less than five acres of land will be disturbed;

1267 2. The postconstruction phosphorous control requirement is less than 10 pounds per year; or

1268 3. The state permit applicant demonstrates to the satisfaction of the VSMP authority that (i)
1269 alternative site designs have been considered that may accommodate onsite best management practices,
1270 (ii) onsite best management practices have been considered in alternative site designs to the maximum
1271 extent practicable, (iii) appropriate onsite best management practices will be implemented, and (iv) full
1272 compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably
1273 be met onsite. For purposes of this subdivision, if an applicant demonstrates onsite control of at least
1274 75 percent of the required phosphorous nutrient reductions, the applicant shall be deemed to have met
1275 the requirements of clauses (i) through (iv).

1276 E. Documentation of the applicant's acquisition of nutrient credits shall be provided to the VSMP
1277 authority and the Department in a certification from the credit provider documenting the number of
1278 phosphorus nutrient credits acquired and the associated ratio of nitrogen nutrient credits at the
1279 credit-generating entity. Until the effective date of regulations establishing application fees in
1280 accordance with § 62.1-44.19:20, the credit provider shall pay the Department a water quality
1281 enhancement fee equal to six percent of the amount paid by the applicant for the credits. Such fee shall
1282 be deposited into the Virginia Stormwater Management Fund established by § 62.1-44.15:29.

1283 F. Nutrient credits used pursuant to subsection B shall be generated in the same or adjacent
1284 eight-digit hydrologic unit code as defined by the United States Geological Survey as the permitted site
1285 except as otherwise limited in subsection C. Nutrient credits outside the same or adjacent eight-digit
1286 hydrologic unit code may only be used if it is determined by the VSMP authority that no credits are
1287 available within the same or adjacent eight-digit hydrologic unit code when the VSMP authority accepts
1288 the final site design. In such cases, and subject to other limitations imposed in this section, credits
1289 available within the same tributary may be used. In no case shall credits from another tributary be

1290 used.

1291 G. For that portion of a site's compliance with stormwater nonpoint nutrient runoff water quality
1292 criteria being obtained through nutrient credits, the applicant shall (i) comply with a 1:1 ratio of the
1293 nutrient credits to the site's remaining postdevelopment nonpoint nutrient runoff compliance requirement
1294 being met by credit use and (ii) use credits certified as perpetual credits pursuant to Article 4.02
1295 (§ 62.1-44.19:12 et seq.).

1296 H. No VSMP authority may grant an exception to, or waiver of, postdevelopment nonpoint nutrient
1297 runoff compliance requirements unless offsite options have been considered and found not available.

1298 I. The VSMP authority shall require that nutrient credits and other offsite options approved by the
1299 Department or applicable state board, including locality pollutant loading pro rata share programs
1300 established pursuant to § 15.2-2243, achieve the necessary nutrient reductions prior to the
1301 commencement of the applicant's land-disturbing activity. A pollutant loading pro rata share program
1302 established by a locality pursuant to § 15.2-2243 and approved by the Department or applicable state
1303 board prior to January 1, 2011, including those that may achieve nutrient reductions after the
1304 commencement of the land-disturbing activity, may continue to operate in the approved manner for a
1305 transition period ending July 1, 2014. The applicant shall have the right to select between the use of
1306 nutrient credits or other offsite options, except during the transition period in those localities to which
1307 the transition period applies. The locality may use funds collected for nutrient reductions pursuant to a
1308 locality pollutant loading pro rata share program under § 15.2-2243 for nutrient reductions in the same
1309 tributary within the same locality as the land-disturbing activity or for the acquisition of nutrient credits.
1310 In the case of a phased project, the applicant may acquire or achieve the offsite nutrient reductions
1311 prior to the commencement of each phase of the land-disturbing activity in an amount sufficient for each
1312 such phase.

1313 J. Nutrient reductions obtained through nutrient credits shall be credited toward compliance with any
1314 nutrient allocation assigned to a municipal separate storm sewer system in a Virginia Stormwater
1315 Management Program Permit or Total Maximum Daily Load applicable to the location where the
1316 activity for which the nutrient credits are used takes place. If the activity for which the nutrient credits
1317 are used does not discharge to a municipal separate storm sewer system, the nutrient reductions shall
1318 be credited toward compliance with the applicable nutrient allocation.

1319 K. A VSMP authority shall allow the full or partial substitution of perpetual nutrient credits for
1320 existing onsite nutrient controls when (i) the nutrient credits will compensate for 10 or fewer pounds of
1321 the annual phosphorous requirement associated with the original land-disturbing activity or (ii) existing
1322 onsite controls are not functioning as anticipated after reasonable attempts to comply with applicable
1323 maintenance agreements or requirements and the use of nutrient credits will account for the deficiency.
1324 Upon determination by the VSMP authority that the conditions established by clause (i) or (ii) have
1325 been met, the party responsible for maintenance shall be released from maintenance obligations related
1326 to the onsite phosphorous controls for which the nutrient credits are substituted.

1327 L. To the extent available, with the consent of the applicant, the VSMP authority, the Board or the
1328 Department may include the use of nutrient credits or other offsite measures in resolving enforcement
1329 actions to compensate for (i) nutrient control deficiencies occurring during the period of noncompliance
1330 and (ii) permanent nutrient control deficiencies.

1331 M. This section shall not be construed as limiting the authority established under § 15.2-2243;
1332 however, under any pollutant loading pro rata share program established thereunder, the subdivider or
1333 developer shall be given appropriate credit for nutrient reductions achieved through nutrient credits or
1334 other offsite options.

1335 N. In order to properly account for allowed nonpoint nutrient offsite reductions, an applicant shall
1336 report to the Department, in accordance with Department procedures, information regarding all offsite
1337 reductions that have been authorized to meet stormwater postdevelopment nonpoint nutrient runoff
1338 compliance requirements.

1339 O. An applicant or a permittee found to be in noncompliance with the requirements of this section
1340 shall be subject to the enforcement and penalty provisions of this article.

1341 **§ 62.1-44.15:36. (For contingent repeal, see Editor's note) Recovery of administrative costs.**

1342 Any locality that administers a stormwater management program may charge applicants a
1343 reasonable fee to defray the cost of program administration, including costs associated with plan review,
1344 issuance of permits, periodic inspection for compliance with approved plans, and necessary enforcement,
1345 provided that charges for such costs are not made under any other law, ordinance, or program. The fee
1346 shall not exceed an amount commensurate with the services rendered and expenses incurred or \$1,000,
1347 whichever is less.

1348 **§ 62.1-44.15:37. Monitoring, reports, investigations, inspections, and stop work orders.**

1349 A. The VSMP authority (i) shall provide for periodic inspections of the installation of stormwater
1350 management measures, (ii) may require monitoring and reports from the person responsible for meeting
1351 the permit conditions to ensure compliance with the permit and to determine whether the measures

1352 required in the permit provide effective stormwater management, and (iii) shall conduct such
 1353 investigations and perform such other actions as are necessary to carry out the provisions of this
 1354 article. If the VSMP authority, where authorized to enforce this article, or the Department determines
 1355 that there is a failure to comply with the permit conditions, notice shall be served upon the permittee or
 1356 person responsible for carrying out the permit conditions by mailing with confirmation of delivery to the
 1357 address specified in the permit application, or by delivery at the site of the development activities to the
 1358 agent or employee supervising such activities. The notice shall specify the measures needed to comply
 1359 with the permit conditions and shall specify the time within which such measures shall be completed.
 1360 Upon failure to comply within the time specified, a stop work order may be issued in accordance with
 1361 subsection B by the VSMP authority, where authorized to enforce this article, or by the Board, or the
 1362 permit may be revoked by the VSMP authority, or the state permit may be revoked by the Board. The
 1363 Board or the VSMP authority, where authorized to enforce this article, may pursue enforcement in
 1364 accordance with § 62.1-44.15:48.

1365 B. If a permittee fails to comply with a notice issued in accordance with subsection A within the time
 1366 specified, the VSMP authority, where authorized to enforce this article, or the Department may issue an
 1367 order requiring the owner, permittee, person responsible for carrying out an approved plan, or person
 1368 conducting the land-disturbing activities without an approved plan or required permit to cease all
 1369 land-disturbing activities until the violation of the permit has ceased, or an approved plan and required
 1370 permits are obtained, and specified corrective measures have been completed.

1371 Such orders shall be issued (i) in accordance with local procedures if issued by a locality serving as
 1372 a VSMP authority or (ii) after a hearing held in accordance with the requirements of the Administrative
 1373 Process Act (§ 2.2-4000 et seq.) if issued by the Department. Such orders shall become effective upon
 1374 service on the person by mailing, with confirmation of delivery, sent to his address specified in the land
 1375 records of the locality, or by personal delivery by an agent of the VSMP authority or Department.
 1376 However, if the VSMP authority or the Department finds that any such violation is grossly affecting or
 1377 presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition
 1378 in waters within the watersheds of the Commonwealth or otherwise substantially impacting water
 1379 quality, it may issue, without advance notice or hearing, an emergency order directing such person to
 1380 cease immediately all land-disturbing activities on the site and shall provide an opportunity for a
 1381 hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify,
 1382 amend, or cancel such emergency order.

1383 If a person who has been issued an order is not complying with the terms thereof, the VSMP
 1384 authority or the Department may institute a proceeding in accordance with § 62.1-44.15:42.

1385 **§ 62.1-44.15:38. Department to review VSMPs.**

1386 A. The Department shall develop and implement a review and evaluation schedule so that the
 1387 effectiveness of each VSMP authority, Municipal Separate Storm Sewer System Management Program,
 1388 and other MS4 permit requirements is evaluated no less than every five years. The review shall include
 1389 an assessment of the extent to which the program has reduced nonpoint source pollution and mitigated
 1390 the detrimental effects of localized flooding. Such reviews shall be coordinated with those being
 1391 implemented in accordance with the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and
 1392 associated regulations and, where applicable, the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et
 1393 seq.) and associated regulations.

1394 B. Following completion of a compliance review of a VSMP, the Department shall provide results
 1395 and compliance recommendations to the Board in the form of a corrective action agreement if
 1396 deficiencies are found; otherwise, the Board may find the program compliant. If, after such a review
 1397 and evaluation, a VSMP is found to have a program that does not comply with the provisions of this
 1398 article or regulations adopted thereunder, the Board shall establish a schedule for the VSMP authority
 1399 to come into compliance. The Board shall provide a copy of its decision to the VSMP authority that
 1400 specifies the deficiencies, actions needed to be taken, and the approved compliance schedule. If the
 1401 VSMP has not implemented the necessary compliance actions identified by the Board within 30 days
 1402 following receipt of the corrective action agreement, or such additional period as is granted to complete
 1403 the implementation of the corrective action, then the Board shall have the authority to (i) issue a special
 1404 order to any VSMP imposing a civil penalty not to exceed \$5,000 per day with the maximum amount
 1405 not to exceed \$20,000 per violation for noncompliance with the requirements of this article and its
 1406 regulations, to be paid into the state treasury and deposited in the Virginia Stormwater Management
 1407 Fund established by § 62.1-44.15:29 or (ii) revoke its approval of the VSMP. The Administrative
 1408 Process Act (§ 2.2-4000 et seq.) shall govern the activities and proceedings of the Board under this
 1409 article and the judicial review thereof.

1410 If the Board revokes its approval of a VSMP, the Board shall find the VSMP authority provisional
 1411 and shall have the Department assist with the administration of the program until the VSMP authority is
 1412 deemed compliant with the requirements of this article and associated regulations. Assisting with

1413 administration includes the ability to review and comment on plans to the VSMP authority, to conduct
1414 inspections with the VSMP authority, and to conduct enforcement in accordance with this article and
1415 associated regulations.

1416 In lieu of issuing a special order or revoking the program, the Board may take legal action against
1417 a VSMP pursuant to § 62.1-44.15:48 to ensure compliance.

1418 **§ 62.1-44.15:39. Right of entry.**

1419 The Department, the VSMP authority, where authorized to enforce this article, any duly authorized
1420 agent of the Department or VSMP authority, or any locality that is the operator of a regulated
1421 municipal separate storm sewer system may, at reasonable times and under reasonable circumstances,
1422 enter any establishment or upon any property, public or private, for the purpose of obtaining
1423 information or conducting surveys or investigations necessary in the enforcement of the provisions of
1424 this article. For operators of municipal separate storm sewer systems, this authority shall apply only to
1425 those properties from which a discharge enters their municipal separate storm sewer systems.

1426 In accordance with a performance bond with surety, cash escrow, letter of credit, any combination
1427 thereof, or such other legal arrangement, a VSMP authority may also enter any establishment or upon
1428 any property, public or private, for the purpose of initiating or maintaining appropriate actions that are
1429 required by the permit conditions associated with a land-disturbing activity when a permittee, after
1430 proper notice, has failed to take acceptable action within the time specified.

1431 **§ 62.1-44.15:40. Information to be furnished.**

1432 The Board, the Department, or the VSMP authority, where authorized to enforce this article, may
1433 require every permit applicant, every permittee, or any person subject to state permit requirements
1434 under this article to furnish when requested such application materials, plans, specifications, and other
1435 pertinent information as may be necessary to determine the effect of his discharge on the quality of state
1436 waters, or such other information as may be necessary to accomplish the purposes of this article. Any
1437 personal information shall not be disclosed except to an appropriate official of the Board, Department,
1438 U.S. Environmental Protection Agency, or VSMP authority or as may be authorized pursuant to the
1439 Virginia Freedom of Information Act (§ 2.2-3700 et seq.). However, disclosure of records of the
1440 Department, the Board, or the VSMP authority relating to (i) active federal environmental enforcement
1441 actions that are considered confidential under federal law, (ii) enforcement strategies, including
1442 proposed sanctions for enforcement actions, and (iii) any secret formulae, secret processes, or secret
1443 methods other than effluent data used by any permittee or under that permittee's direction is prohibited.
1444 Upon request, such enforcement records shall be disclosed after a proposed sanction resulting from the
1445 investigation has been determined by the Department, the Board, or the VSMP authority. This section
1446 shall not be construed to prohibit the disclosure of records related to inspection reports, notices of
1447 violation, and documents detailing the nature of any land-disturbing activity that may have occurred, or
1448 similar documents.

1449 **§ 62.1-44.15:41. Private rights; liability.**

1450 A. Whenever a common interest community cedes responsibility for the maintenance, repair, and
1451 replacement of a stormwater management facility on its real property to the Commonwealth or political
1452 subdivision thereof, such common interest community shall be immune from civil liability in relation to
1453 such stormwater management facility. In order for the immunity established by this subsection to apply,
1454 (i) the common interest community must cede such responsibility by contract or other instrument
1455 executed by both parties and (ii) the Commonwealth or the governing body of the political subdivision
1456 shall have accepted the responsibility ceded by the common interest community in writing or by
1457 resolution. As used in this section, maintenance, repair, and replacement shall include, without
1458 limitation, cleaning of the facility, maintenance of adjacent grounds that are part of the facility,
1459 maintenance and replacement of fencing where the facility is fenced, and posting of signage indicating
1460 the identity of the governmental entity that maintains the facility. Acceptance or approval of an
1461 easement, subdivision plat, site plan, or other plan of development shall not constitute the acceptance by
1462 the Commonwealth or the governing body of the political subdivision required to satisfy clause (ii). The
1463 immunity granted by this section shall not apply to actions or omissions by the common interest
1464 community constituting intentional or willful misconduct or gross negligence. For the purposes of this
1465 section, "common interest community" means the same as that term is defined in § 55-528.

1466 B. Except as provided in subsection A, the fact that any permittee holds or has held a permit or state
1467 permit issued under this article shall not constitute a defense in any civil action involving private rights.

1468 **§ 62.1-44.15:42. Enforcement by injunction, etc.**

1469 A. It is unlawful for any person to fail to comply with any stop work order, emergency order issued
1470 in accordance with § 62.1-44.15:37, or a special order or emergency special order issued in accordance
1471 with § 62.1-44.15:25 that has become final under the provisions of this article. Any person violating or
1472 failing, neglecting, or refusing to obey any rule, regulation, ordinance, approved standard and
1473 specification, order, or permit condition issued by the Board, Department, or VSMP authority as
1474 authorized to do such, or any provisions of this article, may be compelled in a proceeding instituted in

1475 any appropriate court by the Board, Department, or VSMP authority where authorized to enforce this
1476 article to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy.

1477 B. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or
1478 other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil
1479 penalty in accordance with the provisions of § 62.1-44.15:48.

1480 **§ 62.1-44.15:43. Testing validity of regulations; judicial review.**

1481 A. The validity of any regulation adopted by the Board pursuant to this article may be determined
1482 through judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000
1483 et seq.).

1484 B. An appeal may be taken from the decision of the court to the Court of Appeals as provided by
1485 law.

1486 **§ 62.1-44.15:44. Right to hearing.**

1487 Any permit applicant, permittee, or person subject to state permit requirements under this article
1488 aggrieved by any action of the VSMP authority, Department, or Board taken without a formal hearing,
1489 or by inaction of the VSMP authority, Department, or Board, may demand in writing a formal hearing
1490 by the Board or VSMP authority causing such grievance, provided a petition requesting such hearing is
1491 filed with the Board or the VSMP authority within 30 days after notice of such action.

1492 **§ 62.1-44.15:45. Hearings.**

1493 VSMP authorities holding hearings under this article shall do so in a manner consistent with
1494 § 62.1-44.26.

1495 **§ 62.1-44.15:46. Appeals.**

1496 Any permittee or party aggrieved by a state permit or enforcement decision of the Department or
1497 Board under this article, or any person who has participated, in person or by submittal of written
1498 comments, in the public comment process related to a final decision of the Department or Board under
1499 this article, whether such decision is affirmative or negative, is entitled to judicial review thereof in
1500 accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) if such person
1501 meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the
1502 Constitution of the United States. A person shall be deemed to meet such standard if (i) such person has
1503 suffered an actual or imminent injury that is an invasion of a legally protected interest and that is
1504 concrete and particularized; (ii) such injury is fairly traceable to the decision of the Department or the
1505 Board and not the result of the independent action of some third party not before the court; and (iii)
1506 such injury will likely be redressed by a favorable decision by the court.

1507 The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to decisions
1508 rendered by localities but appeals shall be conducted in accordance with local appeal procedures.

1509 **§ 62.1-44.15:47. Appeal to Court of Appeals.**

1510 From the final decision of the circuit court an appeal may be taken to the Court of Appeals as
1511 provided in § 17.1-405.

1512 **§ 62.1-44.15:48. Penalties, injunctions, and other legal actions.**

1513 A. Any person who violates any provision of this article or of any regulation, ordinance, or standard
1514 and specification adopted or approved hereunder, including those adopted pursuant to the conditions of
1515 an MS4 permit, or who fails, neglects, or refuses to comply with any order of a VSMP authority
1516 authorized to enforce this article, the Department, the Board, or a court, issued as herein provided,
1517 shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the
1518 court. Each day of violation of each requirement shall constitute a separate offense. The Board shall
1519 adopt a regulation establishing a schedule of civil penalties to be utilized by the VSMP authority in
1520 enforcing the provisions of this article. The Board, Department, or VSMP authority may issue a
1521 summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.
1522 Any civil penalties assessed by a court as a result of a summons issued by a locality as an approved
1523 VSMP authority shall be paid into the treasury of the locality wherein the land lies, except where the
1524 violator is the locality itself, or its agent. When the penalties are assessed by the court as a result of a
1525 summons issued by the Board or Department, or where the violator is the locality itself, or its agent, the
1526 court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into
1527 the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29. Such civil penalties
1528 paid into the treasury of the locality in which the violation occurred are to be used for the purpose of
1529 minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating
1530 environmental pollution therein in such manner as the court may, by order, direct.

1531 B. Any person who willfully or negligently violates any provision of this article, any regulation or
1532 order of the Board, any order of a VSMP authority authorized to enforce this article or the Department,
1533 any ordinance of any locality approved as a VSMP authority, any condition of a permit or state permit,
1534 or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more
1535 than 12 months and a fine of not less than \$2,500 nor more than \$32,500, either or both. Any person

1536 who knowingly violates any provision of this article, any regulation or order of the Board, any order of
 1537 the VSMP authority or the Department, any ordinance of any locality approved as a VSMP authority,
 1538 any condition of a permit or state permit, or any order of a court issued as herein provided, or who
 1539 knowingly makes any false statement in any form required to be submitted under this article or
 1540 knowingly renders inaccurate any monitoring device or method required to be maintained under this
 1541 article, shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor
 1542 more than three years, or in the discretion of the jury or the court trying the case without a jury,
 1543 confinement in jail for not more than 12 months and a fine of not less than \$5,000 nor more than
 1544 \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation
 1545 under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each
 1546 requirement shall constitute a separate offense.

1547 C. Any person who knowingly violates any provision of this article, and who knows at that time that
 1548 he thereby places another person in imminent danger of death or serious bodily harm, shall, upon
 1549 conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor
 1550 more than 15 years and a fine of not more than \$250,000, either or both. A defendant that is not an
 1551 individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not
 1552 exceeding the greater of \$1 million or an amount that is three times the economic benefit realized by
 1553 the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine
 1554 and imprisonment for any subsequent conviction of the same person under this subsection.

1555 D. Violation of any provision of this article may also include the following sanctions:

1556 1. The Board, Department, or the VSMP authority, where authorized to enforce this article, may
 1557 apply to the appropriate court in any jurisdiction wherein the land lies to enjoin a violation or a
 1558 threatened violation of the provisions of this article or of the local ordinance without the necessity of
 1559 showing that an adequate remedy at law does not exist.

1560 2. With the consent of any person who has violated or failed, neglected, or refused to obey any
 1561 ordinance, any condition of a permit or state permit, any regulation or order of the Board, any order of
 1562 the VSMP authority or the Department, or any provision of this article, the Board, Department, or
 1563 VSMP authority may provide, in an order issued against such person, for the payment of civil charges
 1564 for violations in specific sums, not to exceed the limit specified in this section. Such civil charges shall
 1565 be instead of any appropriate civil penalty that could be imposed under this section. Any civil charges
 1566 collected shall be paid to the locality or state treasury pursuant to subsection A.

1567 **§ 62.1-44.15:49. Enforcement authority of MS4 localities.**

1568 A. Localities shall adopt a stormwater ordinance pursuant to the conditions of a MS4 permit that is
 1569 consistent with this article and its associated regulations and that contains provisions including the
 1570 Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from
 1571 Construction Activities and shall include additional provisions as required to comply with a state MS4
 1572 permit. Such locality may utilize the civil penalty provisions in subsection A of § 62.1-44.15:48, the
 1573 injunctive authority as provided for in subdivision D 1 of § 62.1-44.15:48, and the civil charges as
 1574 authorized in subdivision D 2 of § 62.1-44.15:48, to enforce the ordinance. At the request of another
 1575 MS4, the locality may apply the penalties provided for in this section to direct or indirect discharges to
 1576 any MS4 located within its jurisdiction.

1577 B. Any person who willfully and knowingly violates any provision of such an ordinance is guilty of a
 1578 Class 1 misdemeanor.

1579 C. The local ordinance authorized by this section shall remain in full force and effect until the
 1580 locality has been approved as a VSMP authority.

1581 **§ 62.1-44.15:50. Cooperation with federal and state agencies.**

1582 A VSMP authority and the Department are authorized to cooperate and enter into agreements with
 1583 any federal or state agency in connection with the requirements for land-disturbing activities for
 1584 stormwater management.

1585 Article 2.4.

1586 Erosion and Sediment Control Law.

1587 **§ 62.1-44.15:51. Definitions.**

1588 As used in this article, unless the context requires a different meaning:

1589 "Agreement in lieu of a plan" means a contract between the plan-approving authority and the owner
 1590 that specifies conservation measures that must be implemented in the construction of a single-family
 1591 residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

1592 "Applicant" means any person submitting an erosion and sediment control plan for approval or
 1593 requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

1594 "Certified inspector" means an employee or agent of a VESCP authority who (i) holds a certificate
 1595 of competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training
 1596 program for project inspection and successfully completes such program within one year after
 1597 enrollment.

1598 "Certified plan reviewer" means an employee or agent of a VESCP authority who (i) holds a
 1599 certificate of competence from the Board in the area of plan review, (ii) is enrolled in the Board's
 1600 training program for plan review and successfully completes such program within one year after
 1601 enrollment, or (iii) is licensed as a professional engineer, architect, landscape architect, land surveyor
 1602 pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1, or professional soil scientist as
 1603 defined in § 54.1-2200.

1604 "Certified program administrator" means an employee or agent of a VESCP authority who (i) holds
 1605 a certificate of competence from the Board in the area of program administration or (ii) is enrolled in
 1606 the Board's training program for program administration and successfully completes such program
 1607 within one year after enrollment.

1608 "Department" means the Department of Environmental Quality.

1609 "Director" means the Director of the Department of Environmental Quality.

1610 "District" or "soil and water conservation district" means a political subdivision of the
 1611 Commonwealth organized in accordance with the provisions of Article 1.5 (§ 10.1-1187.21 et seq.) of
 1612 Chapter 11.1 of Title 10.1.

1613 "Erosion and sediment control plan" or "plan" means a document containing material for the
 1614 conservation of soil and water resources of a unit or group of units of land. It may include appropriate
 1615 maps, an appropriate soil and water plan inventory and management information with needed
 1616 interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain
 1617 all major conservation decisions to ensure that the entire unit or units of land will be so treated to
 1618 achieve the conservation objectives.

1619 "Erosion impact area" means an area of land not associated with current land-disturbing activity but
 1620 subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or
 1621 into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or
 1622 less used for residential purposes or to shorelines where the erosion results from wave action or other
 1623 coastal processes.

1624 "Land-disturbing activity" means any man-made change to the land surface that may result in soil
 1625 erosion from water or wind and the movement of sediments into state waters or onto lands in the
 1626 Commonwealth, including, but not limited to, clearing, grading, excavating, transporting, and filling of
 1627 land, except that the term shall not include:

1628 1. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs,
 1629 and maintenance work;

1630 2. Individual service connections;

1631 3. Installation, maintenance, or repair of any underground public utility lines when such activity
 1632 occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is
 1633 confined to the area of the road, street, or sidewalk that is hard surfaced;

1634 4. Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity
 1635 relating to construction of the building to be served by the septic tank system;

1636 5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects
 1637 conducted pursuant to Title 45.1;

1638 6. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot
 1639 operations, or as additionally set forth by the Board in regulation, including engineering operations as
 1640 follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches,
 1641 strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land
 1642 irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which
 1643 harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11
 1644 (§ 10.1-1100 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as
 1645 described in subsection B of § 10.1-1163;

1646 7. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other
 1647 related structures and facilities of a railroad company;

1648 8. Agricultural engineering operations, including but not limited to the construction of terraces,
 1649 terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of
 1650 the Dam Safety Act (§ 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating,
 1651 contour furrowing, land drainage, and land irrigation;

1652 9. Disturbed land areas of less than 10,000 square feet in size or 2,500 square feet in all areas of
 1653 the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and
 1654 Management Regulations; however, the governing body of the program authority may reduce this
 1655 exception to a smaller area of disturbed land or qualify the conditions under which this exception shall
 1656 apply;

1657 10. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or
 1658 poles;

1659 11. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are
 1660 within the regulatory authority of and approved by local wetlands boards, the Marine Resources
 1661 Commission, or the United States Army Corps of Engineers; however, any associated land that is
 1662 disturbed outside of this exempted area shall remain subject to this article and the regulations adopted
 1663 pursuant thereto; and

1664 12. Emergency work to protect life, limb, or property, and emergency repairs; however, if the
 1665 land-disturbing activity would have required an approved erosion and sediment control plan, if the
 1666 activity were not an emergency, then the land area disturbed shall be shaped and stabilized in
 1667 accordance with the requirements of the VESCP authority.

1668 "Natural channel design concepts" means the utilization of engineering analysis and fluvial
 1669 geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the
 1670 purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and
 1671 allows larger flows to access its bankfull bench and its floodplain.

1672 "Owner" means the owner or owners of the freehold of the premises or lesser estate therein,
 1673 mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person,
 1674 firm, or corporation in control of a property.

1675 "Peak flow rate" means the maximum instantaneous flow from a given storm condition at a
 1676 particular location.

1677 "Permittee" means the person to whom the local permit authorizing land-disturbing activities is
 1678 issued or the person who certifies that the approved erosion and sediment control plan will be followed.

1679 "Person" means any individual, partnership, firm, association, joint venture, public or private
 1680 corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county,
 1681 city, town, or other political subdivision of the Commonwealth, governmental body, including a federal
 1682 or state entity as applicable, any interstate body, or any other legal entity.

1683 "Runoff volume" means the volume of water that runs off the land development project from a
 1684 prescribed storm event.

1685 "Town" means an incorporated town.

1686 "Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the
 1687 Board that has been established by a VESCP authority for the effective control of soil erosion, sediment
 1688 deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the
 1689 unreasonable degradation of properties, stream channels, waters, and other natural resources and shall
 1690 include such items where applicable as local ordinances, rules, permit requirements, annual standards
 1691 and specifications, policies and guidelines, technical materials, and requirements for plan review,
 1692 inspection, enforcement where authorized in this article, and evaluation consistent with the requirements
 1693 of this article and its associated regulations.

1694 "Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an
 1695 authority approved by the Board to operate a Virginia Erosion and Sediment Control Program. An
 1696 authority may include a state entity, including the Department; a federal entity; a district, county, city,
 1697 or town; or for linear projects subject to annual standards and specifications, electric, natural gas, and
 1698 telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad
 1699 companies, or authorities created pursuant to § 15.2-5102.

1700 "Water quality volume" means the volume equal to the first one-half inch of runoff multiplied by the
 1701 impervious surface of the land development project.

1702 **§ 62.1-44.15:52. Virginia Erosion and Sediment Control Program.**

1703 A. The Board shall develop a program and adopt regulations in accordance with the Administrative
 1704 Process Act (§ 2.2-4000 et seq.) for the effective control of soil erosion, sediment deposition, and
 1705 nonagricultural runoff that shall be met in any control program to prevent the unreasonable
 1706 degradation of properties, stream channels, waters, and other natural resources. Stream restoration and
 1707 relocation projects that incorporate natural channel design concepts are not man-made channels and
 1708 shall be exempt from any flow rate capacity and velocity requirements for natural or man-made
 1709 channels as defined in any regulations promulgated pursuant to this section or § 62.1-44.15:54 or
 1710 62.1-44.15:65. Any plan approved prior to July 1, 2014, that provides for stormwater management that
 1711 addresses any flow rate capacity and velocity requirements for natural or man-made channels shall
 1712 satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the
 1713 practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain
 1714 and release over a 24-hour period the expected rainfall resulting from the one-year, 24-hour storm; and
 1715 (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour
 1716 storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good
 1717 forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor
 1718 that is equal to the runoff volume from the site when it was in a good forested condition divided by the
 1719 runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity
 1720 and velocity requirement for natural or man-made channels as defined in regulations promulgated

1721 pursuant to § 62.1-44.15:54 or 62.1-44.15:65. For plans approved on and after July 1, 2014, the flow
1722 rate capacity and velocity requirements of this subsection shall be satisfied by compliance with water
1723 quantity requirements in the Stormwater Management Act (§ 62.1-44.15:24 et seq.) and attendant
1724 regulations, unless such land-disturbing activities are in accordance with the grandfathering provisions
1725 of the Virginia Stormwater Management Program (VSMP) Permit Regulations.

1726 The regulations shall:

1727 1. Be based upon relevant physical and developmental information concerning the watersheds and
1728 drainage basins of the Commonwealth, including, but not limited to, data relating to land use, soils,
1729 hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics,
1730 transportation, and public facilities and services;

1731 2. Include such survey of lands and waters as may be deemed appropriate by the Board or required
1732 by any applicable law to identify areas, including multijurisdictional and watershed areas, with critical
1733 erosion and sediment problems; and

1734 3. Contain conservation standards for various types of soils and land uses, which shall include
1735 criteria, techniques, and methods for the control of erosion and sediment resulting from land-disturbing
1736 activities.

1737 B. The Board shall provide technical assistance and advice to, and conduct and supervise
1738 educational programs for VESCP authorities.

1739 C. The Board shall adopt regulations establishing minimum standards of effectiveness of erosion and
1740 sediment control programs, and criteria and procedures for reviewing and evaluating the effectiveness of
1741 VESCPs. In developing minimum standards for program effectiveness, the Board shall consider
1742 information and standards on which the regulations promulgated pursuant to subsection A are based.

1743 D. The Board shall approve VESCP authorities and shall periodically conduct a comprehensive
1744 program compliance review and evaluation to ensure that all VESCPs operating under the jurisdiction
1745 of this article meet minimum standards of effectiveness in controlling soil erosion, sediment deposition,
1746 and nonagricultural runoff. The Department shall develop a schedule for conducting periodic reviews
1747 and evaluations of the effectiveness of VESCPs unless otherwise directed by the Board. Such reviews
1748 where applicable shall be coordinated with those being implemented in accordance with the Stormwater
1749 Management Act (§ 62.1-44.15:24 et seq.) and associated regulations and the Chesapeake Bay
1750 Preservation Act (§ 62.1-44.15:67 et seq.) and associated regulations. The Department may also conduct
1751 a comprehensive or partial program compliance review and evaluation of a VESCP at a greater
1752 frequency than the standard schedule.

1753 E. The Board shall issue certificates of competence concerning the content, application, and intent of
1754 specified subject areas of this article and accompanying regulations, including program administration,
1755 plan review, and project inspection, to personnel of program authorities and to any other persons who
1756 have completed training programs or in other ways demonstrated adequate knowledge. The Department
1757 shall administer education and training programs for specified subject areas of this article and
1758 accompanying regulations, and is authorized to charge persons attending such programs reasonable fees
1759 to cover the costs of administering the programs. Such education and training programs shall also
1760 contain expanded components to address plan review and project inspection elements of the Stormwater
1761 Management Act (§ 62.1-44.15:24 et seq.) and attendant regulations in accordance with § 62.1-44.15:30.

1762 F. Department personnel conducting inspections pursuant to this article shall hold a certificate of
1763 competence as provided in subsection E.

1764 **§ 62.1-44.15:53. Certification of program personnel.**

1765 A. The minimum standards of VESCP effectiveness established by the Board pursuant to subsection C
1766 of § 62.1-44.15:52 shall provide that (i) an erosion and sediment control plan shall not be approved
1767 until it is reviewed by a certified plan reviewer; (ii) inspections of land-disturbing activities shall be
1768 conducted by a certified inspector; and (iii) a VESCP shall contain a certified program administrator, a
1769 certified plan reviewer, and a certified project inspector, who may be the same person.

1770 B. Any person who holds a certificate of competence from the Board in the area of plan review,
1771 project inspection, or program administration that was attained prior to the adoption of the mandatory
1772 certification provisions of subsection A shall be deemed to satisfy the requirements of that area of
1773 certification.

1774 C. Professionals registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of
1775 Chapter 4 of Title 54.1 or a professional soil scientist as defined in § 54.1-2200 shall be deemed to
1776 satisfy the certification requirements for the purposes of renewals.

1777 **§ 62.1-44.15:54. Establishment of Virginia Erosion and Sediment Control Program.**

1778 A. Counties and cities shall adopt and administer a VESCP.

1779 Any town lying within a county that has adopted its own VESCP may adopt its own program or
1780 shall become subject to the county program. If a town lies within the boundaries of more than one
1781 county, the town shall be considered for the purposes of this article to be wholly within the county in

1782 *which the larger portion of the town lies.*

1783 *B. A VESCP authority may enter into agreements or contracts with soil and water conservation*
1784 *districts, adjacent localities, or other public or private entities to assist with carrying out the provisions*
1785 *of this article, including the review and determination of adequacy of erosion and sediment control*
1786 *plans submitted for land-disturbing activities on a unit or units of land as well as for monitoring,*
1787 *reports, inspections, and enforcement where authorized in this article, of such land-disturbing activities.*

1788 *C. Any VESCP adopted by a county, city, or town shall be approved by the Board if it establishes by*
1789 *ordinance requirements that are consistent with this article and associated regulations.*

1790 *D. Each approved VESCP operated by a county, city, or town shall include provisions for the*
1791 *integration of the VESCP with Virginia stormwater management, flood insurance, flood plain*
1792 *management, and other programs requiring compliance prior to authorizing a land-disturbing activity in*
1793 *order to make the submission and approval of plans, issuance of permits, payment of fees, and*
1794 *coordination of inspection and enforcement activities more convenient and efficient both for the local*
1795 *governments and those responsible for compliance with the programs.*

1796 *E. The Board may approve a state entity, federal entity, or, for linear projects subject to annual*
1797 *standards and specifications, electric, natural gas, and telephone utility companies, interstate and*
1798 *intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to*
1799 *§ 15.2-5102 to operate a VESCP consistent with the requirements of this article and its associated*
1800 *regulations and the VESCP authority's Department-approved annual standards and specifications. For*
1801 *these programs, enforcement shall be administered by the Department and the Board where applicable*
1802 *in accordance with the provisions of this article.*

1803 *F. Following completion of a compliance review of a VESCP in accordance with subsection D of*
1804 *§ 62.1-44.15:52, the Department shall provide results and compliance recommendations to the Board in*
1805 *the form of a corrective action agreement if deficiencies are found; otherwise, the Board may find the*
1806 *program compliant. If a comprehensive or partial program compliance review conducted by the*
1807 *Department of a VESCP indicates that the VESCP authority has not administered, enforced where*
1808 *authorized to do so, or conducted its VESCP in a manner that satisfies the minimum standards of*
1809 *effectiveness established pursuant to subsection C of § 62.1-44.15:52, the Board shall establish a*
1810 *schedule for the VESCP authority to come into compliance. The Board shall provide a copy of its*
1811 *decision to the VESCP authority that specifies the deficiencies, actions needed to be taken, and the*
1812 *approved compliance schedule required to attain the minimum standard of effectiveness and shall*
1813 *include an offer to provide technical assistance to implement the corrective action. If the VESCP*
1814 *authority has not implemented the necessary compliance actions identified by the Board within 30 days*
1815 *following receipt of the corrective action agreement, or such additional period as is granted to complete*
1816 *the implementation of the corrective action, then the Board shall have the authority to (i) issue a special*
1817 *order to any VESCP, imposing a civil penalty not to exceed \$5,000 per day with the maximum amount*
1818 *not to exceed \$20,000 per violation for noncompliance with the state program, to be paid into the state*
1819 *treasury and deposited in the Virginia Stormwater Management Fund established by § 62.1-44.15:29 or*
1820 *(ii) revoke its approval of the VESCP. The Administrative Process Act (§ 2.2-4000 et seq.) shall govern*
1821 *the activities and proceedings of the Board and the judicial review thereof.*

1822 *In lieu of issuing a special order or revoking the program, the Board is authorized to take legal*
1823 *action against a VESCP to ensure compliance.*

1824 *G. If the Board revokes its approval of the VESCP of a county, city, or town, and the locality is in a*
1825 *district, the district, upon approval of the Board, shall adopt and administer a VESCP for the locality.*
1826 *To carry out its program, the district shall adopt regulations in accordance with the Administrative*
1827 *Process Act (§ 2.2-4000 et seq.) consistent with this article and associated regulations. The regulations*
1828 *may be revised from time to time as necessary. The program and regulations shall be available for*
1829 *public inspection at the principal office of the district.*

1830 *H. If the Board (i) revokes its approval of a VESCP of a district, or of a county, city, or town not in*
1831 *a district, or (ii) finds that a local program consistent with this article and associated regulations has*
1832 *not been adopted by a district or a county, city, or town that is required to adopt and administer a*
1833 *VESCP, the Board shall find the VESCP authority provisional, and have the Department assist with the*
1834 *administration of the program until the Board finds the VESCP authority compliant with the*
1835 *requirements of this article and associated regulations. "Assisting with administration" includes but is*
1836 *not limited to the ability to review and comment on plans to the VESCP authority, to conduct*
1837 *inspections with the VESCP authority, and to conduct enforcement in accordance with this article and*
1838 *associated regulations.*

1839 *I. If the Board revokes its approval of a state entity, federal entity, or, for linear projects subject to*
1840 *annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and*
1841 *intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to*
1842 *§ 15.2-5102, the Board shall find the VESCP authority provisional, and have the Department assist with*
1843 *the administration of the program until the Board finds the VESCP authority compliant with the*

1844 requirements of this article and associated regulations. Assisting with administration includes the ability
 1845 to review and comment on plans to the VESCP authority and to conduct inspections with the VESCP
 1846 authority in accordance with this article and associated regulations.

1847 J. Any VESCP authority that administers an erosion and sediment control program may charge
 1848 applicants a reasonable fee to defray the cost of program administration. Such fee may be in addition to
 1849 any fee charged for administration of a Virginia Stormwater Management Program, although payment
 1850 of fees may be consolidated in order to provide greater convenience and efficiency for those responsible
 1851 for compliance with the programs. A VESCP authority shall hold a public hearing prior to establishing
 1852 a schedule of fees. The fee shall not exceed an amount commensurate with the services rendered, taking
 1853 into consideration the time, skill, and the VESCP authority's expense involved.

1854 K. The governing body of any county, city, or town, or a district board that is authorized to
 1855 administer a VESCP, may adopt an ordinance or regulation where applicable providing that violations
 1856 of any regulation or order of the Board, any provision of its program, any condition of a permit, or any
 1857 provision of this article shall be subject to a civil penalty. The civil penalty for any one violation shall
 1858 be not less than \$100 nor more than \$1,000. Each day during which the violation is found to have
 1859 existed shall constitute a separate offense. In no event shall a series of specified violations arising from
 1860 the same operative set of facts result in civil penalties that exceed a total of \$10,000, except that a
 1861 series of violations arising from the commencement of land-disturbing activities without an approved
 1862 plan for any site shall not result in civil penalties that exceed a total of \$10,000. Adoption of such an
 1863 ordinance providing that violations are subject to a civil penalty shall be in lieu of criminal sanctions
 1864 and shall preclude the prosecution of such violation as a misdemeanor under subsection A of
 1865 § 62.1-44.15:63. The penalties set out in this subsection are also available to the Board in its
 1866 enforcement actions.

1867 **§ 62.1-44.15:55. Regulated land-disturbing activities; submission and approval of erosion and**
 1868 **sediment control plan.**

1869 A. Except as provided in § 62.1-44.15:56 for state agency and federal entity land-disturbing
 1870 activities, no person shall engage in any land-disturbing activity until he has submitted to the VESCP
 1871 authority an erosion and sediment control plan for the land-disturbing activity and the plan has been
 1872 reviewed and approved. Upon the development of an online reporting system by the Department, but no
 1873 later than July 1, 2014, a VESCP authority shall then be required to obtain evidence of Virginia
 1874 Stormwater Management Program permit coverage where it is required prior to providing approval to
 1875 begin land disturbance. Where land-disturbing activities involve lands under the jurisdiction of more
 1876 than one VESCP, an erosion and sediment control plan may, at the request of one or all of the VESCP
 1877 authorities, be submitted to the Department for review and approval rather than to each jurisdiction
 1878 concerned. The Department may charge the jurisdictions requesting the review a fee sufficient to cover
 1879 the cost associated with conducting the review. A VESCP may enter into an agreement with an adjacent
 1880 VESCP regarding the administration of multijurisdictional projects whereby the jurisdiction that
 1881 contains the greater portion of the project shall be responsible for all or part of the administrative
 1882 procedures. Where the land-disturbing activity results from the construction of a single-family residence,
 1883 an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed
 1884 by the VESCP authority.

1885 B. The VESCP authority shall review erosion and sediment control plans submitted to it and grant
 1886 written approval within 60 days of the receipt of the plan if it determines that the plan meets the
 1887 requirements of this article and the Board's regulations and if the person responsible for carrying out
 1888 the plan certifies that he will properly perform the erosion and sediment control measures included in
 1889 the plan and shall comply with the provisions of this article. In addition, as a prerequisite to engaging
 1890 in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the
 1891 plan shall provide the name of an individual holding a certificate of competence to the VESCP
 1892 authority, as provided by § 62.1-44.15:52, who will be in charge of and responsible for carrying out the
 1893 land-disturbing activity. However, any VESCP authority may waive the certificate of competence
 1894 requirement for an agreement in lieu of a plan for construction of a single-family residence. If a
 1895 violation occurs during the land-disturbing activity, then the person responsible for carrying out the
 1896 agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a
 1897 certificate of competence, as provided by § 62.1-44.15:52. Failure to provide the name of an individual
 1898 holding a certificate of competence prior to engaging in land-disturbing activities may result in
 1899 revocation of the approval of the plan and the person responsible for carrying out the plan shall be
 1900 subject to the penalties provided in this article.

1901 When a plan is determined to be inadequate, written notice of disapproval stating the specific
 1902 reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify
 1903 the modifications, terms, and conditions that will permit approval of the plan. If no action is taken by
 1904 the VESCP authority within the time specified in this subsection, the plan shall be deemed approved and

1905 *the person authorized to proceed with the proposed activity. The VESCP authority shall act on any*
 1906 *erosion and sediment control plan that has been previously disapproved within 45 days after the plan*
 1907 *has been revised, resubmitted for approval, and deemed adequate.*

1908 *C. The VESCP authority may require changes to an approved plan in the following cases:*

1909 *1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or*

1910 *2. Where the person responsible for carrying out the approved plan finds that because of changed*
 1911 *circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed*
 1912 *amendments to the plan, consistent with the requirements of this article and associated regulations, are*
 1913 *agreed to by the VESCP authority and the person responsible for carrying out the plan.*

1914 *D. Electric, natural gas, and telephone utility companies, interstate and intrastate natural gas*
 1915 *pipeline companies, and railroad companies shall, and authorities created pursuant to § 15.2-5102 may,*
 1916 *file general erosion and sediment control standards and specifications annually with the Department for*
 1917 *review and approval. Such standards and specifications shall be consistent with the requirements of this*
 1918 *article and associated regulations and the Stormwater Management Act (§ 62.1-44.15:24 et seq.) and*
 1919 *associated regulations where applicable. The specifications shall apply to:*

1920 *1. Construction, installation, or maintenance of electric transmission, natural gas, and telephone*
 1921 *utility lines and pipelines, and water and sewer lines; and*

1922 *2. Construction of the tracks, rights-of-way, bridges, communication facilities, and other related*
 1923 *structures and facilities of the railroad company.*

1924 *The Department shall have 60 days in which to approve the standards and specifications. If no*
 1925 *action is taken by the Department within 60 days, the standards and specifications shall be deemed*
 1926 *approved. Individual approval of separate projects within subdivisions 1 and 2 is not necessary when*
 1927 *approved specifications are followed. Projects not included in subdivisions 1 and 2 shall comply with*
 1928 *the requirements of the appropriate VESCP. The Board shall have the authority to enforce approved*
 1929 *specifications and charge fees equal to the lower of (i) \$1,000 or (ii) an amount sufficient to cover the*
 1930 *costs associated with standard and specification review and approval, project inspections, and*
 1931 *compliance.*

1932 *E. Any person engaging, in more than one jurisdiction, in the creation and operation of a wetland*
 1933 *mitigation or stream restoration bank or banks, which have been approved and are operated in*
 1934 *accordance with applicable federal and state guidance, laws, or regulations for the establishment, use,*
 1935 *and operation of wetlands mitigation or stream restoration banks, pursuant to a mitigation banking*
 1936 *instrument signed by the Department of Environmental Quality, the Marine Resources Commission, or*
 1937 *the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment*
 1938 *control standards and specifications for wetland mitigation or stream restoration banks annually with*
 1939 *the Department for review and approval consistent with guidelines established by the Board.*

1940 *The Department shall have 60 days in which to approve the specifications. If no action is taken by*
 1941 *the Department within 60 days, the specifications shall be deemed approved. Individual approval of*
 1942 *separate projects under this subsection is not necessary when approved specifications are implemented*
 1943 *through a project-specific erosion and sediment control plan. Projects not included in this subsection*
 1944 *shall comply with the requirements of the appropriate local erosion and sediment control program. The*
 1945 *Board shall have the authority to enforce approved specifications and charge fees equal to the lower of*
 1946 *(i) \$1,000 or (ii) an amount sufficient to cover the costs associated with standard and specification*
 1947 *review and approval, projection inspections, and compliance. Approval of general erosion and sediment*
 1948 *control specifications by the Department does not relieve the owner or operator from compliance with*
 1949 *any other local ordinances and regulations including requirements to submit plans and obtain permits*
 1950 *as may be required by such ordinances and regulations.*

1951 *F. In order to prevent further erosion, a VESCP authority may require approval of an erosion and*
 1952 *sediment control plan for any land identified by the VESCP authority as an erosion impact area.*

1953 *G. For the purposes of subsections A and B, when land-disturbing activity will be required of a*
 1954 *contractor performing construction work pursuant to a construction contract, the preparation,*
 1955 *submission, and approval of an erosion and sediment control plan shall be the responsibility of the*
 1956 *owner.*

1957 **§ 62.1-44.15:56. State agency and federal entity projects.**

1958 *A. A state agency shall not undertake a project involving a land-disturbing activity unless (i) the*
 1959 *state agency has submitted annual standards and specifications for its conduct of land-disturbing*
 1960 *activities that have been reviewed and approved by the Department as being consistent with this article*
 1961 *and associated regulations or (ii) the state agency has submitted an erosion and sediment control plan*
 1962 *for the project that has been reviewed and approved by the Department. When a federal entity submits*
 1963 *an erosion and sediment control plan for a project, land disturbance shall not commence until the*
 1964 *Department has reviewed and approved the plan.*

1965 *B. The Department shall not approve an erosion and sediment control plan submitted by a state*
 1966 *agency or federal entity for a project involving a land-disturbing activity (i) in any locality that has not*

1967 adopted a local program with more stringent regulations than those of the state program or (ii) in
1968 multiple jurisdictions with separate local programs, unless the erosion and sediment control plan is
1969 consistent with the requirements of the state program.

1970 C. The Department shall not approve an erosion and sediment control plan submitted by a state
1971 agency or federal entity for a project involving a land-disturbing activity in one locality with a local
1972 program with more stringent ordinances than those of the state program unless the erosion and
1973 sediment control plan is consistent with the requirements of the local program. If a locality has not
1974 submitted a copy of its local program regulations to the Department, the provisions of subsection B
1975 shall apply.

1976 D. The Department shall have 60 days in which to comment on any standards and specifications or
1977 erosion and sediment control plan submitted to it for review, and its comments shall be binding on the
1978 state agency and any private business hired by the state agency.

1979 E. As onsite changes occur, the state agency shall submit changes in an erosion and sediment
1980 control plan to the Department.

1981 F. The state agency responsible for the land-disturbing activity shall ensure compliance with an
1982 approved plan, and the Department and Board, where applicable, shall provide project oversight and
1983 enforcement as necessary.

1984 G. If the state agency or federal entity has developed, and the Department has approved, annual
1985 standards and specifications, and the state agency or federal entity has been approved by the Board to
1986 operate a VESCP as a VESCP authority, erosion and sediment control plan review and approval and
1987 land-disturbing activity inspections shall be conducted by such entity. The Department and the Board,
1988 where applicable, shall provide project oversight and enforcement as necessary and comprehensive
1989 program compliance review and evaluation. Such standards and specifications shall be consistent with
1990 the requirements of this article and associated regulations and the Stormwater Management Act
1991 (§ 62.1-44.15:24 et seq.) and associated regulations when applicable.

1992 **§ 62.1-44.15:57. Approved plan required for issuance of grading, building, or other permits;**
1993 **security for performance.**

1994 Agencies authorized under any other law to issue grading, building, or other permits for activities
1995 involving land-disturbing activities regulated under this article shall not issue any such permit unless the
1996 applicant submits with his application an approved erosion and sediment control plan and certification
1997 that the plan will be followed and, upon the development of an online reporting system by the
1998 Department but no later than July 1, 2014, evidence of Virginia Stormwater Management Program
1999 permit coverage where it is required. Prior to issuance of any permit, the agency may also require an
2000 applicant to submit a reasonable performance bond with surety, cash escrow, letter of credit, any
2001 combination thereof, or such other legal arrangement acceptable to the agency, to ensure that measures
2002 could be taken by the agency at the applicant's expense should he fail, after proper notice, within the
2003 time specified to initiate or maintain appropriate conservation action that may be required of him by the
2004 approved plan as a result of his land-disturbing activity. The amount of the bond or other security for
2005 performance shall not exceed the total of the estimated cost to initiate and maintain appropriate
2006 conservation action based on unit price for new public or private sector construction in the locality and
2007 a reasonable allowance for estimated administrative costs and inflation, which shall not exceed 25
2008 percent of the estimated cost of the conservation action. If the agency takes such conservation action
2009 upon such failure by the permittee, the agency may collect from the permittee the difference should the
2010 amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of
2011 the achievement of adequate stabilization of the land-disturbing activity in any project or section
2012 thereof, the bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or
2013 unobligated portion thereof, shall be refunded to the applicant or terminated based upon the percentage
2014 of stabilization accomplished in the project or section thereof. These requirements are in addition to all
2015 other provisions of law relating to the issuance of such permits and are not intended to otherwise affect
2016 the requirements for such permits.

2017 **§ 62.1-44.15:58. Monitoring, reports, and inspections.**

2018 A. The VESCP authority (i) shall provide for periodic inspections of the land-disturbing activity and
2019 require that an individual holding a certificate of competence, as provided by § 62.1-44.15:52, who will
2020 be in charge of and responsible for carrying out the land-disturbing activity and (ii) may require
2021 monitoring and reports from the person responsible for carrying out the erosion and sediment control
2022 plan, to ensure compliance with the approved plan and to determine whether the measures required in
2023 the plan are effective in controlling erosion and sediment. However, any VESCP authority may waive
2024 the certificate of competence requirement for an agreement in lieu of a plan for construction of a
2025 single-family residence. The owner, permittee, or person responsible for carrying out the plan shall be
2026 given notice of the inspection. If the VESCP authority, where authorized to enforce this article, or the
2027 Department determines that there is a failure to comply with the plan following an inspection, notice

2028 shall be served upon the permittee or person responsible for carrying out the plan by mailing with
2029 confirmation of delivery to the address specified in the permit application or in the plan certification, or
2030 by delivery at the site of the land-disturbing activities to the agent or employee supervising such
2031 activities. The notice shall specify the measures needed to comply with the plan and shall specify the
2032 time within which such measures shall be completed. Upon failure to comply within the time specified,
2033 the permit may be revoked and the VESCP authority, where authorized to enforce this article, the
2034 Department, or the Board may pursue enforcement as provided by § 62.1-44.15:63.

2035 B. Notwithstanding the provisions of subsection A, a VESCP authority is authorized to enter into
2036 agreements or contracts with districts, adjacent localities, or other public or private entities to assist
2037 with the responsibilities of this article, including but not limited to the review and determination of
2038 adequacy of erosion and sediment control plans submitted for land-disturbing activities as well as
2039 monitoring, reports, inspections, and enforcement where an authority is granted such powers by this
2040 article.

2041 C. Upon issuance of an inspection report denoting a violation of this section, § 62.1-44.15:55 or
2042 62.1-44.15:56, in conjunction with or subsequent to a notice to comply as specified in subsection A, a
2043 VESCP authority, where authorized to enforce this article, or the Department may issue an order
2044 requiring that all or part of the land-disturbing activities permitted on the site be stopped until the
2045 specified corrective measures have been taken or, if land-disturbing activities have commenced without
2046 an approved plan as provided in § 62.1-44.15:55, requiring that all of the land-disturbing activities be
2047 stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance
2048 is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in
2049 waters within the watersheds of the Commonwealth, or where the land-disturbing activities have
2050 commenced without an approved erosion and sediment control plan or any required permits, such an
2051 order may be issued whether or not the alleged violator has been issued a notice to comply as specified
2052 in subsection A. Otherwise, such an order may be issued only after the alleged violator has failed to
2053 comply with a notice to comply. The order for noncompliance with a plan shall be served in the same
2054 manner as a notice to comply, and shall remain in effect for seven days from the date of service
2055 pending application by the VESCP authority, the Department, or alleged violator for appropriate relief
2056 to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other
2057 appropriate court. The order for disturbance without an approved plan or permits shall be served upon
2058 the owner by mailing with confirmation of delivery to the address specified in the land records of the
2059 locality, shall be posted on the site where the disturbance is occurring, and shall remain in effect until
2060 such time as permits and plan approvals are secured, except in such situations where an agricultural
2061 exemption applies. If the alleged violator has not obtained an approved erosion and sediment control
2062 plan or any required permit within seven days from the date of service of the order, the Department or
2063 the chief administrative officer or his designee on behalf of the VESCP authority may issue a subsequent
2064 order to the owner requiring that all construction and other work on the site, other than corrective
2065 measures, be stopped until an approved erosion and sediment control plan and any required permits
2066 have been obtained. The subsequent order shall be served upon the owner by mailing with confirmation
2067 of delivery to the address specified in the permit application or the land records of the locality in which
2068 the site is located. The owner may appeal the issuance of any order to the circuit court of the
2069 jurisdiction wherein the violation was alleged to have occurred or other appropriate court. Any person
2070 violating or failing, neglecting, or refusing to obey an order issued by the Department or the chief
2071 administrative officer or his designee on behalf of the VESCP authority may be compelled in a
2072 proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have
2073 occurred or other appropriate court to obey same and to comply therewith by injunction, mandamus, or
2074 other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved
2075 plan or any required permits, the order shall immediately be lifted. Nothing in this section shall prevent
2076 the Department, the Board, or the chief administrative officer or his designee on behalf of the VESCP
2077 authority from taking any other action specified in § 62.1-44.15:63.

2078 **§ 62.1-44.15:59. Reporting.**

2079 Each VESCP authority shall report to the Department, in a method such as an online reporting
2080 system and on a time schedule established by the Department, a listing of each land-disturbing activity
2081 for which a plan has been approved by the VESCP under this article.

2082 **§ 62.1-44.15:60. Right of entry.**

2083 The Department, the VESCP authority, where authorized to enforce this article, or any duly
2084 authorized agent of the Department or such VESCP authority may, at reasonable times and under
2085 reasonable circumstances, enter any establishment or upon any property, public or private, for the
2086 purpose of obtaining information or conducting surveys or investigations necessary in the enforcement
2087 of the provisions of this article.

2088 In accordance with a performance bond with surety, cash escrow, letter of credit, any combination
2089 thereof, or such other legal arrangement, a VESCP authority may also enter any establishment or upon

2090 any property, public or private, for the purpose of initiating or maintaining appropriate actions that are
2091 required by the permit conditions associated with a land-disturbing activity when a permittee, after
2092 proper notice, has failed to take acceptable action within the time specified.

2093 **§ 62.1-44.15:61. Cooperation with federal and state agencies.**

2094 A VESCP authority and the Board are authorized to cooperate and enter into agreements with any
2095 federal or state agency in connection with the requirements for erosion and sediment control with
2096 respect to land-disturbing activities.

2097 **§ 62.1-44.15:62. Judicial appeals.**

2098 A. A final decision by a county, city, or town, when serving as a VESCP authority under this article,
2099 shall be subject to judicial review, provided that an appeal is filed within 30 days from the date of any
2100 written decision adversely affecting the rights, duties, or privileges of the person engaging in or
2101 proposing to engage in land-disturbing activities.

2102 B. Final decisions of the Board, Department, or district shall be subject to judicial review in
2103 accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

2104 **§ 62.1-44.15:63. Penalties, injunctions and other legal actions.**

2105 A. Violators of § 62.1-44.15:55, 62.1-44.15:56, or 62.1-44.15:58 shall be guilty of a Class 1
2106 misdemeanor.

2107 B. Any person who has violated or failed, neglected, or refused to obey any regulation or order of
2108 the Board, any order, notice, or requirement of the Department or VESCP authority, any condition of a
2109 permit, or any provision of this article or associated regulation shall, upon a finding of an appropriate
2110 court, be assessed a civil penalty. If a locality or district serving as a VESCP authority has adopted a
2111 uniform schedule of civil penalties as permitted by subsection K of § 62.1-44.15:54, such assessment
2112 shall be in accordance with the schedule. The VESCP authority or the Department may issue a
2113 summons for collection of the civil penalty. In any trial for a scheduled violation, it shall be the burden
2114 of the locality or Department to show the liability of the violator by a preponderance of the evidence.
2115 An admission or finding of liability shall not be a criminal conviction for any purpose. Any civil
2116 penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, except
2117 that where the violator is the locality itself, or its agent, or where the Department is issuing the
2118 summons, the court shall direct the penalty to be paid into the state treasury.

2119 C. The VESCP authority, the Department, or the owner of property that has sustained damage or
2120 which is in imminent danger of being damaged may apply to the circuit court in any jurisdiction
2121 wherein the land lies or other appropriate court to enjoin a violation or a threatened violation under
2122 § 62.1-44.15:55, 62.1-44.15:56, or 62.1-44.15:58 without the necessity of showing that an adequate
2123 remedy at law does not exist; however, an owner of property shall not apply for injunctive relief unless
2124 (i) he has notified in writing the person who has violated the VESCP, the Department, and the VESCP
2125 authority that a violation of the VESCP has caused, or creates a probability of causing, damage to his
2126 property, and (ii) neither the person who has violated the VESCP, the Department, nor the VESCP
2127 authority has taken corrective action within 15 days to eliminate the conditions that have caused, or
2128 create the probability of causing, damage to his property.

2129 D. In addition to any criminal or civil penalties provided under this article, any person who violates
2130 any provision of this article may be liable to the VESCP authority or the Department, as appropriate, in
2131 a civil action for damages.

2132 E. Without limiting the remedies that may be obtained in this section, any person violating or failing,
2133 neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this
2134 section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each
2135 violation. A civil action for such violation or failure may be brought by the VESCP authority wherein
2136 the land lies or the Department. Any civil penalties assessed by a court shall be paid into the treasury
2137 of the locality wherein the land lies, except that where the violator is the locality itself, or its agent, or
2138 other VESCP authority, or where the penalties are assessed as the result of an enforcement action
2139 brought by the Department, the court shall direct the penalty to be paid into the state treasury.

2140 F. With the consent of any person who has violated or failed, neglected, or refused to obey any
2141 regulation or order of the Board, any order, notice, or requirement of the Department or VESCP
2142 authority, any condition of a permit, or any provision of this article or associated regulations, the
2143 Board, the Director, or VESCP authority may provide, in an order issued by the Board or VESCP
2144 authority against such person, for the payment of civil charges for violations in specific sums, not to
2145 exceed the limit specified in subsection E. Such civil charges shall be instead of any appropriate civil
2146 penalty that could be imposed under subsection B or E.

2147 G. Upon request of a VESCP authority, the attorney for the Commonwealth shall take legal action to
2148 enforce the provisions of this article. Upon request of the Board, the Department, or the district, the
2149 Attorney General shall take appropriate legal action on behalf of the Board, the Department, or the
2150 district to enforce the provisions of this article.

2151 *H. Compliance with the provisions of this article shall be prima facie evidence in any legal or*
2152 *equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have*
2153 *been met and the complaining party must show negligence in order to recover any damages.*

2154 **§ 62.1-44.15:64. Stop work orders by Department; civil penalties.**

2155 *A. An aggrieved owner of property sustaining pecuniary damage resulting from a violation of an*
2156 *approved erosion and sediment control plan or required permit, or from the conduct of land-disturbing*
2157 *activities commenced without an approved plan or required permit, may give written notice of the*
2158 *alleged violation to the VESCP authority and to the Director.*

2159 *B. Upon receipt of the notice from the aggrieved owner and notification to the VESCP authority, the*
2160 *Director shall conduct an investigation of the aggrieved owner's complaint.*

2161 *C. If the VESCP authority has not responded to the alleged violation in a manner that causes the*
2162 *violation to cease and abates the damage to the aggrieved owner's property within 30 days following*
2163 *receipt of the notice from the aggrieved owner, the aggrieved owner may request that the Director*
2164 *require the violator to stop the violation and abate the damage to his property.*

2165 *D. If (i) the Director's investigation of the complaint indicates that the VESCP authority has not*
2166 *responded to the alleged violation as required by the VESCP, (ii) the VESCP authority has not*
2167 *responded to the alleged violation within 30 days from the date of the notice given pursuant to*
2168 *subsection A, and (iii) the Director is requested by the aggrieved owner to require the violator to cease*
2169 *the violation, then the Director shall give written notice to the VESCP authority that the Department*
2170 *intends to issue an order pursuant to subsection E.*

2171 *E. If the VESCP authority has not instituted action to stop the violation and abate the damage to the*
2172 *aggrieved owner's property within 10 days following receipt of the notice from the Director, the*
2173 *Department is authorized to issue an order requiring the owner, permittee, person responsible for*
2174 *carrying out an approved erosion and sediment control plan, or person conducting the land-disturbing*
2175 *activities without an approved plan or required permit to cease all land-disturbing activities until the*
2176 *violation of the plan or permit has ceased or an approved plan and required permits are obtained, as*
2177 *appropriate, and specified corrective measures have been completed. The Department also may*
2178 *immediately initiate a program review of the VESCP.*

2179 *F. Such orders are to be issued after a hearing held in accordance with the requirements of the*
2180 *Administrative Process Act (§ 2.2-4000 et seq.), and they shall become effective upon service on the*
2181 *person by mailing with confirmation of delivery, sent to his address specified in the land records of the*
2182 *locality, or by personal delivery by an agent of the Director. Any subsequent identical mail or notice*
2183 *that is sent by the Department may be sent by regular mail. However, if the Department finds that any*
2184 *such violation is grossly affecting or presents an imminent and substantial danger of causing harmful*
2185 *erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, it may*
2186 *issue, without advance notice or hearing, an emergency order directing such person to cease all*
2187 *land-disturbing activities on the site immediately and shall provide an opportunity for a hearing, after*
2188 *reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel*
2189 *such emergency order.*

2190 *G. If a person who has been issued an order or emergency order is not complying with the terms*
2191 *thereof, the Board may institute a proceeding in the appropriate circuit court for an injunction,*
2192 *mandamus, or other appropriate remedy compelling the person to comply with such order.*

2193 *H. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or*
2194 *other remedy obtained pursuant to subsection G shall be subject, in the discretion of the court, to a civil*
2195 *penalty not to exceed \$2,000 for each violation. Any civil penalties assessed by a court shall be paid*
2196 *into the state treasury.*

2197 **§ 62.1-44.15:65. Authorization for more stringent regulations.**

2198 *A. As part of a VESCP, a district or locality is authorized to adopt more stringent soil erosion and*
2199 *sediment control regulations or ordinances than those necessary to ensure compliance with the Board's*
2200 *regulations, provided that the more stringent regulations or ordinances are based upon factual findings*
2201 *of local or regional comprehensive watershed management studies or findings developed through the*
2202 *implementation of an MS4 permit or a locally adopted watershed management study and are determined*
2203 *by the district or locality to be necessary to prevent any further degradation to water resources, to*
2204 *address total maximum daily load requirements, to protect exceptional state waters, or to address*
2205 *specific existing water pollution including nutrient and sediment loadings, stream channel erosion,*
2206 *depleted groundwater resources, or excessive localized flooding within the watershed and that prior to*
2207 *adopting more stringent regulations or ordinances, a public hearing is held after giving due notice. The*
2208 *VESCP authority shall report to the Board when more stringent stormwater management regulations or*
2209 *ordinances are determined to be necessary pursuant to this section. However, this section shall not be*
2210 *construed to authorize any district or locality to impose any more stringent regulations for plan*
2211 *approval or permit issuance than those specified in §§ 62.1-44.15:55 and 62.1-44.15:57.*

2212 *B. Any provisions of an erosion and sediment control program in existence before July 1, 2012, that*

2213 contains more stringent provisions than this article shall be exempt from the analysis requirements of
2214 subsection A.

2215 **§ 62.1-44.15:66. No limitation on authority Department of Mines, Minerals and Energy.**

2216 The provisions of this article shall not limit the powers or duties of the Department of Mines,
2217 Minerals and Energy as they relate to strip mine reclamation under Chapters 16 (§ 45.1-180 et seq.), 17
2218 (§ 45.1-198 et seq.), and 19 (§ 45.1-226 et seq.) of Title 45.1 or oil or gas exploration under the
2219 Virginia Gas and Oil Act (§ 45.1-361.1 et seq.).

2220 Article 2.5.

2221 Chesapeake Bay Preservation Act.

2222 **§ 62.1-44.15:67. Cooperative state-local program.**

2223 A. Healthy state and local economies and a healthy Chesapeake Bay are integrally related; balanced
2224 economic development and water quality protection are not mutually exclusive. The protection of the
2225 public interest in the Chesapeake Bay, its tributaries, and other state waters and the promotion of the
2226 general welfare of the people of the Commonwealth require that (i) the counties, cities, and towns of
2227 Tidewater Virginia incorporate general water quality protection measures into their comprehensive
2228 plans, zoning ordinances, and subdivision ordinances; (ii) the counties, cities, and towns of Tidewater
2229 Virginia establish programs, in accordance with criteria established by the Commonwealth, that define
2230 and protect certain lands, hereinafter called Chesapeake Bay Preservation Areas, which if improperly
2231 developed may result in substantial damage to the water quality of the Chesapeake Bay and its
2232 tributaries; (iii) the Commonwealth make its resources available to local governing bodies by providing
2233 financial and technical assistance, policy guidance, and oversight when requested or otherwise required
2234 to carry out and enforce the provisions of this chapter; and (iv) all agencies of the Commonwealth
2235 exercise their delegated authority in a manner consistent with water quality protection provisions of
2236 local comprehensive plans, zoning ordinances, and subdivision ordinances when it has been determined
2237 that they comply with the provisions of this chapter.

2238 B. Local governments have the initiative for planning and for implementing the provisions of this
2239 article, and the Commonwealth shall act primarily in a supportive role by providing oversight for local
2240 governmental programs, by establishing criteria as required by this chapter, and by providing those
2241 resources necessary to carry out and enforce the provisions of this chapter.

2242 **§ 62.1-44.15:68. Definitions.**

2243 For the purposes of this article, the following words shall have the meanings respectively ascribed to
2244 them:

2245 "Chesapeake Bay Preservation Area" means an area delineated by a local government in accordance
2246 with criteria established pursuant to § 62.1-44.15:72.

2247 "Criteria" means criteria developed by the Board pursuant to § 62.1-44.15:72 for the purpose of
2248 determining the ecological and geographic extent of Chesapeake Bay Preservation Areas and for use by
2249 local governments in permitting, denying, or modifying requests to rezone, subdivide, or use and develop
2250 land in Chesapeake Bay Preservation Areas.

2251 "Department" means the Department of Environmental Quality.

2252 "Director" means the Director of the Department of Environmental Quality.

2253 "Secretary" means the Secretary of Natural Resources.

2254 "Tidewater Virginia" means the following jurisdictions:

2255 The Counties of Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax,
2256 Gloucester, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William,
2257 Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince
2258 William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York, and the Cities of Alexandria,
2259 Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport
2260 News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach, and
2261 Williamsburg.

2262 **§ 62.1-44.15:69. Powers and duties of the Board.**

2263 The Board is responsible for carrying out the purposes and provisions of this article and is
2264 authorized to:

2265 1. Provide land use and development and water quality protection information and assistance to the
2266 various levels of local, regional, and state government within the Commonwealth.

2267 2. Consult, advise, and coordinate with the Governor, the Secretary, the General Assembly, other
2268 state agencies, regional agencies, local governments, and federal agencies for the purpose of
2269 implementing this chapter.

2270 3. Provide financial and technical assistance and advice to local governments and to regional and
2271 state agencies concerning aspects of land use and development and water quality protection pursuant to
2272 this chapter.

2273 4. Promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.).

- 2274 5. Develop, promulgate, and keep current the criteria required by § 62.1-44.15:72.
- 2275 6. Provide technical assistance and advice or other aid for the development, adoption, and
- 2276 implementation of local comprehensive plans, zoning ordinances, subdivision ordinances, and other land
- 2277 use and development and water quality protection measures utilizing criteria established by the Board to
- 2278 carry out the provisions of this chapter.
- 2279 7. Develop procedures for use by local governments to designate Chesapeake Bay Preservation Areas
- 2280 in accordance with the criteria developed pursuant to § 62.1-44.15:72.
- 2281 8. Ensure that local government comprehensive plans, zoning ordinances, and subdivision ordinances
- 2282 are in accordance with the provisions of this chapter. Determination of compliance shall be in
- 2283 accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).
- 2284 9. Make application for federal funds that may become available under federal acts and to transmit
- 2285 such funds when applicable to any appropriate person.
- 2286 10. Take administrative and legal actions to ensure compliance by counties, cities, and towns with
- 2287 the provisions of this chapter including the proper enforcement and implementation of, and continual
- 2288 compliance with, this chapter.
- 2289 11. Perform such other duties and responsibilities related to the use and development of land and the
- 2290 protection of water quality as the Secretary may assign.
- 2291 **§ 62.1-44.15:70. Exclusive authority of Board to institute legal actions.**
- 2292 The Board shall have the exclusive authority to institute or intervene in legal and administrative
- 2293 actions to ensure compliance by local governing bodies with this chapter and with any criteria or
- 2294 regulations adopted hereunder.
- 2295 **§ 62.1-44.15:71. Program compliance.**
- 2296 Program compliance reviews conducted in accordance with § 62.1-44.15:69 and the regulations
- 2297 associated with this article shall be coordinated where applicable with those being implemented in
- 2298 accordance with the erosion and sediment control and stormwater management provisions of this
- 2299 chapter and associated regulations. The Department may also conduct a comprehensive or partial
- 2300 program compliance review and evaluation of a local government program more frequently than the
- 2301 standard schedule.
- 2302 Following completion of a compliance review of a local government program, the Department shall
- 2303 provide results and compliance recommendations to the Board in the form of a corrective action
- 2304 agreement should deficiencies be found; otherwise, the Board may find the program compliant. When
- 2305 deficiencies are found, the Board will establish a schedule for the local government to come into
- 2306 compliance. The Board shall provide a copy of its decision to the local government that specifies the
- 2307 deficiencies, actions needed to be taken, and the approved compliance schedule. If the local government
- 2308 has not implemented the necessary compliance actions identified by the Board within 30 days following
- 2309 receipt of the corrective action agreement, or such additional period as is granted to complete the
- 2310 implementation of the compliance actions, then the Board shall have the authority to issue a special
- 2311 order to any local government imposing a civil penalty not to exceed \$5,000 per day with the maximum
- 2312 amount not to exceed \$20,000 per violation for noncompliance with the state program, to be paid into
- 2313 the state treasury and deposited in the Virginia Stormwater Management Fund established by
- 2314 § 62.1-44.15:29.
- 2315 The Administrative Process Act (§ 2.2-4000 et seq.) shall govern the activities and proceedings of the
- 2316 Board under this article and the judicial review thereof.
- 2317 In lieu of issuing a special order, the Board is also authorized to take legal action against a local
- 2318 government to ensure compliance.
- 2319 **§ 62.1-44.15:72. Board to develop criteria.**
- 2320 A. In order to implement the provisions of this article and to assist counties, cities, and towns in
- 2321 regulating the use and development of land and in protecting the quality of state waters, the Board shall
- 2322 promulgate regulations that establish criteria for use by local governments to determine the ecological
- 2323 and geographic extent of Chesapeake Bay Preservation Areas. The Board shall also promulgate
- 2324 regulations that establish criteria for use by local governments in granting, denying, or modifying
- 2325 requests to rezone, subdivide, or use and develop land in these areas.
- 2326 B. In developing and amending the criteria, the Board shall consider all factors relevant to the
- 2327 protection of water quality from significant degradation as a result of the use and development of land.
- 2328 The criteria shall incorporate measures such as performance standards, best management practices, and
- 2329 various planning and zoning concepts to protect the quality of state waters while allowing use and
- 2330 development of land consistent with the provisions of this chapter. The criteria adopted by the Board,
- 2331 operating in conjunction with other state water quality programs, shall encourage and promote (i)
- 2332 protection of existing high quality state waters and restoration of all other state waters to a condition or
- 2333 quality that will permit all reasonable public uses and will support the propagation and growth of all
- 2334 aquatic life, including game fish, which might reasonably be expected to inhabit them; (ii) safeguarding
- 2335 the clean waters of the Commonwealth from pollution; (iii) prevention of any increase in pollution; (iv)

2336 reduction of existing pollution; and (v) promotion of water resource conservation in order to provide for
2337 the health, safety, and welfare of the present and future citizens of the Commonwealth.

2338 C. Prior to the development or amendment of criteria, the Board shall give due consideration to,
2339 among other things, the economic and social costs and benefits which can reasonably be expected to
2340 obtain as a result of the adoption or amendment of the criteria.

2341 D. In developing such criteria the Board may consult with and obtain the comments of any federal,
2342 state, regional, or local agency that has jurisdiction by law or special expertise with respect to the use
2343 and development of land or the protection of water. The Board shall give due consideration to the
2344 comments submitted by such federal, state, regional, or local agencies.

2345 E. Effective July 1, 2014, requirements promulgated under this article directly related to compliance
2346 with the erosion and sediment control and stormwater management provisions of this chapter and
2347 regulated under the authority of those provisions shall cease to have effect.

2348 **§ 62.1-44.15:73. Local government authority.**

2349 Counties, cities, and towns are authorized to exercise their police and zoning powers to protect the
2350 quality of state waters consistent with the provisions of this article.

2351 **§ 62.1-44.15:74. Local governments to designate Chesapeake Bay Preservation Areas; incorporate**
2352 **into local plans and ordinances; impose civil penalties.**

2353 A. Counties, cities, and towns in Tidewater Virginia shall use the criteria developed by the Board to
2354 determine the extent of the Chesapeake Bay Preservation Area within their jurisdictions. Designation of
2355 Chesapeake Bay Preservation Areas shall be accomplished by every county, city, and town in Tidewater
2356 Virginia not later than 12 months after adoption of criteria by the Board.

2357 B. Counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of
2358 state waters into each locality's comprehensive plan consistent with the provisions of this article.

2359 C. All counties, cities, and towns in Tidewater Virginia shall have zoning ordinances that incorporate
2360 measures to protect the quality of state waters in the Chesapeake Bay Preservation Areas consistent
2361 with the provisions of this article. Zoning in Chesapeake Bay Preservation Areas shall comply with all
2362 criteria set forth in or established pursuant to § 62.1-44.15:72.

2363 D. Counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of
2364 state waters in Chesapeake Bay Preservation Areas into their subdivision ordinances consistent with the
2365 provisions of this article. Counties, cities, and towns in Tidewater Virginia shall ensure that all
2366 subdivisions developed pursuant to their subdivision ordinances comply with all criteria developed by
2367 the Board.

2368 E. In addition to any other remedies which may be obtained under any local ordinance enacted to
2369 protect the quality of state waters in Chesapeake Bay Preservation Areas, counties, cities, and towns in
2370 Tidewater Virginia may incorporate the following penalties into their zoning, subdivision, or other
2371 ordinances:

2372 1. Any person who (i) violates any provision of any such ordinance or (ii) violates or fails, neglects,
2373 or refuses to obey any local governmental body's or official's final notice, order, rule, regulation, or
2374 variance or permit condition authorized under such ordinance shall, upon such finding by an
2375 appropriate circuit court, be assessed a civil penalty not to exceed \$5,000 for each day of violation.
2376 Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the
2377 treasury of the county, city, or town in which the violation occurred for the purpose of abating
2378 environmental damage to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as
2379 the court may direct by order, except that where the violator is the county, city, or town itself, or its
2380 agent, the court shall direct the penalty to be paid into the state treasury.

2381 2. With the consent of any person who (i) violates any provision of any local ordinance related to
2382 the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects,
2383 or refuses to obey any local governmental body's or official's notice, order, rule, regulation, or variance
2384 or permit condition authorized under such ordinance, the local government may provide for the issuance
2385 of an order against such person for the one-time payment of civil charges for each violation in specific
2386 sums, not to exceed \$10,000 for each violation. Such civil charges shall be paid into the treasury of the
2387 county, city, or town in which the violation occurred for the purpose of abating environmental damage
2388 to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is the county,
2389 city, or town itself, or its agent, the civil charges shall be paid into the state treasury. Civil charges
2390 shall be in lieu of any appropriate civil penalty that could be imposed under subdivision 1. Civil
2391 charges may be in addition to the cost of any restoration required or ordered by the local governmental
2392 body or official.

2393 F. Localities that are subject to the provisions of this article may by ordinance adopt an appeal
2394 period for any person aggrieved by a decision of a board that has been established by the locality to
2395 hear cases regarding ordinances adopted pursuant to this article. The ordinance shall allow the
2396 aggrieved party a minimum of 30 days from the date of such decision to appeal the decision to the

2397 *circuit court.*

2398 **§ 62.1-44.15:75. Local governments outside of Tidewater Virginia may adopt provisions.**

2399 *Any local government, although not a part of Tidewater Virginia, may employ the criteria developed*
 2400 *pursuant to § 62.1-44.15:72 and may incorporate protection of the quality of state waters into their*
 2401 *comprehensive plans, zoning ordinances, and subdivision ordinances consistent with the provisions of*
 2402 *this article.*

2403 **§ 62.1-44.15:76. Local government requirements for water quality protection.**

2404 *Local governments shall employ the criteria promulgated by the Board to ensure that the use and*
 2405 *development of land in Chesapeake Bay Preservation Areas shall be accomplished in a manner that*
 2406 *protects the quality of state waters consistent with the provisions of this article.*

2407 **§ 62.1-44.15:77. Effect on other governmental authority.**

2408 *The authorities granted herein are supplemental to other state, regional, and local governmental*
 2409 *authority. No authority granted to a local government by this article shall affect in any way the*
 2410 *authority of the Board. No authority granted to a local government by this article shall limit in any way*
 2411 *any other planning, zoning, or subdivision authority of that local government.*

2412 **§ 62.1-44.15:78. State agency consistency.**

2413 *All agencies of the Commonwealth shall exercise their authorities under the Constitution and laws of*
 2414 *Virginia in a manner consistent with the provisions of comprehensive plans, zoning ordinances, and*
 2415 *subdivision ordinances that comply with §§ 62.1-44.15:74 and 62.1-44.15:75.*

2416 **§ 62.1-44.15:79. Vested rights protected.**

2417 *The provisions of this article shall not affect vested rights of any landowner under existing law.*

2418 **§ 62.1-44.19:13. Definitions.**

2419 *As used in this article, unless the context requires a different meaning:*

2420 *"Annual mass load of total nitrogen" (expressed in pounds per year) means the daily total nitrogen*
 2421 *concentration (expressed as mg/L to the nearest 0.01 mg/L) multiplied by the flow volume of effluent*
 2422 *discharged during the 24-hour period (expressed as MGD to the nearest 0.01 MGD), multiplied by 8.34*
 2423 *and rounded to the nearest whole number to convert to pounds per day (lbs/day) units, then totaled for*
 2424 *the calendar month to convert to pounds per month (lbs/mo) units, and then totaled for the calendar year*
 2425 *to convert to pounds per year (lbs/yr) units.*

2426 *"Annual mass load of total phosphorus" (expressed in pounds per year) means the daily total*
 2427 *phosphorus concentration (expressed as mg/L to the nearest 0.01mg/L) multiplied by the flow volume of*
 2428 *effluent discharged during the 24-hour period (expressed as MGD to the nearest 0.01 MGD) multiplied*
 2429 *by 8.34 and rounded to the nearest whole number to convert to pounds per day (lbs/day) units, then*
 2430 *totalled for the calendar month to convert to pounds per month (lbs/mo) units, and then totaled for the*
 2431 *calendar year to convert to pounds per year (lbs/yr) units.*

2432 *"Association" means the Virginia Nutrient Credit Exchange Association authorized by this article.*

2433 *"Attenuation" means the rate at which nutrients are reduced through natural processes during*
 2434 *transport in water.*

2435 *"Best management practice," "practice," or "BMP" means a structural practice, nonstructural*
 2436 *practice, or other management practice used to prevent or reduce nutrient loads associated with*
 2437 *stormwater from reaching surface waters or the adverse effects thereof.*

2438 *"Biological nutrient removal technology" means (i) technology that will achieve an annual average*
 2439 *total nitrogen effluent concentration of eight milligrams per liter and an annual average total phosphorus*
 2440 *effluent concentration of one milligram per liter, or (ii) equivalent reductions in loads of total nitrogen*
 2441 *and total phosphorus through the recycle or reuse of wastewater as determined by the Department.*

2442 *"Delivered total nitrogen load" means the discharged mass load of total nitrogen from a point source*
 2443 *that is adjusted by the delivery factor for that point source.*

2444 *"Delivered total phosphorus load" means the discharged mass load of total phosphorus from a point*
 2445 *source that is adjusted by the delivery factor for that point source.*

2446 *"Delivery factor" means an estimate of the number of pounds of total nitrogen or total phosphorus*
 2447 *delivered to tidal waters for every pound discharged from a permitted facility, as determined by the*
 2448 *specific geographic location of the permitted facility, to account for attenuation that occurs during*
 2449 *riverine transport between the permitted facility and tidal waters. Delivery factors shall be calculated*
 2450 *using the Chesapeake Bay Program watershed model.*

2451 *"Department" means the Department of Environmental Quality.*

2452 *"Equivalent load" means 2,300 pounds per year of total nitrogen and 300 pounds per year of total*
 2453 *phosphorus at a flow volume of 40,000 gallons per day; 5,700 pounds per year of total nitrogen and 760*
 2454 *pounds per year of total phosphorus at a flow volume of 100,000 gallons per day; and 28,500 pounds*
 2455 *per year of total nitrogen and 3,800 pounds per year of total phosphorus at a flow volume of 500,000*
 2456 *gallons per day.*

2457 *"Facility" means a point source discharging or proposing to discharge total nitrogen or total*
 2458 *phosphorus to the Chesapeake Bay or its tributaries. This term does not include confined animal feeding*

- 2459 operations, discharges of stormwater, return flows from irrigated agriculture, or vessels.
- 2460 "General permit" means the general permit authorized by this article.
- 2461 "MS4" means a municipal separate storm sewer system.
- 2462 "Nutrient credit" or "credit" means a nutrient reduction that is certified pursuant to this article and
- 2463 expressed in pounds of phosphorus or nitrogen either (i) delivered to tidal waters when the credit is
- 2464 generated within the Chesapeake Bay Watershed or (ii) as otherwise specified when generated in the
- 2465 Southern Rivers watersheds. "Nutrient credit" does not include point source nitrogen credits or point
- 2466 source phosphorus credits as defined in this section.
- 2467 "Nutrient credit-generating entity" means an entity that generates nonpoint source nutrient credits.
- 2468 "Permitted facility" means a facility authorized by the general permit to discharge total nitrogen or
- 2469 total phosphorus. For the sole purpose of generating point source nitrogen credits or point source
- 2470 phosphorus credits, "permitted facility" shall also mean the Blue Plains wastewater treatment facility
- 2471 operated by the District of Columbia Water and Sewer Authority.
- 2472 "Permittee" means a person authorized by the general permit to discharge total nitrogen or total
- 2473 phosphorus.
- 2474 "Point source nitrogen credit" means the difference between (i) the waste load allocation for a
- 2475 permitted facility specified as an annual mass load of total nitrogen, and (ii) the monitored annual mass
- 2476 load of total nitrogen discharged by that facility, where clause (ii) is less than clause (i), and where the
- 2477 difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered
- 2478 total nitrogen load.
- 2479 "Point source phosphorus credit" means the difference between (i) the waste load allocation for a
- 2480 permitted facility specified as an annual mass load of total phosphorus, and (ii) the monitored annual
- 2481 mass load of total phosphorus discharged by that facility, where clause (ii) is less than clause (i), and
- 2482 where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of
- 2483 delivered total phosphorus load.
- 2484 "State-of-the-art nutrient removal technology" means (i) technology that will achieve an annual
- 2485 average total nitrogen effluent concentration of three milligrams per liter and an annual average total
- 2486 phosphorus effluent concentration of 0.3 milligrams per liter, or (ii) equivalent load reductions in total
- 2487 nitrogen and total phosphorus through recycle or reuse of wastewater as determined by the Department.
- 2488 "Tributaries" means those river basins for which separate tributary strategies were prepared pursuant
- 2489 to § 2.2-218 and includes the Potomac, Rappahannock, York, and James River Basins, and the Eastern
- 2490 Coastal Basin, which encompasses the creeks and rivers of the Eastern Shore of Virginia that are west
- 2491 of Route 13 and drain into the Chesapeake Bay.
- 2492 "Waste load allocation" means (i) the water quality-based annual mass load of total nitrogen or
- 2493 annual mass load of total phosphorus allocated to individual facilities pursuant to the Water Quality
- 2494 Management Planning Regulation (9 VAC 25-720) or its successor, or permitted capacity in the case of
- 2495 nonsignificant dischargers; (ii) the water quality-based annual mass load of total nitrogen or annual mass
- 2496 load of total phosphorus acquired pursuant to § 62.1-44.19:15 for new or expanded facilities; or (iii)
- 2497 applicable total nitrogen or total phosphorus waste load allocations under the Chesapeake Bay total
- 2498 maximum daily loads (TMDLs) to restore or protect the water quality and beneficial uses of the
- 2499 Chesapeake Bay or its tidal tributaries.
- 2500 **§ 62.1-44.19:15. New or expanded facilities.**
- 2501 A. An owner or operator of a new or expanded facility shall comply with the applicable requirements
- 2502 of this section as a condition of the facility's coverage under the general permit.
- 2503 1. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination
- 2504 System permit first issued before July 1, 2005, that expands his facility to discharge 100,000 gallons or
- 2505 more per day, or an equivalent load directly into tidal waters, or 500,000 gallons or more per day, or an
- 2506 equivalent load, directly into nontidal waters shall demonstrate to the Department that he has acquired
- 2507 waste load allocations sufficient to offset any increase in his delivered total nitrogen and delivered total
- 2508 phosphorus loads resulting from any expansion beyond his waste load allocations or permitted design
- 2509 capacity as of July 1, 2005, and will install state-of-the-art nutrient removal technology at the time of
- 2510 the expansion.
- 2511 2. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination
- 2512 System permit first issued before July 1, 2005, that expands his facility to discharge 100,000 gallons or
- 2513 more per day up to and including 499,999 gallons per day, or an equivalent load, directly into nontidal
- 2514 waters, shall demonstrate to the Department that he has acquired waste load allocations sufficient to
- 2515 offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from
- 2516 any expansion beyond his permitted capacity as of July 1, 2005, and will install, at a minimum,
- 2517 biological nutrient removal technology at the time of the expansion.
- 2518 3. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination
- 2519 System permit first issued before July 1, 2005, that expands his facility to discharge 40,000 gallons or

2520 more per day up to and including 99,999 gallons per day, or an equivalent load, directly into tidal or
2521 nontidal waters, shall demonstrate to the Department that he has acquired waste load allocations
2522 sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads
2523 resulting from any expansion beyond his permitted capacity as of July 1, 2005.

2524 4. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination
2525 System permit first issued on or after July 1, 2005, to discharge 40,000 gallons or more per day, or an
2526 equivalent load, shall demonstrate to the Department that he has acquired waste load allocations
2527 sufficient to offset his delivered total nitrogen and delivered total phosphorus loads, and will install (i) at
2528 a minimum, biological nutrient removal technology at any facility authorized to discharge up to and
2529 including 99,999 gallons per day, or an equivalent load, directly into tidal and nontidal waters, or up to
2530 and including 499,999 gallons per day, or an equivalent load, to nontidal waters; and (ii) state-of-the-art
2531 nutrient removal technology at any facility authorized to discharge 100,000 gallons or more per day, or
2532 an equivalent load, directly into tidal waters, or 500,000 gallons or more per day, or an equivalent load,
2533 directly into nontidal waters.

2534 5. An owner or operator of a facility treating domestic sewage authorized by a Virginia Pollutant
2535 Discharge Elimination System permit with a discharge greater than 1,000 gallons per day up to and
2536 including 39,999 gallons per day that has not commenced the discharge of pollutants prior to January 1,
2537 2011, shall demonstrate to the Department that he has acquired waste load allocations sufficient to offset
2538 his delivered total nitrogen and delivered total phosphorus loads prior to commencing the discharge,
2539 except when the facility is for short-term temporary use only or when treatment of domestic sewage is
2540 not the primary purpose of the facility.

2541 B. Waste load allocations required by this section to offset new or increased delivered total nitrogen
2542 and delivered total phosphorus loads shall be acquired in accordance with this subsection.

2543 1. Such allocations may be acquired from one or a combination of the following:

2544 a. Acquisition of all or a portion of the waste load allocations or point source nitrogen or point
2545 source phosphorus credits from one or more permitted facilities in the same tributary;

2546 b. Acquisition of credits certified by the Board pursuant to § 62.1-44.19:20 ~~or certified by the Soil~~
2547 ~~and Water Conservation Board pursuant to § 10.1-603.15:2.~~ Such best management practices shall
2548 achieve reductions beyond those already required by or funded under federal or state law, or the
2549 Virginia Chesapeake Bay TMDL Watershed Implementation Plan, and shall be installed in the same
2550 tributary in which the new or expanded facility is located and included as conditions of the facility's
2551 individual Virginia Pollutant Discharge Elimination System permit;

2552 c. Acquisition of allocations purchased through the Nutrient Offset Fund established pursuant to
2553 § 10.1-2128.2; or

2554 d. Acquisition of allocations through such other means as may be approved by the Department on a
2555 case-by-case basis.

2556 2. Such allocations or credits shall be provided for a minimum period of five years with each
2557 registration under the general permit. This subdivision shall not preclude the Board from adopting
2558 longer-term or permanent allocation requirements by regulation.

2559 3. The Board shall give priority to allocations or credits acquired in accordance with subdivisions 1
2560 a, 1 b, and 1 d. The Board shall approve allocations acquired in accordance with subdivision 1 d only
2561 after the owner or operator has demonstrated that he has made a good faith effort to acquire sufficient
2562 allocations in accordance with subdivisions 1 a, 1 b, and 1 d and that such allocations are not
2563 reasonably available taking into account timing, cost, and other relevant factors.

2564 4. Notwithstanding the priority provisions in subdivision 3, the Board may grant a waste load
2565 allocation in accordance with subdivision 1 d to an owner or operator of a facility authorized by a
2566 Virginia Pollution Abatement permit to land apply domestic sewage if (i) the Virginia Pollution
2567 Abatement permit was issued before July 1, 2005; (ii) the waste load allocation does not exceed such
2568 facility's permitted design capacity as of July 1, 2005; (iii) the waste treated by the existing facility is
2569 going to be treated and discharged pursuant to a Virginia Pollutant Discharge Elimination System permit
2570 for a new discharge; and (iv) the owner or operator installs state-of-the-art nutrient removal technology
2571 at such facility. Such facilities cannot generate credits or waste load allocations, based upon the removal
2572 of land application sites, that can be acquired by other permitted facilities to meet the requirements of
2573 this article.

2574 C. Until such time as the Director finds that no allocations are reasonably available in an individual
2575 tributary, the general permit shall provide for the acquisition of allocations through payments into the
2576 Nutrient Offset Fund established in § 10.1-2128.2. Such payments shall be promptly applied by the
2577 Department to achieve equivalent point or nonpoint source reductions in the same tributary beyond those
2578 reductions already required by or funded under federal or state law or the Virginia Chesapeake Bay
2579 TMDL Watershed Implementation Plan. The general permit shall base the cost of each pound of
2580 allocation on (i) the estimated cost of achieving a reduction of one pound of nitrogen or phosphorus at
2581 the facility that is securing the allocation, or comparable facility, for each pound of allocation acquired;

2582 or (ii) the average cost of reducing two pounds of nitrogen or phosphorus from nonpoint sources in the
 2583 same tributary for each pound of allocation acquired, whichever is higher. Upon each reissuance of the
 2584 general permit, the Board may adjust the cost of each pound of allocation based on current costs and
 2585 cost estimates.

2586 D. The acquisition of nutrient allocations or credits from animal waste-to-energy or animal waste
 2587 reduction facilities, or the acquisition of such nutrient allocations or credits from entities acting on
 2588 behalf of such facilities, shall be considered point source allocations or credits for all nutrient trading
 2589 purposes and shall not be subject to any otherwise applicable nonpoint source trading ratio if the best
 2590 management practice being used to generate such nutrient allocations or credits is a point source nutrient
 2591 removal technology. Point source nutrient removal technology shall include animal waste gasification in
 2592 which lab analysis of the animal waste reveals the concentration of nutrients in the animal waste being
 2593 fed into the gasifier, and the fate of the nutrients during the animal waste gasification process, is known
 2594 and documented using studies such as air emissions tests and ash analyses.

2595 **§ 62.1-44.19:20. Nutrient credit certification.**

2596 A. *The Board may adopt regulations for the purpose of establishing procedures for the certification*
 2597 *of point source nutrient credits except that no certification shall be required for point source nitrogen*
 2598 *and point source phosphorus credits generated by point sources regulated under the Watershed General*
 2599 *Virginia Pollutant Discharge Elimination System Permit issued pursuant to § 62.1-44.19:14. The Board*
 2600 *may shall adopt regulations for the purpose of establishing procedures for the certification of nonpoint*
 2601 *source nutrient credits other than (i) point source nitrogen or point source phosphorus credits generated*
 2602 *by point sources covered by the general permit issued pursuant to § 62.1-44.19:14 and (ii) nutrient*
 2603 *credits certified by the Soil and Water Conservation Board and the Department of Conservation and*
 2604 *Recreation pursuant to Article 1.1-1 (§ 10.1-603.15:1 et seq.) of Chapter 6 of Title 10.1. During the*
 2605 *promulgation of the regulations, the Board shall consult with the Department of Conservation and*
 2606 *Recreation to avoid duplication and to promote consistency where appropriate.*

2607 B. Regulations adopted pursuant to this section shall:

2608 1. Establish procedures for the certification and registration of credits, including:

2609 a. Certifying credits that may be generated from effective nutrient controls or removal practices,
 2610 including activities associated with the types of facilities or practices historically regulated by the Board,
 2611 such as water withdrawal and treatment and wastewater collection, treatment, and beneficial reuse; and

2612 b. *Certifying credits that may be generated from agricultural and urban stormwater best management*
 2613 *practices, use or management of manures, managed turf, land use conversion, stream or wetlands*
 2614 *projects, shellfish aquaculture, algal harvesting, and other established or innovative methods of nutrient*
 2615 *control or removal, as appropriate;*

2616 c. *Establishing a process and standards for wetland or stream credits to be converted to nutrient*
 2617 *credits. Such process and standards shall only apply to wetland or stream credits that were established*
 2618 *after July 1, 2005, and have not been transferred or used. Under no circumstances shall such credits be*
 2619 *used for both wetland or stream credit and nutrient credit purposes;*

2620 d. *Certifying credits from multiple practices that are bundled as a package by the applicant;*

2621 e. *Prohibiting the certification of credits generated from activities funded by federal or state water*
 2622 *quality grant funds other than controls and practices under subdivision B 1 a; however, baseline levels*
 2623 *may be achieved through the use of such grants;*

2624 f. *Establishing a timely and efficient certification process including application requirements, a*
 2625 *reasonable application fee schedule not to exceed \$10,000 per application, and review and approval*
 2626 *procedures; and*

2627 g. *Requiring public notification of a proposed nutrient credit-generating entity;*

2628 2. Establish credit calculation procedures for proposed credit-generating practices, including the
 2629 determination of:

2630 a. *Baselines for credits certified under subdivision B 1 a in accordance with any applicable*
 2631 *provisions of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs;*
 2632 *and*

2633 b. *Baselines established for agricultural practices, which shall be those actions necessary to achieve*
 2634 *a level of reduction assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or*
 2635 *approved TMDLs as implemented on the tract, field, or other land area under consideration;*

2636 c. *Baselines for urban practices from new development and redevelopment, which shall be in*
 2637 *compliance with postconstruction nutrient loading requirements of the Virginia Stormwater Management*
 2638 *Program regulations. Baselines for all other existing development shall be at a level necessary to*
 2639 *achieve the reductions assigned in the urban sector in the Virginia Chesapeake Bay TMDL Watershed*
 2640 *Implementation Plan or approved TMDLs;*

2641 d. *Baselines for land use conversion, which shall be based on the pre-conversion land use and the*
 2642 *level of reductions assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or*

2643 approved TMDLs applicable to that land use;

2644 *e. Baselines for other nonpoint source credit-generating practices, which shall be based on the*

2645 *Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs using the best*

2646 *available scientific and technical information;*

2647 *f. Unless otherwise established by the Board, for certification within the Chesapeake Bay Watershed*

2648 *a credit-generating practice that involves land use conversion, which shall represent controls beyond*

2649 *those in place as of July 1, 2005. For other waters for which a TMDL has been approved, the practice*

2650 *shall represent controls beyond those in place at the time of TMDL approval;*

2651 *g. Baseline dates for all other credit-generating practices, which shall be based on the Virginia*

2652 *Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs; and*

2653 *h. Credit quantities, which shall be established using the best available scientific and technical*

2654 *information at the time of certification;*

2655 3. Provide certification of credits on an appropriate temporal basis, such as annual, term of years, or

2656 perpetual, depending on the nature of the credit-generating practice. A credit shall be certified for a term

2657 of no less than 12 months;

2658 4. Establish ~~operation and maintenance requirements and associated financial assurance requirements~~

2659 ~~to include alternatives such as requirements to reasonably assure the generation of the credit depending~~

2660 ~~on the nature of the credit-generating activity and use, such as legal instruments for perpetual credits,~~

2661 ~~operation and maintenance requirements, and associated financial assurance requirements. Financial~~

2662 ~~assurance requirements may include letters of credit, escrows, surety bonds, insurance, and where the~~

2663 ~~credits are used or generated by a locality, authority, utility, sanitation district, or permittee operating an~~

2664 ~~MS4 or a point source permitted under this article, its existing tax or rate authority;~~

2665 5. Establish appropriate reporting requirements;

2666 6. Provide for the ability of the Department to inspect or audit for compliance with the requirements

2667 of such regulations;

2668 7. Provide that the option to acquire nutrient credits for compliance purposes shall not eliminate any

2669 requirement to comply with local water quality requirements; ~~and~~

2670 8. *Establish a credit retirement requirement whereby five percent of nonpoint source credits in the*

2671 *Chesapeake Bay Watershed other than controls and practices under subdivision B 1 a are permanently*

2672 *retired at the time of certification pursuant to this section for the purposes of offsetting growth in*

2673 *unregulated nutrient loads; and*

2674 9. Establish such other requirements as the Board deems necessary and appropriate.

2675 C. Prior to the adoption of such regulations, the Board shall certify credits that may be generated

2676 from effective nutrient controls or removal practices, including activities associated with the types of

2677 facilities or practices historically regulated by the Board, such as water withdrawal and treatment and

2678 wastewater collection, treatment, and beneficial reuse, on a case-by-case basis using the best available

2679 scientific and technical information.

2680 D. *The Department shall establish and maintain an online Virginia Nutrient Credit Registry of*

2681 *credits as follows:*

2682 1. *The registry shall include all nonpoint source credits certified pursuant to this article and may*

2683 *include point source nitrogen and point source phosphorus credits generated from point sources covered*

2684 *by the general permit issued pursuant to § 62.1-44.19:14 or point source nutrient credits certified*

2685 *pursuant to this section at the option of the owner. No other credits shall be valid for compliance*

2686 *purposes.*

2687 2. *Registration of credits on the registry shall not preclude or restrict the right of the owner of such*

2688 *credits from transferring the credits on such commercial terms as may be established by and between*

2689 *the owner and the regulated or unregulated party acquiring the credits.*

2690 3. *The Department shall establish procedures for the listing and tracking of credits on the registry,*

2691 *including but not limited to (i) notification of the availability of new nutrient credits to the locality*

2692 *where the credit-generating practice is implemented at least five business days prior to listing on the*

2693 *registry to provide the locality an opportunity to acquire such credits at fair market value for*

2694 *compliance purposes and (ii) notification that the listing of credits on the registry does not constitute a*

2695 *representation by the Board or the owner that the credits will satisfy the specific regulatory*

2696 *requirements applicable to the prospective user's intended use and that the prospective user is*

2697 *encouraged to contact the Board for technical assistance to identify limitations, if any, applicable to the*

2698 *intended use.*

2699 4. *The registry shall be publicly accessible without charge.*

2700 E. *The owner or operator of a nonpoint source nutrient credit-generating entity that fails to comply*

2701 *with the provisions of this section shall be subject to the enforcement and penalty provisions of*

2702 *§ 62.1-44.19:22.*

2703 F. *Nutrient credits from stormwater nonpoint nutrient credit-generating facilities in receipt of a*

2704 *Nonpoint Nutrient Offset Authorization for Transfer letter from the Department prior to July 1, 2012,*

2705 shall be considered certified nutrient credits and shall not be subject to further certification
 2706 requirements or to the credit retirement requirement under subdivision B 8. However, such facilities
 2707 shall be subject to the other provisions of this article, including registration, inspection, reporting, and
 2708 enforcement.

2709 **§ 62.1-44.19:21. Nutrient credit use by regulated entities.**

2710 A. An MS4 permittee may acquire, use, and transfer nutrient credits for purposes of compliance with
 2711 any waste load allocations established as effluent limitations in an MS4 permit issued pursuant to
 2712 § 62.1-44.15:25. Such method of compliance may be approved by the Department following review of a
 2713 compliance plan submitted by the permittee that includes the use of nutrient credits. The permittee may
 2714 use such credits for compliance purposes only if (i) the credits, whether annual, term, or perpetual, are
 2715 generated and applied for purposes of compliance for the same calendar year; (ii) the credits are
 2716 acquired no later than a date following the calendar year in which the credits are applied as specified
 2717 by the Department consistent with the permittee's Virginia Stormwater Management Program (VSMP)
 2718 permit annual report deadline under such permit; (iii) the credits are generated in the same locality or
 2719 tributary, except that permittees in the Eastern Coastal Basin may also acquire credits from the
 2720 Potomac and Rappahannock tributaries; and (iv) the credits either are point source nitrogen or point
 2721 source phosphorus credits generated by point sources covered by the general permit issued pursuant to
 2722 § 62.1-44.19:14, or are certified pursuant to § 62.1-44.19:20. An MS4 permittee may enter into an
 2723 agreement with one or more other MS4 permittees within the same locality or within the same or
 2724 adjacent eight-digit hydrologic unit code to collectively meet the sum of any waste load allocations in
 2725 their permits. Such permittees shall submit to the Department for approval a compliance plan to achieve
 2726 their aggregate permit waste load allocations.

2727 B. Those applicants required to comply with water quality requirements for land-disturbing activities
 2728 operating under a General VSMP Permit for Discharges of Stormwater from Construction Activities or
 2729 a Construction Individual Permit may acquire and use perpetual nutrient credits certified and registered
 2730 on the Virginia Nutrient Credit Registry in accordance with § 62.1-44.15:35.

2731 C. Confined animal feeding operations issued permits pursuant to this chapter may acquire, use, and
 2732 transfer credits for compliance with any waste load allocations contained in the provisions of a Virginia
 2733 Pollutant Discharge Elimination System (VPDES) permit. Such method of compliance may be approved
 2734 by the Department following review of a compliance plan submitted by the permittee that includes the
 2735 use of nutrient credits.

2736 D. Facilities registered under the Industrial Stormwater General Permit issued pursuant to this
 2737 chapter may acquire, use, and transfer credits for compliance with any waste load allocations
 2738 established as effluent limitations in a VPDES permit. Such method of compliance may be approved by
 2739 the Department following review of a compliance plan submitted by the permittee that includes the use
 2740 of nutrient credits.

2741 E. Public notice of each compliance plan submitted for approval pursuant to this section shall be
 2742 given by the Department.

2743 F. This section shall not be construed to limit or otherwise affect the authority of the Board to
 2744 establish and enforce more stringent water quality-based effluent limitations for total nitrogen or total
 2745 phosphorus in permits where those limitations are necessary to protect local water quality. The
 2746 exchange or acquisition of credits pursuant to this article shall not affect any requirement to comply
 2747 with such local water quality-based limitations.

2748 **§ 62.1-44.19:22. Enforcement and penalties.**

2749 A. Transfer of certified nutrient credits by an operator of a nutrient credit-generating entity may be
 2750 suspended by the Department until such time as the operator comes into compliance with this article
 2751 and attendant regulations.

2752 B. Any operator of a nutrient credit-generating entity who violates any provision of this article, or of
 2753 any regulations adopted hereunder, shall be subject to a civil penalty not to exceed \$10,000 within the
 2754 discretion of the court. The Department may issue a summons for collection of the civil penalty, and the
 2755 action may be prosecuted in the appropriate circuit court. When the penalties are assessed by the court
 2756 as a result of a summons issued by the Department, the court shall direct the penalty to be paid into the
 2757 state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund
 2758 established pursuant to § 62.1-44.15:29.

2759 **§ 62.1-44.19:23. Appeals.**

2760 Any person applying to establish a nutrient credit-generating entity or an operator of a nutrient
 2761 credit-generating entity aggrieved by any action of the Department taken in accordance with this
 2762 section, or by inaction of the Department, shall have the right to review in accordance with the
 2763 provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

2764 **§ 62.1-44.23. Enforcement by injunction, etc.**

2765 Any person violating or failing, neglecting or refusing to obey any rule, regulation, order, water

2766 quality standard, pretreatment standard, or requirement of or any provision of any certificate issued by
 2767 the Board, or by the owner of a publicly owned treatment works issued to an industrial user, or any
 2768 provisions of this chapter, *except as provided by a separate article*, may be compelled in a proceeding
 2769 instituted in any appropriate court by the Board to obey same and to comply therewith by injunction,
 2770 mandamus or other appropriate remedy.

2771 **§ 62.1-44.32. Penalties.**

2772 (a) ~~Any~~ *Except as otherwise provided in this chapter*, any person who violates any provision of this
 2773 chapter, or who fails, neglects, or refuses to comply with any order of the Board, or order of a court,
 2774 issued as herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation
 2775 within the discretion of the court. Each day of violation of each requirement shall constitute a separate
 2776 offense. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer
 2777 into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1,
 2778 excluding penalties assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et
 2779 seq.) of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition
 2780 of approval relating to or issued under those articles.

2781 Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the
 2782 treasury of the county, city, or town in which the violation occurred, to be used for the purpose of
 2783 abating environmental pollution therein in such manner as the court may, by order, direct, except that
 2784 where the owner in violation is such county, city or town itself, or its agent, the court shall direct such
 2785 penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia
 2786 Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1, excluding penalties
 2787 assessed for violations of Article 9 or 10 of Chapter 3.1 of Title 62.1, or a regulation, administrative or
 2788 judicial order, or term or condition of approval relating to or issued under those articles.

2789 In the event that a county, city, or town, or its agent, is the owner, such county, city, or town, or its
 2790 agent, may initiate a civil action against any user or users of a waste water treatment facility to recover
 2791 that portion of any civil penalty imposed against the owner proximately resulting from the act or acts of
 2792 such user or users in violation of any applicable federal, state, or local requirements.

2793 (b) ~~Any~~ *Except as otherwise provided in this chapter*, any person who willfully or negligently
 2794 violates any provision of this chapter, any regulation or order of the Board, any condition of a certificate
 2795 or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more
 2796 than 12 months and a fine of not less than \$2,500 nor more than \$32,500, either or both. Any person
 2797 who knowingly violates any provision of this chapter, any regulation or order of the Board, any
 2798 condition of a certificate or any order of a court issued as herein provided, or who knowingly makes
 2799 any false statement in any form required to be submitted under this chapter or knowingly renders
 2800 inaccurate any monitoring device or method required to be maintained under this chapter, shall be guilty
 2801 of a felony punishable by a term of imprisonment of not less than one year nor more than three years,
 2802 or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not
 2803 more than 12 months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any
 2804 defendant that is not an individual shall, upon conviction of a violation under this subsection, be
 2805 sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall
 2806 constitute a separate offense.

2807 (c) ~~Any~~ *Except as otherwise provided in this chapter*, any person who knowingly violates any
 2808 provision of this chapter, and who knows at that time that he thereby places another person in imminent
 2809 danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a
 2810 term of imprisonment of not less than two years nor more than 15 years and a fine of not more than
 2811 \$250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation
 2812 under this subsection, be sentenced to pay a fine not exceeding the greater of \$1 million or an amount
 2813 that is three times the economic benefit realized by the defendant as a result of the offense. The
 2814 maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent
 2815 conviction of the same person under this subsection.

2816 (d) Criminal prosecution under this section shall be commenced within three years of discovery of
 2817 the offense, notwithstanding the limitations provided in any other statute.

2818 **§ 62.1-44.44. Construction of chapter.**

2819 (a) Nothing in this chapter shall be construed as superseding any provisions of Chapter 5 of Title
 2820 10.1, or as limiting or affecting any powers, duties or responsibilities conferred or imposed heretofore or
 2821 hereafter on the Virginia Soil and Water Conservation Board.

2822 (b) Nothing in this chapter shall be construed as altering, or as authorizing any alteration of, any
 2823 existing riparian rights or other vested rights in water or water use.

2824 **§ 62.1-73. Appointment and removal of Virginia members of Commission.**

2825 In pursuance of Article IV of said compact there shall be three members of the Ohio River Valley
 2826 Water Sanitation Commission from Virginia. ~~One member~~ *Two members* of the Commission shall be
 2827 appointed by the Governor, subject to confirmation by the General Assembly, from the membership of

2828 the State Water Control Board continued under § 62.1-44.7. The term of the commissioner shall be
 2829 coincident with that of his term upon the State Water Control Board. Any vacancy in the office of the
 2830 commissioner shall be filled by appointment by the Governor. The ~~second~~ *third* Virginia member of the
 2831 Commission shall be the Director of the Department of Environmental Quality. ~~The third Virginia~~
 2832 ~~member shall be the Director of the Department of Conservation and Recreation.~~ Any member of the
 2833 Commission appointed pursuant to this section who cannot be present at a meeting of the Commission,
 2834 or at any committee or subcommittee of the Commission, may designate any employee of the
 2835 Department of Environmental Quality, ~~the Department of Conservation and Recreation,~~ or a member of
 2836 the State Water Control Board to attend the meeting and vote on his behalf.

2837 Any commissioner may be removed from office by the Governor.

2838 **§ 62.1-195.1. Chesapeake Bay; drilling for oil or gas prohibited.**

2839 A. Notwithstanding any other law, a person shall not drill for oil or gas in the waters of the
 2840 Chesapeake Bay or any of its tributaries. In Tidewater Virginia, as defined in § ~~10.1-2101~~
 2841 ~~62.1-44.15:68,~~ a person shall not drill for oil or gas in, whichever is the greater distance, as measured
 2842 landward of the shoreline:

2843 1. Those Chesapeake Bay Preservation Areas, as defined in § ~~10.1-2101~~ ~~62.1-44.15:68,~~ which a local
 2844 government designates as "Resource Protection Areas" and incorporates into its local comprehensive
 2845 plan. "Resource Protection Areas" shall be defined according to the criteria developed by the Virginia
 2846 ~~Soil and Water Conservation State Water Control Board pursuant to § 10.1-2107~~ ~~62.1-44.15:72;~~ or

2847 2. Five hundred feet from the shoreline of the waters of the Chesapeake Bay or any of its tributaries.

2848 B. In the event that any person desires to drill for oil or gas in any area of Tidewater Virginia where
 2849 drilling is not prohibited by the provisions of subsection A, he shall submit to the Department of Mines,
 2850 Minerals and Energy as part of his application for permit to drill an environmental impact assessment.
 2851 The environmental impact assessment shall include:

2852 1. The probabilities and consequences of accidental discharge of oil or gas into the environment
 2853 during drilling, production, and transportation on:

2854 a. Finfish, shellfish, and other marine or freshwater organisms;

2855 b. Birds and other wildlife that use the air and water resources;

2856 c. Air and water quality; and

2857 d. Land and water resources;

2858 2. Recommendations for minimizing any adverse economic, fiscal, or environmental impacts; and

2859 3. An examination of the secondary environmental effects of induced economic development due to
 2860 the drilling and production.

2861 C. Upon receipt of an environmental impact assessment, the Department of Mines, Minerals and
 2862 Energy shall notify the Department of Environmental Quality to coordinate a review of the
 2863 environmental impact assessment. The Department of Environmental Quality shall:

2864 1. Publish in the Virginia Register of Regulations a notice sufficient to identify the environmental
 2865 impact assessment and providing an opportunity for public review of and comment on the assessment.
 2866 The period for public review and comment shall not be less than 30 days from the date of publication;

2867 2. Submit the environmental impact assessment to all appropriate state agencies to review the
 2868 assessment and submit their comments to the Department of Environmental Quality; and

2869 3. Based upon the review by all appropriate state agencies and the public comments received, submit
 2870 findings and recommendations to the Department of Mines, Minerals and Energy, within 90 days after
 2871 notification and receipt of the environmental impact assessment from the Department.

2872 D. The Department of Mines, Minerals and Energy may not grant a permit under § 45.1-361.29 until
 2873 it has considered the findings and recommendations of the Department of Environmental Quality.

2874 E. The Department of Environmental Quality shall, in conjunction with other state agencies and in
 2875 conformance with the Administrative Process Act (§ 2.2-4000 et seq.), develop criteria and procedures to
 2876 assure the orderly preparation and evaluation of environmental impact assessments required by this
 2877 section.

2878 F. A person may drill an exploratory well or a gas well in any area of Tidewater Virginia where
 2879 drilling is not prohibited by the provisions of subsection A only if:

2880 1. For directional drilling, the person has the permission of the owners of all lands to be directionally
 2881 drilled into;

2882 2. The person files an oil discharge contingency plan and proof of financial responsibility to
 2883 implement the plan, both of which have been filed with and approved by the State Water Control Board.

2884 For purposes of this section, the oil discharge contingency plan shall comply with the requirements set
 2885 forth in § 62.1-44.34:15. The Board's regulations governing the amount of any financial responsibility
 2886 required shall take into account the type of operation, location of the well, the risk of discharge or
 2887 accidental release, the potential damage or injury to state waters or sensitive natural resource features or
 2888 the impairment of their beneficial use that may result from discharge or release, the potential cost of

2889 containment and cleanup, and the nature and degree of injury or interference with general health, welfare
 2890 and property that may result from discharge or accidental release;

2891 3. All land-disturbing activities resulting from the construction and operation of the permanent
 2892 facilities necessary to implement the contingency plan and the area within the berm will be located
 2893 outside of those areas described in subsection A;

2894 4. The drilling site is stabilized with boards or gravel or other materials which will result in minimal
 2895 amounts of runoff;

2896 5. Persons certified in blowout prevention are present at all times during drilling;

2897 6. Conductor pipe is set as necessary from the surface;

2898 7. Casing is set and pressure grouted from the surface to a point at least 2500 feet below the surface
 2899 or 300 feet below the deepest known ground water, as defined in § 62.1-255, for a beneficial use, as
 2900 defined in § 62.1-10, whichever is deeper;

2901 8. Freshwater-based drilling mud is used during drilling;

2902 9. There is no onsite disposal of drilling muds, produced contaminated fluids, waste contaminated
 2903 fluids or other contaminated fluids;

2904 10. Multiple blow-out preventers are employed; and

2905 11. The person complies with all requirements of Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1
 2906 and regulations promulgated thereunder.

2907 G. The provisions of subsection A and subdivisions F 1 and 4 through 9 shall be enforced consistent
 2908 with the requirements of Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1.

2909 H. In the event that exploration activities in Tidewater Virginia result in a finding by the Director of
 2910 the Department of Mines, Minerals and Energy that production of commercially recoverable quantities of
 2911 oil is likely and imminent, the Director of the Department of Mines, Minerals and Energy shall notify
 2912 the Secretary of Commerce and Trade and the Secretary of Natural Resources. At that time, the
 2913 Secretaries shall develop a joint report to the Governor and the General Assembly assessing the
 2914 environmental risks and safeguards; transportation issues; state-of-the-art oil production well technology;
 2915 economic impacts; regulatory initiatives; operational standards; and other matters related to the
 2916 production of oil in the region. No permits for oil production wells shall be issued until (i) the Governor
 2917 has had an opportunity to review the report and make recommendations, in the public interest, for
 2918 legislative and regulatory changes, (ii) the General Assembly, during the next upcoming regular session,
 2919 has acted on the Governor's recommendations or on its own initiatives, and (iii) any resulting legislation
 2920 has become effective. The report by the Secretaries and the Governor's recommendations shall be
 2921 completed within 18 months of the findings of the Director of the Department of Mines, Minerals and
 2922 Energy.

2923 **§ 62.1-229.4. Loans for stormwater runoff control best management practices.**

2924 Loans may be made from the Fund, in the Board's discretion, to a local government for the purpose
 2925 of constructing facilities or structures or implementing other best management practices that reduce or
 2926 prevent pollution of state waters caused by stormwater runoff from impervious surfaces. The Board, ~~in~~
 2927 ~~consultation with the Department of Conservation and Recreation,~~ shall develop guidelines for the
 2928 administration of such loans and shall determine the terms and conditions of any loan from the Fund.
 2929 Unless otherwise required by law, loans for such facilities, structures, and other best management
 2930 practices may be made only when loan requests for eligible wastewater treatment facilities designed to
 2931 meet the water quality standards established pursuant to § 62.1-44.15 have first been satisfied. The
 2932 Board shall give priority (i) first to local governments that have adopted a stormwater control program
 2933 in accordance with § 15.2-2114, (ii) second to projects designed to reduce or prevent a pollutant in a
 2934 water body where the water body is in violation of water quality standards established pursuant to
 2935 § 62.1-44.15, (iii) third to local governments subject to an MS4 discharge permit *issued by the Board* in
 2936 accordance with ~~§ 10.1-603.2:2~~ *62.1-44.15:20*, (iv) fourth to local governments that have adopted a
 2937 stormwater management program in accordance with ~~Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of~~
 2938 ~~Title 10.1~~ *the stormwater management provisions of the State Water Control Law (§ 62.1-44.2 et seq.)*,
 2939 and (v) fifth to all others.

2940 2. That Article 4 of Chapter 5 (§§ 10.1-560 through 10.1-571), Articles 1.1 and 1.1:1 (§§ 10.1-603.1
 2941 through 10.1-603.15:5) of Chapter 6, and Chapter 21 (§§ 10.1-2100 through 10.1-2115) of Title 10.1
 2942 of the Code of Virginia are repealed.

2943 3. That § 62.1-44.15:36 as created by this act shall be repealed upon the effective date of a
 2944 statewide permit fee schedule pursuant to § 10.1-603.4 by the Virginia Soil and Water
 2945 Conservation Board prior to July 1, 2013, or pursuant to § 62.1-44.15:28, as added by this act, by
 2946 the State Water Control Board on or after July 1, 2013, whichever occurs sooner.

2947 4. That the transfer of the responsibility for administering the issuance of national pollutant
 2948 discharge elimination system permits for the control of stormwater discharges shall become
 2949 effective on July 1, 2013, or upon the U.S. Environmental Protection Agency's rescission of
 2950 authorization for delegation of program authority to the Virginia Soil and Water Conservation

2951 Board, whichever occurs later.

2952 5. That upon the Governor's approval of the provisions of this act, the Department of
2953 Environmental Quality shall seek the U.S. Environmental Protection Agency's rescission of
2954 authorization for delegation of program authority to the Virginia Soil and Water Conservation
2955 Board to return delegation of program authority to the State Water Control Board for the
2956 issuance of the national pollutant discharge elimination system permits for the control of
2957 stormwater discharges for MS4 and construction activities under the federal Clean Water Act.
2958 Permits issued by the Virginia Soil and Water Conservation Board or a Virginia Erosion and
2959 Sediment Control Program authority or a Virginia Stormwater Management Program authority
2960 acting under the Virginia Soil and Water Conservation Board's authority that have not expired or
2961 been revoked or terminated before or on the program transfer date shall continue to remain in
2962 full force and effect until their specified expiration dates.

2963 6. That the regulations adopted by the Virginia Soil and Water Conservation Board to administer
2964 and implement the Virginia Stormwater Management Act (§ 10.1-603.1 et seq. of the Code of
2965 Virginia), the Erosion and Sediment Control Law (§ 10.1- 560 et seq. of the Code of Virginia), and
2966 the Chesapeake Bay Preservation Act (§ 10.1- 2100 et seq. of the Code of Virginia) are transferred
2967 from the Virginia Soil and Water Conservation Board to the State Water Control Board, and the
2968 State Water Control Board may amend, modify, or delete provisions in these regulations in order
2969 to implement this act. Such regulations shall remain in full force and effect until altered, amended,
2970 or rescinded by the State Water Control Board.

2971 7. That the initial actions of the State Water Control Board to adopt, with necessary amendments,
2972 the regulations implementing the programs being transferred by this act from the Virginia Soil
2973 and Water Conservation Board to the State Water Control Board shall be exempt from Article 2
2974 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia. After transfer of the
2975 programs, if the State Water Control Board determines that additional amendments to the
2976 regulations are necessary solely to enable implementation of the programs in accordance with this
2977 act, the regulatory actions necessary shall be exempt from Article 2 (§ 2.2-4006 et seq.) of Chapter
2978 40 of Title 2.2 of the Code of Virginia, except that the Department of Environmental Quality shall
2979 provide an opportunity for public comment on the regulatory actions.

2980 8. That any regulatory action initiated by the Virginia Soil and Water Conservation Board to
2981 amend the programs being transferred by this act may be continued by the State Water Control
2982 Board at the time of the program transfer and that the State Water Control Board shall act
2983 expeditiously to address all such actions.

2984 9. That the full-time employees employed in the administration of the programs being transferred
2985 by this act shall be transferred from the Department of Conservation and Recreation to the
2986 Department of Environmental Quality. The Department of Conservation and Recreation is
2987 directed to transfer to the Department of Environmental Quality all appropriations, including
2988 special funds, for programs identified for transfer by this act. The Department of Environmental
2989 Quality is authorized to hire additional staff to operate the programs transferred by this act.

2990 10. That guidance of the Department of Conservation and Recreation, the Virginia Soil and Water
2991 Conservation Board, and the former Chesapeake Bay Local Assistance Board relating to programs
2992 to be transferred by this act shall remain in effect until amended or repealed.