

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact §§ 10.1-2500, 15.2-2403.3, 62.1-44.3, 62.1-44.5, 62.1-44.15, 62.1-44.15:24, 62.1-44.15:25, 62.1-44.15:27, 62.1-44.15:28, 62.1-44.15:29, 62.1-44.15:30, 62.1-44.15:31, 62.1-44.15:33, 62.1-44.15:34, 62.1-44.15:35, 62.1-44.15:37, 62.1-44.15:39, 62.1-44.15:40, 62.1-44.15:41, 62.1-44.15:46, 62.1-44.15:48 through 62.1-44.15:55, 62.1-44.15:57, 62.1-44.15:58, 62.1-44.15:60, 62.1-44.15:62 through 62.1-44.15:65, 62.1-44.15:69, 62.1-44.15:74, 62.1-44.19:22, 62.1-44.22, 62.1-44.23, 62.1-44.25, 62.1-44.26, 62.1-44.29, 62.1-44.31, and 62.1-44.32 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 62.1-44.15:25.1, 62.1-44.15:27.1, 62.1-44.15:29.1, and 62.1-44.15:51.1; and to repeal §§ 62.1-44.15:26, 62.1-44.15:32, 62.1-44.15:36, 62.1-44.15:38, 62.1-44.15:42 through 62.1-44.15:45, 62.1-44.15:47, 62.1-44.15:56, 62.1-44.15:61, and 62.1-44.15:71 of the Code of Virginia, relating to State Water Control Law, Erosion and Sediment Control Law, and Chesapeake Bay Preservation Act.*

[H 1250]

Approved

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 10.1-2500, 15.2-2403.3, 62.1-44.3, 62.1-44.5, 62.1-44.15, 62.1-44.15:24, 62.1-44.15:25, 62.1-44.15:27, 62.1-44.15:28, 62.1-44.15:29, 62.1-44.15:30, 62.1-44.15:31, 62.1-44.15:33, 62.1-44.15:34, 62.1-44.15:35, 62.1-44.15:37, 62.1-44.15:39, 62.1-44.15:40, 62.1-44.15:41, 62.1-44.15:46, 62.1-44.15:48 through 62.1-44.15:55, 62.1-44.15:57, 62.1-44.15:58, 62.1-44.15:60, 62.1-44.15:62 through 62.1-44.15:65, 62.1-44.15:69, 62.1-44.15:74, 62.1-44.19:22, 62.1-44.22, 62.1-44.23, 62.1-44.25, 62.1-44.26, 62.1-44.29, 62.1-44.31, and 62.1-44.32 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 62.1-44.15:25.1, 62.1-44.15:27.1, 62.1-44.15:29.1, and 62.1-44.15:51.1 as follows:**

**§ 10.1-2500. Virginia Environmental Emergency Response Fund established.**

A. There is hereby established the Virginia Environmental Emergency Response Fund, hereafter referred to as the Fund, to be used (i) for the purpose of emergency response to environmental pollution incidents and for the development and implementation of corrective actions for pollution incidents, other than pollution incidents addressed through the Virginia Underground Petroleum Storage Tank Fund, as described in § 62.1-44.34:11 of the State Water Control Law; (ii) to conduct assessments of potential sources of toxic contamination in accordance with the policy developed pursuant to § 62.1-44.19:10; and (iii) to assist small businesses for the purposes described in § 10.1-1197.3.

B. The Fund shall be a nonlapsing revolving fund consisting of grants, general funds, and other such moneys as appropriated by the General Assembly, and moneys received by the State Treasurer for:

1. Noncompliance penalties assessed pursuant to § 10.1-1311, civil penalties assessed pursuant to subsection B of § 10.1-1316, and civil charges assessed pursuant to subsection C of § 10.1-1316.

2. Civil penalties assessed pursuant to subsection C of § 10.1-1418.1, civil penalties assessed pursuant to subsections A and E of § 10.1-1455, and civil charges assessed pursuant to subsection F of § 10.1-1455.

3. Civil charges assessed pursuant to subdivision 8d (8d) of § 62.1-44.15 and civil penalties assessed pursuant to subsection (a) of § 62.1-44.32, excluding assessments made for violations of Article 2.3 (§ 62.1-44.15:24 *et seq.*), 2.4 (§ 62.1-44.15:51 *et seq.*), 2.5 (§ 62.1-44.15:67 *et seq.*), 9 (§ 62.1-44.34:8 *et seq.*), or 10 (§ 62.1-44.34:10 *et seq.*), of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.

4. Civil penalties and civil charges assessed pursuant to § 62.1-270.

5. Civil penalties assessed pursuant to subsection A of § 62.1-252 and civil charges assessed pursuant to subsection B of § 62.1-252.

6. Civil penalties assessed in conjunction with special orders by the Director pursuant to § 10.1-1186 and by the Waste Management Board pursuant to subsection G of § 10.1-1455.

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

Any town located within a stormwater service district created pursuant to this chapter shall be entitled to any revenues collected within the town pursuant to subdivision 6 of § 15.2-2403, subject to the limitations set forth therein, so long as the town maintains its own ~~MS4 permit issued pursuant to § 62.1-44.15:26~~ *municipal separate storm sewer system (MS4) permit issued by the State Water Control Board* or maintains its own stormwater service district.

**§ 62.1-44.3. Definitions.**

Unless a different meaning is required by the context, the following terms as used in this chapter

57 shall have the meanings hereinafter respectively ascribed to them:

58 "Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are  
 59 not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste  
 60 assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows  
 61 for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection  
 62 of fish and wildlife resources and habitat, recreation, cultural and aesthetic values is an instream  
 63 beneficial use of Virginia's waters. Offstream beneficial uses include, but are not limited to, domestic  
 64 (including public water supply), agricultural uses, electric power generation, commercial, and industrial  
 65 uses.

66 "Board" means the State Water Control Board.

67 "Certificate" means any certificate or permit issued by the Board.

68 "Department" means the Department of Environmental Quality.

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

70 "Establishment" means any industrial establishment, mill, factory, tannery, paper or pulp mill, mine,  
 71 coal mine, colliery, breaker or coal-processing operations, quarry, oil refinery, boat, vessel, and every  
 72 other industry or plant or works the operation of which produces industrial wastes or other wastes or  
 73 which may otherwise alter the physical, chemical or biological properties of any state waters.

74 "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.

75 "Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture,  
 76 trade, or business or from the development of any natural resources.

77 "*Land-disturbance approval*" means an approval allowing a land-disturbing activity to commence  
 78 issued by (i) a Virginia Erosion and Stormwater Management Program authority after the requirements  
 79 of § 62.1-44.15:34 have been met or (ii) a Virginia Erosion and Sediment Control Program authority  
 80 after the requirements of § 62.1-44.15:55 have been met.

81 "The law" or "this law" means the law contained in this chapter as now existing or hereafter  
 82 amended.

83 "Member" means a member of the Board.

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

87 1. Owned or operated by a federal entity, state, city, town, county, district, association, or other  
 88 public body, created by or pursuant to state law, having jurisdiction over disposal of sewage, industrial  
 89 wastes, stormwater, or other wastes, including a special district under state law such as a sewer district,  
 90 flood control district, drainage district or similar entity, or a designated and approved management  
 91 agency under § 208 of the federal Clean Water Act (33 U.S.C. § 1251 et seq.) that discharges to surface  
 92 waters;

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

94 3. Not a combined sewer; and

95 4. Not part of a publicly owned treatment works.

96 "Normal agricultural activities" means those activities defined as an agricultural operation in  
 97 § 3.2-300 and any activity that is conducted as part of or in furtherance of such agricultural operation  
 98 but shall not include any activity for which a permit would have been required as of January 1, 1997,  
 99 under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

100 "Normal silvicultural activities" means any silvicultural activity as defined in § 10.1-1181.1 and any  
 101 activity that is conducted as part of or in furtherance of such silvicultural activity but shall not include  
 102 any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C.  
 103 § 1344 or any regulations promulgated pursuant thereto.

104 "Other wastes" means decayed wood, sawdust, shavings, bark, lime, garbage, refuse, ashes, offal, tar,  
 105 oil, chemicals, and all other substances except industrial wastes and sewage which may cause pollution  
 106 in any state waters.

107 "Owner" means the Commonwealth or any of its political subdivisions, including but not limited to  
 108 sanitation district commissions and authorities and any public or private institution, corporation,  
 109 association, firm, or company organized or existing under the laws of this or any other state or country,  
 110 or any officer or agency of the United States, or any person or group of persons acting individually or  
 111 as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for  
 112 any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any  
 113 facility or operation that has the capability to alter the physical, chemical, or biological properties of  
 114 state waters in contravention of § 62.1-44.5.

115 "Person" means an individual, corporation, partnership, association, governmental body, municipal  
 116 corporation, or any other legal entity.

117 "Policies" means policies established under subdivisions (3a) and (3b) of § 62.1-44.15.

"Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution" for the terms and purposes of this chapter.

"Pretreatment requirements" means any requirements arising under the Board's pretreatment regulations including the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the owner of a publicly owned treatment works; or any reporting requirements imposed by the owner of a publicly owned treatment works or by the regulations of the Board.

"Pretreatment standards" means any standards of performance or other requirements imposed by regulation of the Board upon an industrial user of a publicly owned treatment works.

"Reclaimed water" means water resulting from the treatment of domestic, municipal, or industrial wastewater that is suitable for a direct beneficial or controlled use that would not otherwise occur. Specifically excluded from this definition is "gray water."

"Reclamation" means the treatment of domestic, municipal, or industrial wastewater or sewage to produce reclaimed water for a direct beneficial or controlled use that would not otherwise occur.

"Regulation" means a regulation issued under *subdivision (10) of § 62.1-44.15* ~~(10)~~.

"Reuse" means the use of reclaimed water for a direct beneficial use or a controlled use that is in accordance with the requirements of the Board.

"Rule" means a rule adopted by the Board to regulate the procedure of the Board pursuant to *subdivision (7) of § 62.1-44.15* ~~(7)~~.

"Ruling" means a ruling issued under *subdivision (9) of § 62.1-44.15* ~~(9)~~.

"Sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes and underground, surface, storm, or other water as may be present.

"Sewage treatment works" or "treatment works" means any device or system used in the storage, treatment, disposal, or reclamation of sewage or combinations of sewage and industrial wastes, including but not limited to pumping, power, and other equipment, and appurtenances, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for the ultimate disposal of residues or effluent resulting from such treatment. These terms shall not include onsite sewage systems or alternative discharging sewage systems.

"Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other construction, devices, and appliances appurtenant thereto, used for conducting sewage or industrial wastes or other wastes to a point of ultimate disposal.

"Special order" means a special order issued under subdivisions (8a), (8b), and (8c) of § 62.1-44.15.

"Standards" means standards established under subdivisions (3a) and (3b) of § 62.1-44.15.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

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

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

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

2. Excavate in a wetland;

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

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

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

b. Filling or dumping;

c. Permanent flooding or impounding; or

d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.; *or*

5. Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land disturbing activities.

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

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

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

(1) [Repealed.]

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

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

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

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

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

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

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

(5) To issue, revoke, or amend certificates *and land-disturbance approvals* under prescribed conditions for: (a) the discharge of sewage, *stormwater*, industrial wastes, and other wastes into or adjacent to state waters; (b) the alteration otherwise of the physical, chemical, or biological properties of state waters; (c) excavation in a wetland; or (d) on and after October 1, 2001, the conduct of the following activities in a wetland: (i) new activities to cause draining that significantly alters or degrades

existing wetland acreage or functions, (ii) filling or dumping, (iii) permanent flooding or impounding, or (iv) new activities that cause significant alteration or degradation of existing wetland acreage or functions. However, to the extent allowed by federal law, any person holding a certificate issued by the Board that is intending to upgrade the permitted facility by installing technology, control equipment, or other apparatus that the permittee demonstrates to the satisfaction of the Director will result in improved energy efficiency, reduction in the amount of nutrients discharged, and improved water quality shall not be required to obtain a new, modified, or amended permit. The permit holder shall provide the demonstration anticipated by this subdivision to the Department no later than 30 days prior to commencing construction.

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

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

1. The owner has violated any regulation or order of the Board, any condition of a certificate *or land-disturbance approval*, any provision of this chapter, or any order of a court, where such violation results in a release of harmful substances into the environment ~~or~~, poses a substantial threat of release of harmful substances into the environment, *causes unreasonable property degradation*, or presents a hazard to human health or the violation is representative of a pattern of serious or repeated violations which, in the opinion of the Board, demonstrates the owner's disregard for or inability to comply with applicable laws, regulations, or requirements;

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

3. The activity for which the certificate *or land-disturbance approval* was issued endangers human health or the environment *or causes unreasonable property degradation* and can be regulated to acceptable levels *or practices* by amendment or revocation of the certificate *or land-disturbance approval*; or

4. There exists a material change in the basis on which the *certificate, land-disturbance approval, or permit* was issued that requires either a temporary or a permanent reduction or elimination of any discharge *or land-disturbing activity* controlled by the certificate, *land-disturbance approval, or permit* necessary to protect human health or the environment *or stop or prevent unreasonable degradation of property*.

(5c) Any certificate issued by the Board under this chapter relating to dredging projects governed under Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 may be conditioned upon a demonstration of financial responsibility for the completion of compensatory mitigation requirements. Financial responsibility may be demonstrated by a letter of credit, a certificate of deposit, or a performance bond executed in a form approved by the Board. If the U.S. Army Corps of Engineers requires demonstration of financial responsibility for the completion of compensatory mitigation required for a particular project, then the mechanism and amount approved by the U.S. Army Corps of Engineers shall be used to meet this requirement.

(6) To make investigations and inspections, to ensure compliance with *the conditions of* any certificates, *land-disturbance approvals*, standards, policies, rules, regulations, rulings, and ~~special~~ orders ~~which~~ that it may adopt, issue, or establish, and to furnish advice, recommendations, or instructions for the purpose of obtaining such compliance. In recognition of §§ 32.1-164 and 62.1-44.18, the Board and the State Department of Health shall enter into a memorandum of understanding establishing a common format to consolidate and simplify inspections of sewage treatment plants and coordinate the scheduling of the inspections. The new format shall ensure that all sewage treatment plants are inspected at

appropriate intervals in order to protect water quality and public health and at the same time avoid any unnecessary administrative burden on those being inspected.

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

(8a) Except as otherwise provided in ~~Articles 2.4 (§ 62.1-44.15:51 et seq.) and 2.5 (§ 62.1-44.15:67 et seq.)~~ *subdivision (19) and Article 2.3 (§ 62.1-44.15:24 et seq.)*, to issue special orders to owners ~~(i), including owners as defined in § 62.1-44.15:24, who (i) are permitting or causing the pollution, as defined by § 62.1-44.3, of state waters or the unreasonable degradation of property to cease and desist from such pollution or degradation, (ii) who have failed to construct facilities in accordance with final approved plans and specifications to construct such facilities in accordance with final approved plans and specifications, (iii) who have violated the terms and provisions of a certificate or land-disturbance approval issued by the Board to comply with such terms and provisions, (iv) who have failed to comply with a directive from the Board to comply with such directive, (v) who have contravened duly adopted and promulgated water quality standards and policies to cease and desist from such contravention and to comply with such water quality standards and policies, (vi) who have violated the terms and provisions of a pretreatment permit issued by the Board or by the owner of a publicly owned treatment works to comply with such terms and provisions, or (vii) who have contravened any applicable pretreatment standard or requirement to comply with such standard or requirement; and also to issue such orders to require any owner to comply with the provisions of this chapter and any decision of the Board. Except as otherwise provided by a separate article, orders issued pursuant to this subsection subdivision may include civil penalties of up to \$32,500 per violation, not to exceed \$100,000 per order. The Board may assess penalties under this subsection subdivision if (a) the person has been issued at least two written notices of alleged violation by the Department for the same or substantially related violations at the same site, (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by the Board or the Director, or by other means, (c) at least 130 days have passed since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations have occurred after a hearing conducted in accordance with subdivision (8b). The actual amount of any penalty assessed shall be based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty. The Board shall provide the person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this subsection subdivision. The issuance of a notice of alleged violation by the Department shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific provision of law violated, and information on the process for obtaining a final decision or fact finding from the Department on whether or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a determination. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.), except that civil penalties assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or Article 11 (§ 62.1-44.34:14 et seq.) shall be paid into the Virginia Petroleum Storage Tank Fund in accordance with § 62.1-44.34:11, and except that civil penalties assessed for violations of *subdivision (19) or Article 2.3 (§ 62.1-44.15:24 et seq.)* shall be paid *into the Stormwater Local Assistance Fund* in accordance with the provisions of § 62.1-44.15:48 *62.1-44.15:29.1*.~~

(8b) Such special orders are to be issued only after a hearing before a hearing officer appointed by the Supreme Court in accordance with § 2.2-4020 or, if requested by the person, before a quorum of the Board with at least 30 days' notice to the affected owners, of the time, place, and purpose thereof, and they shall become effective not less than 15 days after service as provided in § 62.1-44.12; provided that if the Board finds that any such owner is grossly affecting or presents an imminent and substantial danger to (i) the public health, safety, or welfare, or the health of animals, fish, or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural, or other reasonable uses, it may issue, without advance notice or hearing, an emergency special order directing the owner to cease such pollution or discharge immediately, and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof to the owner, to affirm, modify, amend, or cancel such emergency special order. If an owner who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board may proceed in accordance with § 62.1-44.23, and where the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires cessation of a discharge, the Board shall provide an opportunity for a hearing within 48 hours of the issuance of the injunction.

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

(8d) ~~With~~ *Except as otherwise provided in subdivision (19), subdivision 2 of § 62.1-44.15:25, or § 62.1-44.15:63, with the consent of any owner who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any condition of a certificate, land-disturbance approval, or permit, or any provision of this chapter, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums not to exceed the limit specified in subsection (a) of § 62.1-44.32 (a).* Such civil charges shall be instead of any appropriate civil penalty which could be imposed under *subsection (a) of § 62.1-44.32 (a)* and shall not be subject to the provisions of § 2.2-514. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.), excluding civil charges assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et seq.) of Chapter 3.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles, or civil charges assessed for violations of Article 2.3 (§ 62.1-44.15:24 et seq.); *or 2.5 (§ 62.1-44.15:67 et seq.)* or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under ~~that article~~ *Article 2.3 or 2.5.*

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

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

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

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

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

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

(a) Whenever the Board shall determine that any owner, whether or not he shall have been issued a certificate for discharge of waste, has discharged sewage, industrial waste, or other waste into state waters in such quantity, concentration, or manner that fish are killed as a result thereof, it may effect such settlement with the owner as will cover the costs incurred by the Board and by the Department of Game and Inland Fisheries in investigating such killing of fish, plus the replacement value of the fish destroyed, or as it deems proper, and if no such settlement is reached within a reasonable time, the Board shall authorize its executive secretary to bring a civil action in the name of the Board to recover from the owner such costs and value, plus any court or other legal costs incurred in connection with such action.

(b) If the owner is a political subdivision of the Commonwealth, the action may be brought in any

circuit court within the territory embraced by such political subdivision. If the owner is an establishment, as defined in this chapter, the action shall be brought in the circuit court of the city or the circuit court of the county in which such establishment is located. If the owner is an individual or group of individuals, the action shall be brought in the circuit court of the city or circuit court of the county in which such person or any of them reside.

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

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

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

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

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

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

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

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

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

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

(18) To be the lead agency for the Commonwealth's nonpoint source pollution management program,



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

(19) To review for compliance with the provisions of this chapter the Virginia Erosion and Stormwater Management Programs adopted by localities pursuant to § 62.1-44.15:27, the Virginia Erosion and Sediment Control Programs adopted by localities pursuant to subdivision B 3 of § 62.1-44.15:27, and the programs adopted by localities pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). The Board shall develop and implement a schedule for conducting such program reviews as often as necessary but at least once every five years. Following the completion of a compliance review in which deficiencies are found, the Board shall establish a schedule for the locality to follow in correcting the deficiencies and bringing its program into compliance. If the locality fails to bring its program into compliance in accordance with the compliance schedule, then the Board is authorized to (i) issue a special order to any locality imposing a civil penalty not to exceed \$5,000 per violation with the maximum amount not to exceed \$50,000 per order for noncompliance with the state program, to be paid into the state treasury and deposited in the Stormwater Local Assistance Fund established in § 62.1-44.15:29.1 or (ii) with the consent of the locality, provide in an order issued against the locality for the payment of civil charges for violations in lieu of civil penalties, in specific sums not to exceed the limit stated in this subdivision. Such civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subsection (a) of § 62.1-44.32 and shall not be subject to the provisions of § 2.2-514. The Board shall not delegate to the Department its authority to issue special orders pursuant to clause (i). In lieu of issuing an order, the Board is authorized to take legal action against a locality pursuant to § 62.1-44.23 to ensure compliance.

#### Article 2.3.

#### Virginia Erosion and Stormwater Management Act (VESMA).

#### § 62.1-44.15:24. Definitions.

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

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

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

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

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

"Department" means the Department of Environmental Quality.

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

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

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

"Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that ~~potentially changes~~ may result in soil erosion or has the potential to change its runoff characteristics, including construction activity such as the clearing, grading, or excavation, ~~except that the term shall not~~

include those exemptions specified in § 62.1-44.15:34 excavating, or filling of land.

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

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

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

2. Designed or used for collecting or conveying stormwater;

3. That is not a combined sewer; and

4. That is not part of a publicly owned treatment works the same as that term is defined in § 62.1-44.3.

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

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

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

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

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

"Permit" or "VSMP authority permit" means an approval to conduct a land-disturbing activity issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of state VSMP general permit coverage has been provided where applicable a Virginia Pollutant Discharge Elimination System (VPDES) permit issued by the Board pursuant to § 62.1-44.15 for stormwater discharges from a land-disturbing activity or MS4.

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

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

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

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

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

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

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

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

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the Board that is established by a VESCP authority pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.) for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters,

and other natural resources. The VESCP shall include, where applicable, such items as local ordinances, rules, policies and guidelines, technical materials, and requirements for plan review, inspection, and evaluation consistent with the requirements of Article 2.4 (§ 62.1-44.15:51 et seq.).

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

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

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

"Virginia Stormwater Management Program" or "VSMP" means a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority the Board pursuant to § 62.1-44.15:27.1 on behalf of a locality on or after July 1, 2014, to manage the quality and quantity of runoff resulting from any land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or more of land disturbance.

"Virginia Stormwater Management Program authority" or "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a Virginia Stormwater Management Program or the Department. An authority may include a locality; state entity, including the Department; federal entity; or, for linear projects subject to annual standards and specifications in accordance with subsection B of § 62.1-44.15:31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 when administering a VSMP on behalf of a locality that, pursuant to subdivision B 3 of § 62.1-44.15:27, has chosen not to adopt and administer a VESMP.

"Water quality volume" means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project technical criteria" means standards set forth in regulations adopted pursuant to this article that establish minimum design criteria for measures to control nonpoint source pollution.

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

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

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

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

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

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

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

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

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

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

d. There exists a material change in the basis on which the state permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge or land-disturbing activity controlled by the state permit necessary to prevent unreasonable degradation of properties, water quality, stream channels, and other natural resources.

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

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

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

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

(8a) or (8b) of § 62.1-44.15 to any owner subject to requirements under this article, except that for any land-disturbing activity that disturbs an area measuring not less than 10,000 square feet but less than one acre in an area of a locality that is not designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and that is not part of a larger common plan of development or sale that disturbs one acre or more of land, such special orders may include civil penalties of up to \$5,000 per violation, not to exceed \$50,000 per order. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to § 62.1-44.15:29.1.

The provisions of this section notwithstanding, the Board may proceed directly under § 62.1-44.15:48 or Article 5 (§ 62.1-44.20 et seq.) for any past violation or violations of any provision of this article or any regulation duly adopted hereunder.

2. With the consent of any person owner subject to state or VSMP authority permit requirements under this article who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any order, notice, or requirement of the Department or VSMP authority, any condition of a state or VSMP authority permit, or any provision of this article, the Board may provide, in an order issued by the Board pursuant to subdivision (8d) of § 62.1-44.15 against such person owner, for the payment of civil charges for violations in specific sums. Such sums shall not to exceed the limit specified in subsection A subdivision A 1 or B 1, as applicable, of § 62.1-44.15:48. Such civil charges shall be collected in lieu of any appropriate civil penalty that could be imposed pursuant to subsection A of § 62.1-44.15:48 and shall not be subject to the provisions of § 2.2-514. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Local Assistance Fund established pursuant to § 62.1-44.15:29 62.1-44.15:29.1.

**§ 62.1-44.15:25.1. Additional local authority.**

Any locality serving as a VESMP authority shall have the authority to:

1. Issue orders in accordance with the procedures of subdivision 10 a of § 15.2-2122 to any owner subject to the requirements of this article. Such orders may include civil penalties in specific sums not to exceed the limit specified in subdivision A 2 or B 2, as applicable, of § 62.1-44.15:48, and such civil penalties shall be paid into the treasury of the locality in accordance with subdivision A 2 of § 62.1-44.15:48. The provisions of this section notwithstanding, the locality may proceed directly under § 62.1-44.15:48 for any past violation or violations of any provision of this article or any ordinance duly adopted hereunder.

2. Issue consent orders with the consent of any person who has violated or failed, neglected, or refused to obey any ordinance adopted pursuant to the provisions of this article, any condition of a locality's land-disturbance approval, or any order of a locality serving as a VESMP. Such consent order may provide for the payment of civil charges not to exceed the limits specified in subdivision A 2 or B 2, as applicable, of § 62.1-44.15:48. Such civil charges shall be in lieu of any appropriate civil penalty that could be imposed under this article. Any civil charges collected shall be paid to the treasury of the locality in accordance with subdivision A 2 of § 62.1-44.15:48.

**§ 62.1-44.15:27. Virginia Programs for Erosion Control and Stormwater Management.**

A. Any locality that operates a regulated MS4 or that notifies the Department of its decision to participate in the establishment of a VSMP administers a Virginia Stormwater Management Program (VSMP) as of July 1, 2017, shall be required to adopt a VSMP for land-disturbing activities and administer a VESMP consistent with the provisions of this article according to a schedule set by the Department. Such schedule shall require implementation no later than July 1, 2014. Thereafter, the Department shall provide an annual schedule by which localities can submit applications to implement a VSMP. Localities subject to this subsection are authorized to coordinate plan review and inspections with other entities in accordance with subsection H. The Department shall operate a VSMP on behalf of any that regulates any land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). The VESMP shall be adopted according to a process established by the Department.

B. Any locality that does not operate a regulated MS4 and that does not for which the Department administers a VSMP as of July 1, 2017, shall choose one of the following options and shall notify the Department, of its choice according to a schedule set process established by the Department, of its decision to participate in the establishment of a VSMP. A locality that decides not to establish a VSMP shall still comply:

1. Adopt and administer a VESMP consistent with the requirements set forth in provisions of this article and attendant regulations as required to satisfy the stormwater flow rate capacity and velocity requirements set forth in the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.). A locality that is subject to the provisions of that regulates any land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a

Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.);

2. Adopt and administer a VESMP consistent with the provisions of this article that regulates any land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.), except that the Department shall provide the locality with review of the plan required by § 62.1-44.15:34 and provide a recommendation to the locality on the plan's compliance with the water quality and water quantity technical criteria; or

3. Adopt and administer a VESCP pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.) that regulates any land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). For such a land-disturbing activity in a Chesapeake Bay Preservation Area, the VESCP authority also shall adopt requirements set forth in this article and attendant regulations as required to regulate Chesapeake Bay Preservation Act land-disturbing those activities in accordance with §§ 62.1-44.15:28 and 62.1-44.15:34.

Notwithstanding any other provision of this subsection, any county that operates an MS4 that became a regulated MS4 on or after January 1, 2014 may elect, on a schedule set by the Department, to defer the implementation of the county's VSMP until no later than January 1, 2015. During this deferral period, when such county thus lacks the legal authority to operate a VSMP, the Department shall operate a VSMP on behalf of the county and address post-construction stormwater runoff and the required design criteria for stormwater runoff controls. Any such county electing to defer the establishment of its VSMP shall still comply with the requirements set forth in this article and attendant regulations as required to satisfy the stormwater flow rate capacity and velocity requirements set forth in the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.).

B. The Board shall administer a VSMP on behalf of each VESCP authority for any land-disturbing activity that (a) disturbs one acre or more of land or (b) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or greater of land disturbance.

C. Any town that is required to or elects to adopt and administer a VESMP or VESCP, as applicable, may choose one of the following options and shall notify the Department of its choice according to a process established by the Department:

1. Any town, including a town that operates a regulated MS4, lying within a county that has adopted a VSMP in accordance with subsection A may decide, but shall not be required, may enter into an agreement with the county to become subject to the county's VSMP. Any VESMP. If a town lying lies within a the boundaries of more than one county, it may enter into an agreement with any of those counties that operates an MS4 that became a regulated MS4 on or after January 1, 2014 may elect a VESMP.

2. Any town that chooses not to adopt and administer a VESMP pursuant to subdivision B 3 and that lies within a county may enter into an agreement with the county to become subject to the county's VSMP according to the deferred schedule established in subsection A. During the county's deferral period, the Department shall operate a VSMP on behalf of the town and address post-construction stormwater runoff and the required design criteria for stormwater runoff controls for the town as provided in subsection A VESMP or VESCP, as applicable. If a town lies within the boundaries of more than one county, the town shall be considered to be wholly within the county in which the larger portion of the town lies. Towns shall inform the Department of their decision according to a schedule established by the Department. Thereafter, the Department shall provide an annual schedule by which towns can submit applications to adopt a VSMP it may enter into an agreement with any of those counties.

3. Any town that is subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) may enter into an agreement with a county pursuant to subdivision C 1 or 2 only if the county administers a VESMP for land-disturbing activities that disturb 2,500 square feet or more.

D. Any locality that chooses not to implement a VESMP pursuant to subdivision B 3 may notify the Department at any time that it has chosen to implement a VESMP pursuant to subdivision B 1 or 2. Any locality that chooses to implement a VESMP pursuant to subdivision B 2 may notify the Department at any time that it has chosen to implement a VESMP pursuant to subdivision B 1. A locality may petition the Board at any time for approval to change from fully administering a VESMP pursuant to subdivision B 1 to administering a VESMP in coordination with the Department pursuant to subdivision B 2 due to a significant change in economic conditions or other fiscal emergency in the locality. The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall govern any appeal of the Board's decision.

E. In support of VSMP VESMP authorities, the Department shall:

1. Provide assistance grants to localities not currently operating a local stormwater management

program to help the localities to establish their VSMP.

2. Provide *provide* technical assistance and training.

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

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

E. G. Each locality that administers an approved VSMP *that operates a regulated MS4 or that chooses to administer a VESMP* shall, by ordinance, establish a VSMP *VESMP* that shall be administered in conjunction with a local MS4 program and a local erosion and sediment control program if required pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) *management program, if applicable, and which shall include the following:*

1. *Consistency Ordinances, policies, and technical materials consistent with regulations adopted in accordance with provisions of this article;*

2. *Requirements for land-disturbance approvals;*

3. *Requirements for plan review, inspection, and enforcement consistent with the requirements of this article, including provisions requiring periodic inspections of the installation of stormwater management measures. A VESMP authority may require monitoring and reports from the person responsible for meeting the permit conditions to ensure compliance with the permit and to determine whether the measures required in the permit provide effective stormwater management;*

4. *Provisions charging each applicant a reasonable fee to defray the cost of program administration for a regulated land-disturbing activity that does not require permit coverage. Such fee may be in addition to any fee charged pursuant to the statewide fee schedule established in accordance with subdivision 9 of § 62.1-44.15:28, although payment of fees may be consolidated in order to provide greater convenience and efficiency for those responsible for compliance with the program. A VESMP authority shall hold a public hearing prior to establishing such fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VESMP authority's expense involved;*

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

3. 6. Provisions for the integration of the VSMP with local erosion and sediment control, coordination of the VESMP with flood insurance, flood plain management, and other programs requiring compliance prior to authorizing ~~construction~~ *land disturbance* in order to make the submission and approval of plans, issuance of ~~permits~~ *land-disturbance approvals*, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

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

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

H. A VSMP *The Board shall approve a VESMP when it deems a program consistent with this article and associated regulations.*

I. A VESMP authority may enter into agreements or contracts with *the Department*, soil and water conservation districts, adjacent localities, *planning district commissions*, or other public or private entities to carry out or assist with the responsibilities of this article *plan review and inspections.*

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

J. Upon the development of an online reporting system by the Department, but no later than July 1,



2014, a VSMP A VESMP authority shall then be required to obtain evidence of state VSMP permit coverage where it from the Department's online reporting system, where such coverage is required, prior to providing land-disturbance approval to begin land disturbance.

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

L. All VSMP authorities shall comply with the provisions of this article and the stormwater management provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and related regulations. The VSMP VESMP authority responsible for regulating the land-disturbing activity shall require compliance with the issued permit, permit its applicable ordinances and the conditions, of its land-disturbance approval and plan specifications. The state Board shall enforce state permits and require compliance with its applicable regulations, including when serving as a VSMP authority in a locality that chose not to adopt a VESMP in accordance with subdivision B 3.

**§ 62.1-44.15:27.1. Virginia Stormwater Management Programs administered by the Board.**

A. The Board shall administer a Virginia Stormwater Management Program (VSMP) on behalf of any locality that notifies the Department pursuant to subsection B of § 62.1-44.15:27 that it has chosen to not administer a VESMP as provided by subdivision B 3 of § 62.1-44.15:27. In such a locality:

1. The Board shall implement a VSMP in order to manage the quality and quantity of stormwater runoff resulting from any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or greater of land disturbance, as required by this article.

2. No person shall conduct a land-disturbing activity until he has obtained land-disturbance approval from the VESCP authority and, if required, submitted to the Department an application that includes a permit registration statement and stormwater management plan, and the Department has issued permit coverage.

B. The Board shall adopt regulations establishing specifications for the VSMP, including permit requirements and requirements for plan review, inspection, and enforcement that reflect the analogous stormwater management requirements for a VESMP set forth in applicable provisions of this article.

**§ 62.1-44.15:28. Development of regulations.**

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

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

2. Establish minimum design criteria for measures to control nonpoint source pollution and localized flooding, and incorporate the stormwater management regulations adopted pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), as they relate to the prevention of stream channel erosion standards of effectiveness of the VESMP and criteria and procedures for reviewing and evaluating its effectiveness. The minimum standards of program effectiveness established by the Board shall provide that (i) no soil erosion control and stormwater management plan shall be approved until it is reviewed by a plan reviewer certified pursuant to § 62.1-44.15:30, (ii) each inspection of a land-disturbing activity shall be conducted by an inspector certified pursuant to § 62.1-44.15:30, and (iii) each VESMP shall contain a program administrator, a plan reviewer, and an inspector, each of whom is certified pursuant to § 62.1-44.15:30 and all of whom may be the same person;

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

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

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

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

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

8. Require as a minimum the inclusion in VSMPs VESMPs of certain administrative procedures



that include, but are not limited to, specifying the time period within which a ~~VSMP~~ *VESMP* authority shall grant ~~land-disturbing activity~~ *land-disturbance* approval, the conditions and processes under which *such* approval shall be granted, the procedures for communicating disapproval, the conditions under which an approval may be changed, and requirements for inspection of approved projects;

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

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

b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department or other supporting revenue from a ~~VSMP~~ *VESMP*; however, the fees shall be set at a level sufficient for the Department, *the Board*, and the ~~VSMP~~ *VESMP* to fully carry out their responsibilities under this article and its attendant ~~regulations~~ and local ordinances or standards and specifications where applicable. When establishing a ~~VSMP~~, the ~~VSMP~~ *VESMP*, *the* *VESMP* authority shall assess the statewide fee *fees pursuant to the* schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in the regulations as available to the Department for program oversight responsibilities pursuant to subdivision 5 a. A ~~VSMP's~~ *VESMP's* portion of the fees shall be used solely to carry out the ~~VSMP's~~ *VESMP's* responsibilities under this article and its attendant ~~regulations, associated ordinances; or annual standards and specifications;~~

c. Until July 1, 2014, the fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the Board, or where the Board has issued an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities for an entity for which it has approved annual standards and specifications, shall be \$750 for each large construction activity with sites or common plans of development equal to or greater than five acres and \$450 for each small construction activity with sites or common plans of development equal to or greater than one acre and less than five acres. On and after July 1, 2014, such fees shall only apply where coverage has been issued under the Board's General Permit for Discharges of Stormwater from Construction Activities to a state agency or federal entity for which it has approved annual standards and specifications. After establishment, such fees may be modified in the future through regulatory actions.

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

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

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

6. Establish statewide standards for stormwater management from ~~land-disturbing activities of one acre or greater, except as specified otherwise within this article, and allow for the consolidation in the permit of a comprehensive approach to addressing stormwater management and erosion and sediment control, consistent with the provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.)~~ and this article. However, such standards shall also apply to ~~land-disturbing activity exceeding an~~

area of 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations;

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

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

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

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

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

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

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

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

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

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

16. 16. Establish procedures to be followed when a locality that operates a VSMP wishes to transfer administration of the VSMP to the Department chooses to change the type of program it administers pursuant to subsection D of § 62.1-44.15:27;

17. 17. Establish a statewide permit fee schedule for stormwater management related to municipal separate storm sewer system MS4 permits; and

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

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

#### § 62.1-44.15:29. Virginia Stormwater Management Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia

Stormwater Management Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys collected by the Department pursuant to §§ 62.1-44.15:28, 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 paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of carrying out the Department's responsibilities under this article. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

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

**§ 62.1-44.15:29.1. Stormwater Local Assistance Fund.**

A. The State Comptroller shall continue in the state treasury the Stormwater Local Assistance Fund (the Fund) established by Chapter 806 of the Acts of Assembly of 2013, which shall be administered by the Department. All civil penalties and civil charges collected by the Board pursuant to §§ 62.1-44.15:25, 62.1-44.15:48, 62.1-44.15:63, and 62.1-44.15:74, subdivision (19) of § 62.1-44.15, and § 62.1-44.19:22 shall be paid into the state treasury and credited to the Fund, together with such other funds as may be made available to the Fund, which shall also receive bond proceeds from bonds authorized by the General Assembly, sums appropriated to it by the General Assembly, and other grants, gifts, and moneys as may be made available to it from any other source, public or private. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

B. The purpose of the Fund is to provide matching grants to local governments for the planning, design, and implementation of stormwater best management practices that address cost efficiency and commitments related to reducing water quality pollutant loads. Moneys in the Fund shall be used to meet (i) obligations related to the Chesapeake Bay total maximum daily load (TMDL) requirements, (ii) requirements for local impaired stream TMDLs, (iii) water quality measures of the Chesapeake Bay Watershed Implementation Plan, and (iv) water quality requirements related to the permitting of small municipal separate storm sewer systems. The grants shall be used solely for stormwater capital projects, including (a) new stormwater best management practices, (b) stormwater best management practice retrofitting or maintenance, (c) stream restoration, (d) low-impact development projects, (e) buffer restoration, (f) pond retrofitting, and (g) wetlands restoration. Such grants shall be made in accordance with eligibility determinations made by the Department pursuant to criteria established by the Board.

C. Moneys in the Fund shall be used solely for the purpose set forth herein and disbursements from it shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

**§ 62.1-44.15:30. Training and certification.**

A. The Board shall issue ~~certificates of competence~~ separate or combined certifications concerning the content and application of specified subject areas of this article and accompanying regulations, including program administration, plan review, and project inspection, to personnel of VSMP authorities and to any other persons who have completed training programs or in other ways demonstrated adequate knowledge to the satisfaction of the Board. As part of The Board also shall issue a Responsible Land Disturber certificate to personnel and contractors who have demonstrated adequate knowledge to the satisfaction of the Board.

B. The Department shall administer education and training programs authorized pursuant to subsection E of § 62.1-44.15:52, the Department shall develop or certify expanded components to address program administration, plan review, and project inspection elements for specified subject areas of this article and attendant regulations. Reasonable and is authorized to charge persons attending such programs reasonable fees to cover the costs of these additional components may be charged administering the programs.

B. Effective July 1, 2014, personnel C. Personnel of VSMP or VESMP authorities who are administering programs, reviewing plans, or conducting inspections pursuant to this chapter article shall hold a ~~certificate of competence~~ certification in the appropriate subject area as provided in subsection A. This requirement shall not apply to third-party individuals who prepare and submit plans to a VESMP or VSMP authority.

D. The Department shall establish procedures and requirements for issuance and periodic renewal of certifications.

E. Professionals registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 shall be deemed to have met the provisions of this section for the purposes of renewals of such certifications.

**§ 62.1-44.15:31. Standards and specifications for state agencies, federal entities, and other specified entities.**

A. State entities, including the Department of Transportation, and for linear projects set out in subsection B, *As an alternative to submitting soil erosion control and stormwater management plans for its land-disturbing activities pursuant to § 62.1-44.15:34, the Virginia Department of Transportation shall, and any other state agency or federal entity may, submit standards and specifications for its conduct of land-disturbing activities for Department of Environmental Quality approval. Approved standards and specifications shall be consistent with this article. The Department of Environmental Quality shall have 60 days after receipt in which to act on any standards and specifications submitted or resubmitted to it for approval.*

B. *As an alternative to submitting soil erosion control and stormwater management plans pursuant to § 62.1-44.15:34, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies shall, and federal entities, and authorities created pursuant to § 15.2-5102 may, annually submit a single set of standards and specifications for Department approval that describes describe how land-disturbing activities shall be conducted. Such standards and specifications shall be consistent with the requirements of this article and associated regulations, including the regulations governing the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities and the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and associated regulations. Each project constructed in accordance with the requirements of this article, its attendant regulations, and where required standards and specifications shall obtain coverage issued under the state general permit prior to land disturbance. The standards may be submitted for the following types of projects:*

1. *Construction, installation, or maintenance of electric transmission and distribution lines, oil or gas transmission and distribution pipelines, communication utility lines, and water and sewer lines; and*

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

*The Department shall have 60 days after receipt in which to act on any standards and specifications submitted or resubmitted to it for approval. A linear project not included in subdivision 1 or 2, or for which the owner chooses not to submit standards and specifications, shall comply with the requirements of the VESMP or the VESCP and VSMP, as appropriate, in any locality within which the project is located.*

C. *As an alternative to submitting soil erosion control and stormwater management plans pursuant to § 62.1-44.15:34, any person engaging in more than one jurisdiction in the creation and operation of a wetland mitigation or stream restoration bank that has been approved and is operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of a wetlands mitigation or stream restoration bank, pursuant to a mitigation banking instrument signed by the Department, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may submit standards and specifications for Department approval that describe how land-disturbing activities shall be conducted. The Department shall have 60 days after receipt in which to act on standards and specifications submitted to it or resubmitted to it for approval.*

D. *All standards and specifications submitted to the Department shall be periodically updated according to a schedule to be established by the Department and shall be consistent with the requirements of this article. Approval of standards and specifications by the Department does not relieve the owner or operator of the duty to comply with any other applicable local ordinances or regulations. Standards and specifications shall include:*

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

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

3. *Provisions for erosion and sediment control and stormwater management program administration, of the standards and specifications program, project-specific plan design, plan review and plan approval, and construction inspection and enforcement compliance;*

4. *Provisions for ensuring that responsible personnel and contractors assisting the owner in carrying out the land-disturbing activity obtain training or qualifications for soil erosion control and stormwater management as set forth in regulations adopted pursuant to this article;*

5. *Provisions for ensuring that personnel implementing approved standards and specifications pursuant to this section obtain certifications or qualifications for erosion and sediment control and stormwater management comparable to those required for local government VESMP personnel pursuant to subsection C of § 62.1-44.15:30;*

6. *Implementation of a project tracking and notification system that ensures notification to the Department of all land-disturbing activities covered under this article; and*

6. 7. Requirements for documenting onsite changes as they occur to ensure compliance with the requirements of ~~the~~ *this* article.

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

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

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

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

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

D. F. The Department shall assess an administrative charge to cover the costs of services rendered associated with its responsibilities pursuant to this section, *including standards and specifications review and approval, project inspections, and compliance. The Board may take enforcement actions in accordance with this article and related regulations.*

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

A. Localities that are ~~VSMP~~ *serving as VESMP* authorities are authorized to adopt more stringent soil erosion control or stormwater management ordinances than those necessary to ensure compliance with the Board's minimum regulations, provided that the more stringent ordinances are based upon factual findings of local or regional comprehensive watershed management studies or findings developed through the implementation of a *an* MS4 permit or a locally adopted watershed management study and are determined by the locality to be necessary to prevent any further degradation to water resources, to address ~~TMDL~~ *total maximum daily load* requirements, to protect exceptional state waters, or to address specific existing water pollution including nutrient and sediment loadings, stream channel erosion, depleted groundwater resources, or excessive localized flooding within the watershed and that prior to adopting more stringent ordinances a public hearing is held after giving due notice. *This process shall not be required when a VESMP authority chooses to reduce the threshold for regulating land-disturbing activities to a smaller area of disturbed land pursuant to § 62.1-44.15:34. However, this section shall not be construed to authorize a VESMP authority to impose a more stringent timeframe for land-disturbance review and approval than those provided in this article.*

B. Localities that are ~~VSMP~~ *serving as VESMP* authorities shall submit a letter report to the Department when more stringent stormwater management ordinances or more stringent requirements authorized by such *stormwater management* ordinances, such as may be set forth in design manuals, policies, or guidance documents developed by the localities, are determined to be necessary pursuant to this section within 30 days after adoption thereof. Any such letter report shall include a summary explanation as to why the more stringent ordinance or requirement has been determined to be necessary pursuant to this section. Upon the request of an affected landowner or his agent submitted to the Department with a copy to be sent to the locality, within 90 days after adoption of any such ordinance or derivative requirement, localities shall submit the ordinance or requirement and all other supporting materials to the Department for a determination of whether the requirements of this section have been met and whether any determination made by the locality pursuant to this section is supported by the evidence. The Department shall issue a written determination setting forth its rationale within 90 days of submission. Such a determination, or a failure by the Department to make such a determination within the 90-day period, may be appealed to the Board.

C. Localities shall not prohibit or otherwise limit the use of any best management practice (BMP) approved for use by the Director or the Board except as follows:

1. When the Director or the Board approves the use of any BMP in accordance with its stated conditions, the locality serving as a ~~VSMP~~ *VESMP* authority shall have authority to preclude the onsite use of the approved BMP, or to require more stringent conditions upon its use, for a specific land-disturbing project based on a review of the stormwater management plan and project site conditions. Such limitations shall be based on site-specific concerns. Any project or site-specific determination purportedly authorized pursuant to this subsection may be appealed to the Department and the Department shall issue a written determination regarding compliance with this section to the requesting party within 90 days of submission. Any such determination, or a failure by the Department to make any such determination within the 90-day period, may be appealed to the Board.

2. When a locality is seeking to uniformly preclude jurisdiction-wide or otherwise limit geographically the use of a BMP approved by the Director or Board, or to apply more stringent conditions to the use of a BMP approved by the Director or Board, upon the request of an affected landowner or his agent submitted to the Department, with a copy submitted to the locality, within 90

days after adoption, such authorizing ordinances, design manuals, policies, or guidance documents developed by the locality that set forth the BMP use policy shall be provided to the Department in such manner as may be prescribed by the Department that includes a written justification and explanation as to why such more stringent limitation or conditions are determined to be necessary. The Department shall review all supporting materials provided by the locality to determine whether the requirements of this section have been met and that any determination made by the locality pursuant to this section is reasonable under the circumstances. The Department shall issue its determination to the locality in writing within 90 days of submission. Such a determination, or a failure by the Department to make such a determination within the 90-day period, may be appealed to the Board.

D. Based on a determination made in accordance with subsection B or C, any ordinance or other requirement enacted or established by a locality that is found to not comply with this section shall be null and void, replaced with state minimum standards, and remanded to the locality for revision to ensure compliance with this section. Any such ordinance or other requirement that has been proposed but neither enacted nor established shall be remanded to the locality for revision to ensure compliance with this section.

E. Any provisions of a local *erosion and sediment control* or stormwater management program in existence before January 1, 2013 2016, that contains more stringent provisions than this article shall be exempt from the requirements of this section *if the locality chooses to retain such provisions when it becomes a VESMP authority*. However, such provisions shall be reported to the Board at the time of submission of the locality's ~~V~~SMP VESMP approval package.

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

A. A person shall not conduct any land-disturbing activity until (i) he has submitted a ~~permit to the appropriate VESMP authority~~ an application to the ~~V~~SMP authority that includes a state ~~V~~SMP permit registration statement, if such statement is required, and, after July 1, 2014, a ~~required, a soil erosion control and stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained V~~SMP authority approval to begin land disturbance. A locality that is not a ~~V~~SMP authority shall provide a general notice to applicants of the state permit coverage requirement and report all approvals pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) to begin land disturbance of one acre or greater to the Department at least monthly. Upon the development of an online reporting system by the Department, but no later than July 1, 2014, a ~~V~~SMP authority shall be required to obtain evidence of state ~~V~~SMP permit coverage where it is required prior to providing approval to begin land disturbance. The ~~V~~SMP authority shall act on any permit plan, if required, and (ii) the VESMP authority has issued its land-disturbance approval. In addition, as a prerequisite to engaging in an approved land-disturbing activity, the name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber certificate pursuant to § 62.1-44.15:30 shall be submitted to the VESMP authority. Any VESMP authority may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan for construction of a single-family detached residential structure; however, if a violation occurs during the land-disturbing activity for the single-family detached residential structure, then the owner shall correct the violation and provide the name of the individual holding a Responsible Land Disturber certificate as provided by § 62.1-14:30. Failure to provide the name of an individual holding a Responsible Land Disturber certificate prior to engaging in land-disturbing activities may result in revocation of the land-disturbance approval and shall subject the owner to the penalties provided in this article.

1. A VESMP authority that is implementing its program pursuant to subsection A of § 62.1-44.15:27 or subdivision B 1 of § 62.1-44.15:27 shall determine the completeness of any application within 15 days after receipt, and shall act on any application within 60 days after it has been determined by the ~~V~~SMP VESMP authority to be a complete application. The ~~V~~SMP authority may either issue project VESMP authority shall issue either land-disturbance approval or denial and shall provide written rationale for the any denial. The ~~V~~SMP authority shall act on any permit application that has been previously disapproved within 45 days after the application has been revised, resubmitted for approval, and deemed complete. Prior to issuance of any approval, the ~~V~~SMP Prior to issuing a land-disturbance approval, a VESMP authority shall be required to obtain evidence of permit coverage when such coverage is required. The VESMP authority also shall determine whether any resubmittal of a previously disapproved application is complete within 15 days after receipt and shall act on the resubmitted application within 45 days after receipt.

2. A VESMP authority implementing its program in coordination with the Department pursuant to subdivision B 2 of § 62.1-44.15:27 shall determine the completeness of any application within 15 days after receipt, and shall act on any application within 60 days after it has been determined by the VESMP authority to be complete. The VESMP authority shall forward a soil erosion control and stormwater management plan to the Department for review within five days of receipt. If the plan is

incomplete, the Department shall return the plan to the locality immediately and the application process shall start over. If the plan is complete, the Department shall review it for compliance with the water quality and water quantity technical criteria and provide its recommendation to the VESMP authority. The VESMP authority shall either (i) issue the land-disturbance approval or (ii) issue a denial and provide a written rationale for the denial. In no case shall a locality have more than 60 days for its decision on an application after it has been determined to be complete. Prior to issuing a land-disturbance approval, a VESMP authority shall be required to obtain evidence of permit coverage when such coverage is required.

The VESMP authority also shall forward to the Department any resubmittal of a previously disapproved application within five days after receipt, and the VESMP authority shall determine whether the plan is complete within 15 days of its receipt of the plan. The Department shall review the plan for compliance with the water quality and water quantity technical criteria and provide its recommendation to the VESMP authority, and the VESMP authority shall act on the resubmitted application within 45 days after receipt.

3. When a state agency or federal entity submits a soil erosion control and stormwater management plan for a project, land disturbance shall not commence until the Board has reviewed and approved the plan and has issued permit coverage when it is required.

a. The Board shall not approve a soil erosion control and stormwater management plan submitted by a state agency or federal entity for a project involving a land-disturbing activity (i) in any locality that has not adopted a local program with more stringent ordinances than those of the state program or (ii) in multiple jurisdictions with separate local programs, unless the plan is consistent with the requirements of the state program.

b. The Board shall not approve a soil erosion control and stormwater management plan submitted by a state agency or federal entity for a project involving a land-disturbing activity in one locality with a local program with more stringent ordinances than those of the state program, unless the plan is consistent with the requirements of the local program.

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

d. The state agency or federal entity responsible for the land-disturbing activity shall ensure compliance with the approved plan. As necessary, the Board shall provide project oversight and enforcement.

4. Prior to issuance of any land-disturbance approval, the VESMP authority may also require an applicant, excluding state agencies and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the VESMP authority, to ensure that measures could be taken by the VESMP authority at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions that may be required of him by the permit conditions comply with the conditions imposed by the VESMP authority as a result of his land-disturbing activity. If the VESMP authority takes such action upon such failure by the applicant, the VESMP authority may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the completion of the requirements of the permit VESMP authority's conditions, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated. These requirements are in addition to all other provisions of law relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

B. A Chesapeake Bay Preservation Act Land-Disturbing Activity shall be subject to coverage under the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities until July 1, 2014, at which time it shall no longer be considered a small construction activity but shall be then regulated under the requirements of this article. The VESMP authority may require changes to an approved soil erosion control and stormwater management plan in the following cases:

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

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

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

D. A VESMP authority may enter into an agreement with an adjacent VESMP authority regarding the administration of multijurisdictional projects, specifying who shall be responsible for all or part of



1399 the administrative procedures. Should adjacent VESMP authorities fail to reach such an agreement,  
 1400 each shall be responsible for administering the area of the multijurisdictional project that lies within its  
 1401 jurisdiction.

1402 E. The following requirements shall apply to land-disturbing activities in the Commonwealth:

1403 1. Any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than  
 1404 one acre of land and is part of a larger common plan of development or sale that results in one acre or  
 1405 greater of land disturbance may, in accordance with regulations adopted by the Board, be required to  
 1406 obtain permit coverage.

1407 2. For a land-disturbing activity occurring in an area not designated as a Chesapeake Bay  
 1408 Preservation Area subject to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.):

1409 a. Soil erosion control requirements and water quantity technical criteria adopted pursuant to this  
 1410 article shall apply to any activity that disturbs 10,000 square feet or more, although the locality may  
 1411 reduce this regulatory threshold to a smaller area of disturbed land. A plan addressing these  
 1412 requirements shall be submitted to the VESMP authority in accordance with subsection A. This  
 1413 subdivision shall also apply to additions or modifications to existing single-family detached residential  
 1414 structures.

1415 b. Soil erosion control requirements and water quantity and water quality technical criteria shall  
 1416 apply to any activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of  
 1417 land and is part of a larger common plan of development or sale that results in one acre or greater of  
 1418 land disturbance, although the locality may reduce this regulatory threshold to a smaller area of  
 1419 disturbed land. A plan addressing these requirements shall be submitted to the VESMP authority in  
 1420 accordance with subsection A.

1421 3. For a land-disturbing activity occurring in an area designated as a Chesapeake Bay Preservation  
 1422 Area subject to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.):

1423 a. Soil erosion control and water quantity and water quality technical criteria shall apply to any  
 1424 land-disturbing activity that disturbs 2,500 square feet or more of land, other than a single-family  
 1425 detached residential structure. However, the governing body of any affected locality may reduce this  
 1426 regulatory threshold to a smaller area of disturbed land. A plan addressing these requirements shall be  
 1427 submitted to the VESMP authority in accordance with subsection A.

1428 b. For land-disturbing activities for single-family detached residential structures, soil erosion control  
 1429 and water quantity technical criteria shall apply to any land-disturbing activity that disturbs 2,500  
 1430 square feet or more of land, and the locality also may require compliance with the water quality  
 1431 technical criteria. A plan addressing these requirements shall be submitted to the VESMP authority in  
 1432 accordance with subsection A.

1433 C. F. Notwithstanding any other provisions of this article, the following activities are ~~exempt~~, not  
 1434 required to comply with the requirements of this article unless otherwise required by federal law:

1435 1. Minor land-disturbing activities, including home gardens and individual home landscaping,  
 1436 repairs, and maintenance work;

1437 2. Installation, maintenance, or repair of any individual service connection;

1438 3. Installation, maintenance, or repair of any underground utility line when such activity occurs on  
 1439 an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to  
 1440 the area of the road, street, or sidewalk that is hard surfaced;

1441 4. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an  
 1442 overall plan for land-disturbing activity relating to construction of the building to be served by the  
 1443 septic tank system;

1444 5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects  
 1445 conducted ~~under the provisions of~~ pursuant to Title 45.1;

1446 ~~2.~~ 6. Clearing of lands specifically for bona fide agricultural purposes ~~and~~; the management, tilling,  
 1447 planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; ~~or~~ as  
 1448 additionally set forth by the Board in regulations, including agricultural engineering operations as  
 1449 follows; including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds,  
 1450 ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land  
 1451 irrigation; ~~however or as additionally set forth by the Board in regulations.~~ However, this exception  
 1452 shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested  
 1453 artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) or is  
 1454 converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

1455 3. Single-family residences separately built and disturbing less than one acre and not part of a larger  
 1456 common plan of development or sale, including additions or modifications to existing single-family  
 1457 detached residential structures. However, localities subject to the provisions of the Chesapeake Bay  
 1458 Preservation Act (§ 62.1-44.15:67 et seq.) may regulate these single-family residences where land  
 1459 disturbance exceeds 2,500 square feet;



4. Land-disturbing activities that disturb less than one acre of land area except for land-disturbing activity exceeding an area of 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) or activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance; however, the governing body of any locality that administers a VSMP may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;

5. 7. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

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

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

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

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

G. Notwithstanding any other provision of this article, the following activities are required to comply with the soil erosion control requirements but are not required to comply with the water quantity and water quality technical criteria, unless otherwise required by federal law:

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

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

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

3. Discharges from a land-disturbing activity to a sanitary sewer or a combined sewer system.

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

A. As used in this section:

"Nutrient credit" or "credit" means a type of offsite option that is a nutrient credit certified pursuant to Article 4.02 (§ 62.1-44.19:12 et seq.).

"Offsite option" means an alternative available, away from the real property where land disturbance is occurring, to address water quality or water quantity technical criteria established pursuant to § 62.1-44.15:28.

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

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

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

C. No applicant shall use nutrient credits to address water quantity control requirements. No applicant shall use nutrient credits or other offsite options No offsite option shall be used in contravention of local water quality-based limitations (i) determined pursuant to subsection B of § 62.1-44.19:14, (ii) adopted pursuant to § 62.1-44.15:33 or other applicable authority, (iii) deemed necessary to protect public water supplies from demonstrated adverse nutrient impacts, or (iv) as otherwise may be established or approved by the Board. Where such a limitation exists, offsite options may be used provided that such

options do not preclude or impair compliance with the local limitation.

D. A VSMP authority shall allow offsite options in accordance with subsection I C. Unless prohibited by subsection B, a VESMP authority or a VSMP authority:

1. May allow the use of offsite options for compliance with water quality and water quantity technical criteria established pursuant to § 62.1-44.15:28, in whole or in part; and

2. Shall allow the use of nutrient credits for compliance with the water quality technical criteria when:

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

2. The postconstruction phosphorous control b. The phosphorous water quality reduction requirement is less than 10 pounds per year; or

3. The state permit applicant demonstrates c. It is demonstrated to the satisfaction of the VESMP or VSMP authority that (i) alternative site designs have been considered that may accommodate onsite best management practices, (ii) onsite best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate onsite best management practices will be implemented, and (iv) full compliance with postdevelopment nonpoint nutrient runoff compliance requirements water quality technical criteria cannot practicably be met onsite. For purposes of this subdivision, if an applicant demonstrates The requirements of clauses (i) through (iv) shall be deemed to have been met if it is demonstrated that onsite control of at least 75 percent of the required phosphorous nutrient reductions, the applicant shall be deemed to have met the requirements of clauses (i) through (iv) water quality reduction will be achieved.

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

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

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

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

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

J. Nutrient reductions obtained through nutrient credits shall be credited toward compliance with any nutrient allocation assigned to a municipal separate storm sewer system in a Virginia Stormwater

Management Program Permit or Total Maximum Daily Load applicable to the location where the activity for which the nutrient credits are used takes place. If the activity for which the nutrient credits are used does not discharge to a municipal separate storm sewer system, the nutrient reductions shall be credited toward compliance with the applicable nutrient allocation.

~~K.~~ A F. With the consent of the land disturber, in resolving enforcement actions, the VESMP authority or the Board may include the use of offsite options to compensate for (i) nutrient control deficiencies occurring during the period of noncompliance and (ii) permanent nutrient control deficiencies.

G. This section shall not be construed as limiting the authority established under § 15.2-2243; however, under any pollutant loading pro rata share program established thereunder, the subdivider or developer shall be given appropriate credit for nutrient reductions achieved through offsite options. The locality may use funds collected for nutrient reductions pursuant to a locality pollutant loading pro rata share program for nutrient reductions in the same tributary within the same locality as the land-disturbing activity, or for the acquisition of nutrient credits.

H. Nutrient credits shall not be used to address water quantity technical criteria. Nutrient credits shall be generated in the same or adjacent fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, as the land-disturbing activity. If no credits are available within these subbasins when the VESMP or VSMP authority accepts the final site design, credits available within the same tributary may be used. The following requirements apply to the use of nutrient credits:

1. Documentation of the acquisition of nutrient credits shall be provided to the VESMP authority and the Department or the VSMP authority in a certification from the credit provider documenting the number of phosphorus nutrient credits acquired and the associated ratio of nitrogen nutrient credits at the credit-generating entity.

2. Until the effective date of regulations establishing application fees in accordance with § 62.1-44.19:20, the credit provider shall pay the Department a water quality enhancement fee equal to six percent of the amount paid for the credits. Such fee shall be deposited into the Virginia Stormwater Management Fund established by § 62.1-44.15:29.

3. For that portion of a site's compliance with water quality technical criteria being obtained through nutrient credits, the land disturber shall (i) comply with a 1:1 ratio of the nutrient credits to the site's remaining post-development nonpoint nutrient runoff compliance requirement being met by credit use and (ii) use credits certified as perpetual credits pursuant to Article 4.02 (§ 62.1-44.19:12 et seq.).

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

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

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

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

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

I. The use of nutrient credits to meet post-construction nutrient control requirements shall be accounted for in the implementation of total maximum daily loads and MS4 permits as specified in subdivisions 1, 2, and 3. In order to ensure that the nutrient reduction benefits of nutrient credits used to meet post-construction nutrient control requirements are attributed to the location of the land-disturbing activity where the credit is used, the following account method shall be used:

1. Chesapeake Bay TMDL.

a. Where nutrient credits are used to meet nutrient reduction requirements applicable to redevelopment projects, a 1:1 credit shall be applied toward MS4 compliance with the Chesapeake Bay TMDL waste load allocation or related MS4 permit requirement applicable to the MS4 service area, including the site of the land-disturbing activity, such that the nutrient reductions of redevelopment projects are counted as part of the MS4 nutrient reductions to the same extent as when land-disturbing activities use onsite measures to comply.

b. Where nutrient credits are used to meet post-construction requirements applicable to new development projects, the nutrient reduction benefits represented by such credits shall be attributed to the location of the land-disturbing activity where the credit is used to the same extent as when land-disturbing activities use onsite measures to comply.

c. A 1:1 credit shall be applied toward compliance by a locality that operates a regulated MS4 with its Chesapeake Bay TMDL waste load allocation or related MS4 permit requirement to the extent that nutrient credits are obtained by the MS4 jurisdiction from a nutrient credit-generating entity as defined in § 62.1-44.19:13 independent of or in excess of those required to meet the post-construction requirements.

2. Local nutrient-related TMDLs adopted prior to the land-disturbing activity.

a. Where nutrient credits are used to meet nutrient reduction requirements applicable to redevelopment projects, a 1:1 credit shall be applied toward MS4 compliance with any local TMDL waste load allocation or related MS4 permit requirement applicable to the MS4 service area, including the site of the land-disturbing activity, such that the nutrient reductions of redevelopment projects are counted as part of the MS4 nutrient reductions to the same extent as when land-disturbing activities use onsite measures to comply, provided the nutrient credits are generated upstream of where the land-disturbing activity discharges to the water body segment that is subject to the TMDL.

b. Where nutrient credits are used to meet post-construction requirements applicable to new development projects, the nutrient reduction benefits represented by such credits shall be attributed to the location of the land-disturbing activity where the credit is used to the same extent as when land-disturbing activities use onsite measures to comply, provided the nutrient credits are generated upstream of where the land-disturbing activity discharges to the water body segment that is subject to the TMDL.

c. A 1:1 credit shall be applied toward MS4 compliance with any local TMDL waste load allocation or related MS4 permit requirement to the extent that nutrient credits are obtained by the MS4 jurisdiction from a nutrient credit-generating entity as defined in § 62.1-44.19:13 independent of or in excess of those required to meet the post-construction requirements. However, such credits shall be generated upstream of where the land-disturbing activity discharges to the water body segment that is subject to the TMDL.

3. Future local nutrient-related TMDLs.

This subdivision applies only to areas where there has been a documented prior use of nutrient credits to meet nutrient control requirements in an MS4 service area that flows to or is upstream of a water body segment for which a nutrient-related TMDL is being developed. For a TMDL waste load allocation applicable to the MS4, the Board shall develop the TMDL waste load allocation with the nutrient reduction benefits represented by the nutrient credit use being attributed to the MS4, except when the Board determines during the TMDL development process that reasonable assurance of implementation cannot be provided for nonpoint source load allocations due to the nutrient reduction benefits being attributed in this manner. The Board shall have no obligation to account for nutrient reduction benefits in this manner if the MS4 does not provide the Board with adequate documentation of (i) the location of the land-disturbing activities, (ii) the number of nutrient credits, and (iii) the generation of the nutrient credits upstream of the site at which the land-disturbing activity discharges to the water body segment addressed by the TMDL. Such attribution shall not be interpreted as amending the requirement that the TMDL be established at a level necessary to meet the applicable water quality standard.

**§ 62.1-44.15:37. Notices to comply and stop work orders.**

A. The VSMP authority (i) shall provide for periodic inspections of the installation of stormwater management measures, (ii) may require monitoring and reports from the person responsible for meeting the permit conditions to ensure compliance with the permit and to determine whether the measures required in the permit provide effective stormwater management, and (iii) shall conduct such investigations and perform such other actions as are necessary to carry out the provisions of this article. If the VSMP authority, where authorized to enforce this article, or the Department When the VESMP authority or the Board determines that there is a failure to comply with the permit conditions, notice shall be served upon the permittee or person responsible for carrying out the permit conditions or conditions of land-disturbance approval, or to obtain an approved plan, permit, or land-disturbance approval prior to commencing land-disturbing activities, the VESMP authority or the Board may serve a

notice to comply upon the owner, permittee, or person conducting land-disturbing activities without an approved plan, permit, or approval. Such notice to comply shall be served by delivery by facsimile, email, or other technology; by mailing with confirmation of delivery to the address specified in the permit or land-disturbance application, if available, or in the land records of the locality; or by delivery at the site of the development activities to the agent or employee supervising such activities to a person previously identified to the VESMP authority by the permittee or owner. The notice to comply shall specify the measures needed to comply with the permit conditions and shall specify the or land-disturbance approval conditions, or shall identify the plan approval or permit or land-disturbance approval needed to comply with this article, and shall specify a reasonable time within which such measures shall be completed. In any instance in which a required permit or land-disturbance approval has not been obtained, the VESMP authority or the Board may require immediate compliance. In any other case, the VESMP authority or the Board may establish the time for compliance by taking into account the risk of damage to natural resources and other relevant factors. Notwithstanding any other provision in this subsection, a VESMP authority or the Board may count any days of noncompliance as days of violation should the VESMP authority or the Board take an enforcement action. The issuance of a notice to comply by the Board shall not be considered a case decision as defined in § 2.2-4001.

B. Upon failure to comply within the time specified, a stop work order may be issued in accordance with subsection B by the VSMP authority, where authorized to enforce this article, or by the Board, or the permit may be revoked by the VSMP authority, or the state permit may be revoked by the Board. The Board or the VSMP authority, where authorized to enforce this article, may pursue enforcement in accordance with § 62.1-44.15:48.

B. If a permittee fails to comply with a notice issued in accordance with subsection A within the time specified, the VSMP authority, where authorized to enforce this article, or the Department may issue an in a notice to comply issued in accordance with subsection A, a locality serving as the VESMP authority or the Board may issue a stop work order requiring the owner, permittee, person responsible for carrying out an approved plan, or person conducting the land-disturbing activities without an approved plan or required permit or land-disturbance approval to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits and approvals are obtained, and specified corrective measures have been completed. The VESMP authority or the Board shall lift the order immediately upon completion and approval of corrective action or upon obtaining an approved plan or any required permits or approvals.

Such orders shall be issued (i) in accordance with local procedures if issued by a locality serving as a VSMP authority or (ii) after a hearing held in accordance with the requirements C. When such an order is issued by the Board, it shall be issued in accordance with the procedures of the Administrative Process Act (§ 2.2-4000 et seq.) if issued by the Department. Such orders shall become effective upon service on the person in the manner set forth in subsection A. However, where the alleged noncompliance is causing or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, the locality serving as the VESMP authority or the Board may issue, without advance notice or procedures, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.

D. The owner, permittee, or person conducting a land-disturbing activity may appeal the issuance of any order to the circuit court of the jurisdiction wherein the violation was alleged to occur or other appropriate court.

E. An aggrieved owner of property sustaining pecuniary damage from soil erosion or sediment deposition resulting from a violation of an approved plan or required land-disturbance approval, or from the conduct of a land-disturbing activity commenced without an approved plan or required land-disturbance approval, may give written notice of an alleged violation to the locality serving as the VESMP authority and to the Board.

1. If the VESMP authority has not responded to the alleged violation in a manner that causes the violation to cease and abates the damage to the aggrieved owner's property within 30 days following receipt of the notice from the aggrieved owner, the aggrieved owner may request that the Board conduct an investigation and, if necessary, require the violator to stop the alleged violation and abate the damage to the property of the aggrieved owner.

2. Upon receipt of the request, the Board shall conduct an investigation of the aggrieved owner's complaint. If the Board's investigation of the complaint indicates that (i) there is a violation and the VESMP authority has not responded to the violation as required by the VESMP and (ii) the VESMP authority has not responded to the alleged violation in a manner that causes the violation to cease and abates the damage to the aggrieved owner's property within 30 days from receipt of the notice from the

aggrieved owner, then the Board shall give written notice to the VESMP authority that the Board intends to issue an order pursuant to subdivision 3.

3. If the VESMP authority has not instituted action to stop the violation and abate the damage to the aggrieved owner's property within 10 days following receipt of the notice from the Board, the Board is authorized to issue an order requiring the owner, person responsible for carrying out an approved plan, or person conducting the land-disturbing activity without an approved plan or required land-disturbance approval to cease all land-disturbing activities until the violation of the plan has ceased or an approved plan and required land-disturbance approval are obtained, as appropriate, and specified corrective measures have been completed. The Board also may immediately initiate a program review of the VESMP.

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

5. If a person who has been issued an order or an emergency order is not complying with the terms thereof, the VSMP authority or the Department Board may institute a proceeding in accordance with § 62.1-44.15:42 the appropriate circuit court for an injunction, mandamus, or other appropriate remedy compelling the person to comply with such order. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty in accordance with the provisions of § 62.1-44.15:48. Any civil penalties assessed by a court shall be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to § 62.1-44.15:29.1.

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

The Department, the VSMP authority, where authorized to enforce this article, any duly authorized agent of the Department or VSMP authority, or any locality that is the operator of a regulated municipal separate storm sewer system In addition to the Board's authority set forth in § 62.1-44.20, a locality serving as a VESMP authority or any duly authorized agent thereof may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this article. For operators of localities that operate regulated municipal separate storm sewer systems, this authority shall apply only to those properties from which a discharge enters their municipal separate storm sewer systems.

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

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

The Board, the Department, or the VSMP authority, where authorized to enforce this article, may require every permit applicant, every permittee, or any person subject to state permit requirements under this article a locality serving as a VESMP authority may require every owner, including every applicant for a permit or land-disturbance approval, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this article. The Board or Department also may require any locality that is a VESMP authority to furnish when requested any information as may be required to accomplish the purposes of this article. Any personal information shall not be disclosed except to an appropriate official of the Board, Department, U.S. Environmental Protection Agency, or VSMP VESMP authority or as may be authorized pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). However, disclosure of records of the Department, the Board, or the VSMP VESMP authority relating to (i) active federal environmental enforcement actions that are considered confidential under federal law, (ii) enforcement strategies, including proposed sanctions for enforcement actions, and (iii) any secret

formulae, secret processes, or secret methods other than effluent data used by any ~~permittee owner~~ or under that ~~permittee's owner's~~ direction is prohibited. Upon request, such enforcement records shall be disclosed after a proposed sanction resulting from the investigation has been determined by the ~~Department~~, the Board, or the ~~VESMP locality serving as a VESMP~~ authority. This section shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any land-disturbing activity that may have occurred, or similar documents.

**§ 62.1-44.15:41. Liability of common interest communities.**

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

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

**§ 62.1-44.15:46. Appeals.**

Any permittee or party aggrieved by a ~~state permit or~~ (i) a permit or permit enforcement decision of the ~~Department or Board~~ under this article or (ii) a decision of the Board under this article concerning a land-disturbing activity in a locality subject to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.), or any person who has participated, in person or by submittal of written comments, in the public comment process related to a ~~final~~ such decision of the ~~Department or Board~~ under this article, whether such decision is affirmative or negative, is entitled to judicial review thereof in accordance with § 62.1-44.29. Appeals of other final decisions of the Board under this article shall be subject to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the Constitution of the United States. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury that is an invasion of a legally protected interest and that is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Department or the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court.

The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to decisions rendered by localities. Appeals of decisions rendered by localities shall be conducted in accordance with local appeal procedures and shall include an opportunity for judicial review in the circuit court of the locality in which the land disturbance occurs or is proposed to occur. Unless otherwise provided by law, the circuit court shall conduct such review in accordance with the standards established in § 2.2-4027, and the decisions of the circuit court shall be subject to review by the Court of Appeals, as in other cases under this article.

A final decision by a locality, when serving as a VESMP authority, shall be subject to judicial review, provided that an appeal is filed in the appropriate court within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in a land-disturbing activity.

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

A. For a land-disturbing activity that disturbs 2,500 square feet or more of land in an area of a locality that is designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.), or that disturbs one acre or more of land or is part of a larger common plan of development or sale that disturbs one acre or more of land anywhere else in the Commonwealth:

1. Any person who violates any applicable provision of this article or of any regulation, ordinance, permit, or standard and specification adopted or approved by the Board hereunder, or who fails, neglects, or refuses to comply with any order of the Board, or a court, issued as herein provided, shall



be subject to a civil penalty pursuant to § 62.1-44.32. The court shall direct that any penalty be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to § 62.1-44.15:29.1.

2. Any person who violates any applicable provision of this article, or any ordinance adopted pursuant to this article, including those adopted pursuant to the conditions of an MS4 permit, or any condition of a local land-disturbance approval, or who fails, neglects, or refuses to comply with any order of a VSMP authority authorized to enforce this article, the Department, the Board, locality serving as a VESMP authority or a court, issued as herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. The Board shall adopt a regulation establishing a schedule of civil penalties to be utilized by the VSMP authority in enforcing the provisions of this article. The Board, Department, or VSMP authority may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court. Such civil penalties shall be paid into the treasury of the locality in which the violation occurred and are to be used solely for stormwater management capital projects, including (i) new stormwater best management practices; (ii) stormwater best management practice maintenance, inspection, or retrofitting; (iii) stream restoration; (iv) low-impact development projects; (v) buffer restoration; (vi) pond retrofitting; and (vii) wetlands restoration.

Where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to § 62.1-44.15:29.1.

B. For a land-disturbing activity that disturbs an area measuring not less than 10,000 square feet but less than one acre in an area that is not designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and is not part of a larger common plan of development or sale that disturbs one acre or more of land:

1. Any person who violates any applicable provision of this article or of any regulation or order of the Board issued pursuant to this article, or any condition of a land-disturbance approval issued by the Board, or fails to obtain a required land-disturbance approval, shall be subject to a civil penalty not to exceed \$5,000 for each violation with a limit of \$50,000 within the discretion of the court in a civil action initiated by the Board. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties that exceed a total of \$50,000. The court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to § 62.1-44.15:29.1.

2. Any locality serving as a VESMP authority shall adopt an ordinance providing that a violation of any ordinance or provision of its program adopted pursuant to this article, or any condition of a land-disturbance approval, shall be subject to a civil penalty. Such ordinance shall provide that any person who violates any applicable provision of this article or any ordinance or order of a locality issued pursuant to this article, or any condition of a land-disturbance approval issued by the locality, or fails to obtain a required land-disturbance approval, shall be subject to a civil penalty not to exceed \$5,000 for each violation with a limit of \$50,000 within the discretion of the court in a civil action initiated by the locality. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties that exceed a total of \$50,000. Any civil penalties assessed by a court as a result of a summons issued by a locality as an approved VSMP authority shall be paid into the treasury of the locality wherein the land lies, except where the violator is the locality itself, or its agent. When the penalties are assessed by the court as a result of a summons issued by the Board or Department, or and used pursuant to subdivision A 2, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Local Assistance Fund established pursuant to § 62.1-44.15:29. Such civil penalties paid into the treasury of the locality in which the violation occurred are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct § 62.1-44.15:29.1.

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



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

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

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

1. The Board, Department, or the VSMP authority, where authorized to enforce this article,

C. The violation of any provision of this article may also result in the following sanctions:

1. The Board may seek an injunction, mandamus, or other appropriate remedy pursuant to § 62.1-44.23. A locality serving as a VESMP authority may apply to the appropriate court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation of the provisions of this article or of the local ordinance without the necessity of showing that an adequate remedy at law does not exist a local ordinance or order or the conditions of a local land-disturbance approval. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this article shall be subject, in the discretion of the court, to a civil penalty that shall be assessed and used in accordance with the provisions of subsection A or B, as applicable.

2. With the consent of any person who has violated or failed, neglected, or refused to obey any ordinance, any condition of a permit or state permit, any regulation or order of the Board, any order of the VSMP authority or the Department, or any provision of this article, the Board, Department, or VSMP authority may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in this section. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under this section. Any civil charges collected shall be paid to the locality or state treasury pursuant to subsection A. The Board or a locality serving as a VESMP authority may use the criminal provisions provided in § 62.1-44.32.

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

A. Localities shall adopt a stormwater ordinance pursuant to the conditions of a MS4 permit that is consistent with this article and its associated regulations and that contains provisions including the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities and shall include additional provisions. Each locality subject to an MS4 permit shall adopt an ordinance to implement a municipal separate storm sewer system management program that is consistent with this chapter and that contains provisions as required to comply with a state an MS4 permit. Such locality may utilize the civil penalty provisions in subsection A subdivision A 2 of § 62.1-44.15:48, the injunctive authority as provided for in subdivision D 1 subsection C of § 62.1-44.15:48, and the civil charges as authorized in subdivision D 2 of § 62.1-44.15:48 § 62.1-44.15:25.1, and the criminal provisions in § 62.1-44.32, to enforce the ordinance. At the request of another MS4, the locality may apply the penalties provided for in this section to direct or indirect discharges to any MS4 located within its jurisdiction.

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

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

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

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

#### **Article 2.4.**

Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program.

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

2009 As used in this article, unless the context requires a different meaning:

2010 "Agreement in lieu of a plan" means a contract between the ~~plan-approving~~ VESCP authority and the  
 2011 owner that specifies conservation measures that must be implemented in the construction of a  
 2012 single-family ~~residence~~ *detached residential structure*; this contract may be executed by the  
 2013 ~~plan-approving~~ VESCP authority in lieu of a formal site plan.

2014 "Applicant" means any person submitting an erosion and sediment control plan for approval ~~or~~  
 2015 ~~requesting the issuance of a permit, when required, authorizing in order to obtain authorization for~~  
 2016 land-disturbing activities to commence.

2017 "Certified inspector" means an employee or agent of a VESCP authority who (i) holds a ~~certificate of~~  
 2018 ~~competence~~ *certification* from the Board in the area of project inspection or (ii) is enrolled in the  
 2019 Board's training program for project inspection and successfully completes such program within one year  
 2020 after enrollment.

2021 "Certified plan reviewer" means an employee or agent of a VESCP authority who (i) holds a  
 2022 ~~certificate of competence~~ *certification* from the Board in the area of plan review, (ii) is enrolled in the  
 2023 Board's training program for plan review and successfully completes such program within one year after  
 2024 enrollment, or (iii) is licensed as a professional engineer, architect, landscape architect, land surveyor  
 2025 pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1, or professional soil scientist as  
 2026 defined in § 54.1-2200.

2027 "Certified program administrator" means an employee or agent of a VESCP authority who (i) holds a  
 2028 ~~certificate of competence~~ *certification* from the Board in the area of program administration or (ii) is  
 2029 enrolled in the Board's training program for program administration and successfully completes such  
 2030 program within one year after enrollment.

2031 "Department" means the Department of Environmental Quality.

2032 "Director" means the Director of the Department of Environmental Quality.

2033 "District" or "soil and water conservation district" means a political subdivision of the  
 2034 Commonwealth organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of Chapter  
 2035 5 of Title 10.1.

2036 "Erosion and sediment control plan" or "plan" means a document containing material for the  
 2037 conservation of soil and water resources of a unit or group of units of land. It may include appropriate  
 2038 maps, an appropriate soil and water plan inventory and management information with needed  
 2039 interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain  
 2040 all major conservation decisions to ensure that the entire unit or units of land will be so treated to  
 2041 achieve the conservation objectives.

2042 "Erosion impact area" means an area of land *that is* not associated with *a* current land-disturbing  
 2043 activity ~~but is~~ subject to persistent soil erosion resulting in the delivery of sediment onto neighboring  
 2044 properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000  
 2045 square feet or less used for residential purposes or to shorelines where the erosion results from wave  
 2046 action or other coastal processes.

2047 "~~Land-disturbing activity~~" "*Land disturbance*" or "*land-disturbing activity*" means any man-made  
 2048 change to the land surface that may result in soil erosion ~~from water or wind and the movement of~~  
 2049 ~~sediments into state waters or onto lands in the Commonwealth, including, but not limited to, or has the~~  
 2050 *potential to change its runoff characteristics, including the* clearing, grading, excavating, transporting,  
 2051 and filling of land; ~~except that the term shall not include:~~

2052 1. ~~Minor land-disturbing activities such as home gardens and individual home landscaping, repairs,~~  
 2053 ~~and maintenance work;~~

2054 2. ~~Individual service connections;~~

2055 3. ~~Installation, maintenance, or repair of any underground public utility lines when such activity~~  
 2056 ~~occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is~~  
 2057 ~~confined to the area of the road, street, or sidewalk that is hard surfaced;~~

2058 4. ~~Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity~~  
 2059 ~~relating to construction of the building to be served by the septic tank system;~~

2060 5. ~~Permitted surface or deep mining operations and projects, or oil and gas operations and projects~~  
 2061 ~~conducted pursuant to Title 45.1;~~

2062 6. ~~Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot~~  
 2063 ~~operations, or as additionally set forth by the Board in regulation, including engineering operations as~~  
 2064 ~~follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip~~  
 2065 ~~cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;~~  
 2066 ~~however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting~~  
 2067 ~~occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100~~  
 2068 ~~et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in~~  
 2069 ~~subsection B of § 10.1-1163;~~

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

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

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

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

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

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

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

"Owner" means the same as provided in § 62.1-44.3. For a land-disturbing activity that is regulated under this article, "owner" also includes the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

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

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

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

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

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

"Town" means an incorporated town.

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

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an authority a locality approved by the Board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the Department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 45.2-5102. A locality that has chosen not to establish a Virginia Erosion and Stormwater Management Program pursuant to subdivision B 3 of § 62.1-44.15:27 is required to become a VESCP authority in accordance with this article.

"Virginia Stormwater Management Program" or "VSMP" means a program established by the Board pursuant to § 62.1-44.15:27.1 on behalf of a locality on or after July 1, 2014, to manage the quality

and quantity of runoff resulting from any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or greater of land disturbance.

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

**§ 62.1-44.15:51.1. Applicability.**

The requirements of this article shall apply in any locality that has chosen not to establish a Virginia Erosion and Stormwater Management Program (VESMP) pursuant to subdivision B 3 of § 62.1-44.15:27. Each such locality shall be required to adopt and administer a Board-approved VESCP.

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

A. The Board shall develop a program and adopt regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) for the effective control of soil erosion, sediment deposition, and nonagricultural runoff that shall be met in any control program to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. Stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or § 62.1-44.15:54 or 62.1-44.15:65. Any plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one-year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirement for natural or man-made channels as defined in regulations promulgated pursuant to § 62.1-44.15:54 or 62.1-44.15:65. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of this subsection shall be satisfied by compliance with water quantity requirements in the Virginia Erosion and Stormwater Management Act (§ 62.1-44.15:24 et seq.) and attendant regulations, unless such land-disturbing activities are in accordance with the grandfathering provisions of the Virginia Erosion and Stormwater Management Program (VSMP) Permit (VESMP) Regulations or exempt pursuant to subdivision E 7 G 2 of § 62.1-44.15:34.

The regulations shall:

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

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

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

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

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

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

a comprehensive or partial program compliance review and evaluation of a VESCP at a greater frequency than the standard schedule pursuant to subdivision (19) of § 62.1-44.15.

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

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

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

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

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

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

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

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

Any town lying within a county that has adopted its own VESCP may adopt its own program or shall become subject to the county program. If a town lies within the boundaries of more than one county, the town shall be considered for the purposes of this article to be wholly within the county in which the larger portion of the town lies. Any locality that has chosen not to establish a Virginia Erosion and Stormwater Management Program (VESMP) pursuant to subdivision B 3 of § 62.1-44.15:27 shall administer a VESCP in accordance with this article; however, a town may enter into an agreement with a county to administer the town's VESCP pursuant to subsection C of § 62.1-44.15:27.

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

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

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

E. The Board may approve a state entity, federal entity, or, for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 to operate a VESCP consistent with the requirements of this article and its associated regulations and the VESCP authority's Department-approved annual standards and specifications. For these programs, enforcement shall be administered by the Department and the Board where applicable in accordance with the provisions of this article shall conduct compliance reviews of VESCPs in accordance with subdivision (19) of § 62.1-44.15. The Board or Department also may require any locality that is a VESCP authority to furnish when requested any information as may be required to accomplish the purposes of this article.

F. Following completion of a compliance review of a VESCP in accordance with subsection D of §

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

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

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

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

I. If the Board revokes its approval of a state entity, federal entity, or, for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102, the Board shall find the VESCP authority provisional, and have the Department assist with the administration of the program until the Board finds the VESCP authority compliant with the requirements of this article and associated regulations. "Assisting with administration" includes the ability to review and comment on plans to the VESCP authority and to conduct inspections with the VESCP authority in accordance with this article and associated regulations.

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

K. The governing body of any county, city, or town, or a district board G. Any locality that is authorized to administer a VESCP, may adopt an ordinance or regulation where applicable providing that violations of any regulation or order of the Board, any provision of its program, any condition of a permit *land-disturbance approval*, or any provision of this article shall be subject to a civil penalty. The civil penalty for any one violation shall be not less than \$100 nor more than \$1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties that exceed a total of \$10,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties that exceed a total of \$10,000. Adoption of such an ordinance providing that violations are subject to a civil penalty shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor

under subsection A of § 62.1-44.15:63. The penalties set out in this subsection are also available to the Board in its enforcement actions.

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

A. Except as provided in § 62.1-44.15:56 for state agency and federal entity land-disturbing activities § 62.1-44.15:31 for a land-disturbing activity conducted by a state agency, federal entity, or other specified entity, no person shall engage in any land-disturbing activity until he has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved. Upon the development of an online reporting system by the Department, but no later than July 1, 2014, a VESCP authority shall then be required to obtain evidence of Virginia Stormwater Management Program permit coverage where it is required prior to providing approval to begin land disturbance. Where land-disturbing activities involve lands under the jurisdiction of more than one VESCP, an erosion and sediment control plan may, at the request of one or all of the VESCP authorities, be submitted to the Department for review and approval rather than to each jurisdiction concerned. The Department may charge the jurisdictions requesting the review a fee sufficient to cover the cost associated with conducting the review. A VESCP may enter into an agreement with an adjacent VESCP regarding the administration of multijurisdictional projects whereby the jurisdiction that contains the greater portion of the project shall be responsible for all or part of the administrative procedures. Where Virginia Pollutant Discharge Elimination System permit coverage is required, a VESCP authority shall be required to obtain evidence of such coverage from the Department's online reporting system prior to approving the erosion and sediment control plan. A VESCP authority may enter into an agreement with an adjacent VESCP or VESMP authority regarding the administration of multijurisdictional projects specifying who shall be responsible for all or part of the administrative procedures. Should adjacent authorities fail to come to such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP authority.

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

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

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

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

D. Electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies shall, and authorities created pursuant to § 15.2-5102 may, file general erosion and sediment control standards and specifications annually with the Department for review and approval. Such standards and specifications shall be consistent with the requirements of this



2375 article and associated regulations and the Stormwater Management Act (§ 62.1-44.15:24 et seq.) and  
 2376 associated regulations where applicable. The specifications shall apply to:

2377 1. Construction, installation, or maintenance of electric transmission, natural gas, and telephone utility  
 2378 lines and pipelines, and water and sewer lines; and

2379 2. Construction of the tracks, rights-of-way, bridges, communication facilities, and other related  
 2380 structures and facilities of the railroad company.

2381 The Department shall have 60 days in which to approve the standards and specifications. If no action  
 2382 is taken by the Department within 60 days, the standards and specifications shall be deemed approved.  
 2383 Individual approval of separate projects within subdivisions 1 and 2 is not necessary when approved  
 2384 specifications are followed. Projects not included in subdivisions 1 and 2 shall comply with the  
 2385 requirements of the appropriate VESCP. The Board shall have the authority to enforce approved  
 2386 specifications and charge fees equal to the lower of (i) \$1,000 or (ii) an amount sufficient to cover the  
 2387 costs associated with standard and specification review and approval, project inspections, and  
 2388 compliance.

2389 E. Any person engaging, in more than one jurisdiction, in the creation and operation of a wetland  
 2390 mitigation or stream restoration bank or banks, which have been approved and are operated in  
 2391 accordance with applicable federal and state guidance, laws, or regulations for the establishment, use,  
 2392 and operation of wetlands mitigation or stream restoration banks, pursuant to a mitigation banking  
 2393 instrument signed by the Department of Environmental Quality, the Marine Resources Commission, or  
 2394 the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment  
 2395 control standards and specifications for wetland mitigation or stream restoration banks annually with the  
 2396 Department for review and approval consistent with guidelines established by the Board.

2397 The Department shall have 60 days in which to approve the specifications. If no action is taken by  
 2398 the Department within 60 days, the specifications shall be deemed approved. Individual approval of  
 2399 separate projects under this subsection is not necessary when approved specifications are implemented  
 2400 through a project-specific erosion and sediment control plan. Projects not included in this subsection  
 2401 shall comply with the requirements of the appropriate local erosion and sediment control program. The  
 2402 Board shall have the authority to enforce approved specifications and charge fees equal to the lower of  
 2403 (i) \$1,000 or (ii) an amount sufficient to cover the costs associated with standard and specification  
 2404 review and approval, projection inspections, and compliance. Approval of general erosion and sediment  
 2405 control specifications by the Department does not relieve the owner or operator from compliance with  
 2406 any other local ordinances and regulations including requirements to submit plans and obtain permits as  
 2407 may be required by such ordinances and regulations.

2408 F. D. In order to prevent further erosion, a VESCP authority may require approval of an erosion and  
 2409 sediment control plan for any land identified by the VESCP authority as an erosion impact area.

2410 G. E. For the purposes of subsections A and B, when land-disturbing activity will be required of a  
 2411 contractor performing construction work pursuant to a construction contract, the preparation, submission,  
 2412 and approval of an erosion and sediment control plan shall be the responsibility of the owner.

2413 F. Notwithstanding any other provisions of this article, the following activities are not required to  
 2414 comply with the requirements of this article unless otherwise required by federal law:

2415 1. Disturbance of a land area of less than 10,000 square feet in size or less than 2,500 square feet  
 2416 in an area designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay  
 2417 Preservation Act (§ 62.1-44.15:67 et seq.). However, the governing body of the program authority may  
 2418 reduce this exception to a smaller area of disturbed land or qualify the conditions under which this  
 2419 exception shall apply;

2420 2. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs,  
 2421 and maintenance work;

2422 3. Installation, maintenance, or repair of any individual service connection;

2423 4. Installation, maintenance, or repair of any underground utility line when such activity occurs on  
 2424 an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to  
 2425 the area of the road, street, or sidewalk that is hard surfaced;

2426 5. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an  
 2427 overall plan for land-disturbing activity relating to construction of the building to be served by the  
 2428 septic tank system;

2429 6. Permitted surface or deep mining operations and projects, or oil and gas operations and projects  
 2430 conducted pursuant to Title 45.1;

2431 7. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling,  
 2432 planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations;  
 2433 agricultural engineering operations, including construction of terraces, terrace outlets, check dams,  
 2434 desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour  
 2435 furrowing, land drainage, and land irrigation; or as additionally set forth by the Board in regulations.



However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

8. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

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

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

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

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

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

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

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

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

land-disturbance approval prior to commencing land-disturbing activity, the VESCP authority or the Board may serve a notice to comply upon the owner or person responsible for carrying out the land-disturbing activity. Such notice to comply shall be served by delivery by facsimile, e-mail, or other technology; by mailing with confirmation of delivery to the address specified in the plan or land-disturbance application, if available, or in the land records of the locality; or by delivery at the site to a person previously identified to the VESCP authority by the owner. The notice to comply shall specify the measures needed to comply with the ~~plan~~ land-disturbance approval conditions or shall identify the plan approval or land-disturbance approval needed to comply with this article and shall specify ~~the~~ a reasonable time within which such measures shall be completed. In any instance in which a required land-disturbance approval has not been obtained, the VESCP authority or the Board may require immediate compliance. In any other case, the VESCP authority or the Board may establish the time for compliance by taking into account the risk of damage to natural resources and other relevant factors. Notwithstanding any other provision in this subsection, a VESCP authority or the Board may count any days of noncompliance as days of violation should the VESCP authority or the Board take an enforcement action. The issuance of a notice to comply by the Board shall not be considered a case decision as defined in § 2.2-4001. Upon failure to comply within the time specified, ~~the permit~~ any plan approval or land-disturbance approval may be revoked and the VESCP authority, ~~where authorized to enforce this article, the Department,~~ or the Board may pursue enforcement as provided by § 62.1-44.15:63.

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

C. Upon issuance of an inspection report denoting a violation of this section, ~~or § 62.1-44.15:55 or 62.1-44.15:56,~~ in conjunction with or subsequent to a notice to comply as specified in subsection A, a VESCP authority, ~~where authorized to enforce this article, or the Department or the Board~~ may issue an ~~a stop work~~ order requiring that all or part of the land-disturbing activities ~~permitted~~ on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved plan as provided in § 62.1-44.15:55, requiring that all of the land-disturbing activities be stopped until an approved plan ~~or any required permits are~~ is obtained. ~~When such an order is issued by the Board, it shall be issued in accordance with the procedures of the Administrative Process Act (§ 2.2-4000 et seq.).~~ Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved erosion and sediment control plan ~~or any required permits, such an,~~ such a stop work order may be issued whether or not the alleged violator has been issued a notice to comply as specified in subsection A. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply. The order for noncompliance with a plan shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the VESCP authority, the ~~Department Board,~~ or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. The ~~stop work~~ order for disturbance without an approved plan ~~or permits~~ shall be served upon the owner by mailing with confirmation of delivery to the address specified in the land records of the locality, shall be posted on the site where the disturbance is occurring, and shall remain in effect until such time as ~~permits and~~ plan approvals are secured, except in such situations where an agricultural exemption applies. If the alleged violator has not obtained an approved erosion and sediment control plan ~~or any required permit~~ within seven days from the date of service of the ~~stop work~~ order, the ~~Department Board~~ or the chief administrative officer or his designee on behalf of the VESCP authority may issue a subsequent order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved erosion and sediment control plan ~~and any required permits have~~ has been obtained. The subsequent order shall be served upon the owner by mailing with confirmation of delivery to the address specified in the ~~permit application plan~~ or the land records of the locality in which the site is located. The owner may appeal the issuance of any order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. Any person violating or failing, neglecting, or refusing to obey an order issued by the ~~Department Board~~ or the chief administrative officer or his designee on behalf of the VESCP authority may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan ~~or any required permits,~~ the order shall immediately be lifted. Nothing in

this section shall prevent the Department, the Board, or the chief administrative officer or his designee on behalf of the VESCP authority from taking any other action specified in § 62.1-44.15:63.

**§ 62.1-44.15:60. Right of entry.**

The Department, the VESCP authority, where authorized to enforce this article, In addition to the Board's authority set forth in § 62.1-44.20, a locality serving as a VESCP authority or any duly authorized agent of the Department or such VESCP authority thereof may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this article.

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

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

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

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

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

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 misdemeanor.

B. Any person who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any order, notice, or requirement of the Department or VESCP authority, any condition of a permit land-disturbance approval, or any provision of this article or associated regulation shall, upon a finding of an appropriate court, be assessed a civil penalty. If a locality or district serving as a VESCP authority has adopted a uniform schedule of civil penalties as permitted by subsection K G of § 62.1-44.15:54, such assessment shall be in accordance with the schedule. The VESCP authority or the Department Board may issue a summons for collection of the civil penalty. In any trial for a scheduled violation, it shall be the burden of the locality or Department Board or the VESCP authority to show the liability of the violator by a preponderance of the evidence. An admission or finding of liability shall not be a criminal conviction for any purpose. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies; except that where and are to be used solely for stormwater management capital projects, including (i) new stormwater best management practices; (ii) stormwater best management practice maintenance, inspection, or retrofitting; (iii) stream restoration; (iv) low-impact development projects; (v) buffer restoration; (vi) pond retrofitting; and (vii) wetlands restoration. Where the violator is the locality itself, or its agent, or where the Department Board is issuing the summons, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to § 62.1-44.15:29.1.

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

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

E. D. Without limiting the remedies that may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the VESCP authority wherein the land lies or the Department Board. Any civil penalties assessed by a court shall be paid into

the treasury of the locality wherein the land lies; ~~except that where and used pursuant to requirements of subsection A. Where~~ the violator is the locality itself, or its agent, ~~or other VESCP authority, or~~ where the penalties are assessed as the result of an enforcement action brought by the ~~Department Board~~, the court shall direct the penalty to be paid into the state treasury *and deposited by the State Treasurer into the Stormwater Local Assistance Fund (§ 62.1-44.15:29.1).*

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

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

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

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

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

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

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

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

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

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

~~G. F.~~ If a person who has been issued an order or emergency order is not complying with the terms thereof, the Board may institute a proceeding in the appropriate circuit court for an injunction,

mandamus, or other appropriate remedy compelling the person to comply with such order.

H. G. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to subsection G shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. Any civil penalties assessed by a court shall be paid into the state treasury *and deposited by the State Treasurer into the Stormwater Local Assistance Fund* (§ 62.1-44.15:29.1).

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

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

B. Any provisions of an erosion and sediment control program in existence before July 1, 2012, that contains more stringent provisions than this article shall be exempt from the analysis requirements of subsection A.

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

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

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

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

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

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

5. Develop, promulgate, and keep current the criteria required by § 62.1-44.15:72.

6. Provide technical assistance and advice or other aid for the development, adoption, and implementation of local comprehensive plans, zoning ordinances, subdivision ordinances, and other land use and development and water quality protection measures utilizing criteria established by the Board to carry out the provisions of this article.

7. Develop procedures for use by local governments to designate Chesapeake Bay Preservation Areas in accordance with the criteria developed pursuant to § 62.1-44.15:72.

8. Ensure that local government comprehensive plans, zoning ordinances, and subdivision ordinances are in accordance with the provisions of this article. Determination of compliance shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

9. Make application for federal funds that may become available under federal acts and to transmit such funds when applicable to any appropriate person.

10. Take administrative and legal actions *pursuant to subdivision (19) of § 62.1-44.15* to ensure compliance by counties, cities, and towns with the provisions of this article including the proper enforcement and implementation of, and continual compliance with, this article.

11. Perform such other duties and responsibilities related to the use and development of land and the protection of water quality as the Secretary may assign.

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

A. Counties, cities, and towns in Tidewater Virginia shall use the criteria developed by the Board to determine the extent of the Chesapeake Bay Preservation Area within their jurisdictions. Designation of Chesapeake Bay Preservation Areas shall be accomplished by every county, city, and town in Tidewater

2741 Virginia not later than 12 months after adoption of criteria by the Board.

2742 B. Counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of  
2743 state waters into each locality's comprehensive plan consistent with the provisions of this article.

2744 C. All counties, cities, and towns in Tidewater Virginia shall have zoning ordinances that incorporate  
2745 measures to protect the quality of state waters in the Chesapeake Bay Preservation Areas consistent with  
2746 the provisions of this article. Zoning in Chesapeake Bay Preservation Areas shall comply with all  
2747 criteria set forth in or established pursuant to § 62.1-44.15:72.

2748 D. Counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of  
2749 state waters in Chesapeake Bay Preservation Areas into their subdivision ordinances consistent with the  
2750 provisions of this article. Counties, cities, and towns in Tidewater Virginia shall ensure that all  
2751 subdivisions developed pursuant to their subdivision ordinances comply with all criteria developed by  
2752 the Board.

2753 E. In addition to any other remedies which may be obtained under any local ordinance enacted to  
2754 protect the quality of state waters in Chesapeake Bay Preservation Areas, counties, cities, and towns in  
2755 Tidewater Virginia may incorporate the following penalties into their zoning, subdivision, or other  
2756 ordinances:

2757 1. Any person who (i) violates any provision of any such ordinance or (ii) violates or fails, neglects,  
2758 or refuses to obey any local governmental body's or official's final notice, order, rule, regulation, or  
2759 variance or permit condition authorized under such ordinance shall, upon such finding by an appropriate  
2760 circuit court, be assessed a civil penalty not to exceed \$5,000 for each day of violation. Such civil  
2761 penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of  
2762 the county, city, or town in which the violation occurred for the purpose of abating environmental  
2763 damage to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as the court may  
2764 direct by order, except that where the violator is the county, city, or town itself, or its agent, the court  
2765 shall direct the penalty to be paid into the state treasury *and deposited by the State Treasurer into the*  
2766 *Stormwater Local Assistance Fund established by § 62.1-44.15:29.1.*

2767 2. With the consent of any person who (i) violates any provision of any local ordinance related to  
2768 the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects,  
2769 or refuses to obey any local governmental body's or official's notice, order, rule, regulation, or variance  
2770 or permit condition authorized under such ordinance, the local government may provide for the issuance  
2771 of an order against such person for the one-time payment of civil charges for each violation in specific  
2772 sums, not to exceed \$10,000 for each violation. Such civil charges shall be paid into the treasury of the  
2773 county, city, or town in which the violation occurred for the purpose of abating environmental damage  
2774 to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is the county,  
2775 city, or town itself, or its agent, the civil charges shall be paid into the state treasury *and deposited by*  
2776 *the State Treasurer into the Stormwater Local Assistance Fund established by § 62.1-44.15:29.1.* Civil  
2777 charges shall be in lieu of any appropriate civil penalty that could be imposed under subdivision 1. Civil  
2778 charges may be in addition to the cost of any restoration required or ordered by the local governmental  
2779 body or official.

2780 F. Localities that are subject to the provisions of this article may by ordinance adopt an appeal  
2781 period for any person aggrieved by a decision of a board that has been established by the locality to  
2782 hear cases regarding ordinances adopted pursuant to this article. The ordinance shall allow the aggrieved  
2783 party a minimum of 30 days from the date of such decision to appeal the decision to the circuit court.

2784 **§ 62.1-44.19:22. Enforcement and penalties.**

2785 A. Transfer of certified nutrient credits by an operator of a nutrient credit-generating entity may be  
2786 suspended by the Department until such time as the operator comes into compliance with this article and  
2787 attendant regulations.

2788 B. Any operator of a nutrient credit-generating entity who violates any provision of this article, or of  
2789 any regulations adopted hereunder, shall be subject to a civil penalty not to exceed \$10,000 within the  
2790 discretion of the court. The Department may issue a summons for collection of the civil penalty, and the  
2791 action may be prosecuted in the appropriate circuit court. When the penalties are assessed by the court  
2792 as a result of a summons issued by the Department, the court shall direct the penalty to be paid into the  
2793 state treasury and deposited by the State Treasurer into the ~~Virginia Stormwater Management Local~~  
2794 ~~Assistance Fund established pursuant to § 62.1-44.15:29~~ § 62.1-44.15:29.1.

2795 **§ 62.1-44.22. Private actions.**

2796 The fact that any owner holds or has held a certificate *or land-disturbance approval* issued under  
2797 this chapter shall not constitute a defense in any civil action involving private rights.

2798 *Compliance with the provisions of this chapter shall be prima facie evidence in any legal or*  
2799 *equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have*  
2800 *been met and the complaining party must show negligence in order to recover any damages.*

2801 **§ 62.1-44.23. Enforcement by injunction, etc.**

Any person violating or failing, neglecting or refusing to obey any rule, regulation, order, water quality standard, pretreatment standard, *approved standard and specification*, or requirement of or any provision of any certificate or *land-disturbance approval* issued by the Board, or by the owner of a publicly owned treatment works issued to an industrial user, or any provisions of this chapter, except as provided by a separate article, may be compelled in a proceeding instituted in any appropriate court by the Board to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

**§ 62.1-44.25. Right to hearing.**

Any owner under §§ *Article 2.3* (§ 62.1-44.15:24 *et seq.*), *Article 2.5* (§ 62.1-44.15:67 *et seq.*), or § 62.1-44.16, 62.1-44.17, ~~and~~ or 62.1-44.19 aggrieved by any action of the Board taken without a formal hearing, or by inaction of the Board, may demand in writing a formal hearing of such owner's grievance, provided a petition requesting such hearing is filed with the Board. In cases involving actions of the Board, such petition must be filed within ~~thirty~~ 30 days after notice of such action is mailed to such owner by certified mail.

**§ 62.1-44.26. Hearings.**

A. The formal hearings held by the Board under this chapter shall be conducted pursuant to § 2.2-4009 or 2.2-4020 and may be conducted by the Board itself at a regular or special meeting of the Board, or by at least one member of the Board designated by the chairman to conduct such hearings on behalf of the Board at any other time and place authorized by the Board.

B. A verbatim record of the proceedings of such hearings shall be taken and filed with the Board. Depositions may be taken and read as in actions at law.

C. The Board shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the Board in the manner prescribed in § 2.2-4022. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions.

**§ 62.1-44.29. Judicial review.**

Any owner aggrieved by or any person who has participated, in person or by submittal of written comments, in the public comment process related to a final decision of the Board under *subdivision* (5), (8a), (8b), (8c), or (19) of § 62.1-44.15 ~~(5), 62.1-44.15 (8a), (8b), and (8c), or~~ § 62.1-44.15:20, 62.1-44.15:21, 62.1-44.15:22, 62.1-44.15:23, 62.1-44.16, 62.1-44.17, 62.1-44.19, or 62.1-44.25, whether such decision is affirmative or negative, is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 *et seq.*) if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the United States Constitution. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court.

**§ 62.1-44.31. Violation of order or certificate or failure to cooperate with Board.**

It shall be unlawful for any owner to fail to comply with any ~~special~~ order adopted by the Board, which has become final under the provisions of this chapter, or to fail to comply with a pretreatment condition incorporated into the permit issued to it by the owner of a publicly owned treatment works or to fail to comply with any pretreatment standard or pretreatment requirement, or to discharge sewage, industrial waste or other waste in violation of any condition contained in a certificate or *land-disturbance approval* issued by the Board or in excess of the waste covered by such certificate or *land-disturbance approval*, or to fail or refuse to furnish information, plans, specifications or other data reasonably necessary and pertinent required by the Board under this chapter.

For the purpose of this section, the term "owner" shall mean, in addition to the definition contained in §§ 62.1-44.3 and 62.1-44.15:24, any responsible corporate officer so designated in the applicable discharge permit.

**§ 62.1-44.32. Penalties.**

(a) Except as otherwise provided in this chapter, any person who violates any provision of this chapter, or who fails, neglects, or refuses to comply with any *regulation, certificate, land-disturbance approval, or* order of the Board, or order of a court, issued as herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 *et seq.*) of Title 10.1, excluding penalties assessed for violations of Article 2.3 (§ 62.1-44.15:24 *et seq.*), 2.4 (§ 62.1-44.15:51 *et seq.*), 2.5 (§ 62.1-44.15:67 *et seq.*), 9 (§ 62.1-44.34:8 *et seq.*), or 10 (§ 62.1-44.34:10 *et seq.*) of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.



Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred, to be used for the purpose of abating environmental pollution therein in such manner as the court may, by order, direct, except that where the owner in violation is such county, city, or town itself, or its agent, the court shall direct such penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1, excluding penalties assessed for violations of Article 2.3, 2.4, 2.5, 9, or 10 of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.

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

(b) Except as otherwise provided in this chapter, any person who willfully or negligently violates (1) any provision of this chapter, any regulation or order of the Board, *or any condition of a certificate or land-disturbance approval of the Board*, (2) *any land-disturbance approval, ordinance, or order of a locality serving as a Virginia Erosion and Stormwater Management Program authority*, or (3) any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not less than \$2,500 nor more than \$32,500, either or both. Any person who knowingly violates (A) any provision of this chapter, any regulation or order of the Board, *or any condition of a certificate or land-disturbance approval of the Board*, (B) *any land-disturbance approval, ordinance, or order of a locality serving as a Virginia Erosion and Stormwater Management Program authority*, or (C) any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this chapter or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate offense.

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

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

**2. That §§ 62.1-44.15:26, 62.1-44.15:32, 62.1-44.15:36, 62.1-44.15:38, 62.1-44.15:42 through 62.1-44.15:45, 62.1-44.15:47, 62.1-44.15:56, 62.1-44.15:61, and 62.1-44.15:71 of the Code of Virginia are repealed.**

**3. That any locality that operates a regulated municipal separate storm sewer system (MS4) and was required to adopt a Virginia Stormwater Management Program (VSMP) as of July 1, 2014, is authorized to continue to operate its Virginia Erosion and Sediment Control Program (VESCP) and its VSMP until the State Water Control Board approves its consolidated VESMP.**

**4. That any locality that does not operate a regulated MS4 and elected to adopt a VSMP is authorized to continue to operate its VESCP and its VSMP until the State Water Control Board approves its consolidated VESMP.**

**5. That any locality that does not operate a regulated MS4, did not elect to adopt a VSMP, and chooses to fully administer a VESMP pursuant to subdivision B 1 of § 62.1-44.15:27 of the Code of Virginia, as amended by this act, is authorized to continue to operate its VESCP until the State Water Control Board approves its consolidated VESMP. For any such locality that does not, as of the effective date of this act, employ a person holding a certificate of competence in the area of stormwater management plan review, project inspection, or program administration, the Department of Environmental Quality (the Department) shall assist with those responsibilities until new training and certifications have been obtained according to a timeframe to be established by the Department.**

6. That any locality that does not operate a regulated MS4, did not elect to adopt a VSMP, and chooses to administer a VESMP with the Department's assistance pursuant to subdivision B 2 of § 62.1-44.15:27 of the Code of Virginia, as amended by this act, is authorized to continue to operate its VESCP until the State Water Control Board approves its consolidated VESMP. For any such locality that, as of the effective date of this act, does not employ a person holding a certificate of competence in the area of stormwater management plan review, project inspection, or program administration, the Department shall assist with those responsibilities until new training and certifications have been obtained according to a timeframe to be established by the Department. The Department shall be responsible for stormwater management plan review in any such locality.

7. That any person who holds a valid separate, combined, or dual certificate of competence from the State Water Control Board in the area of erosion and sediment control plan review, project inspection, or program administration, or such a certificate in stormwater management plan review, project inspection, or program administration, shall retain such certification until the Department establishes new training and certifications and provides a schedule according to which such a person may meet the eligibility requirements for certification or recertification, as applicable. The State Water Control Board shall incorporate the valid certificates of competence into the new eligibility requirements for certification or recertification purposes as appropriate.

8. That the Department shall conduct an evaluation of fees related to the consolidated Virginia Erosion and Stormwater Management Program in order to determine whether the program can be funded adequately under the current fee structure. The Department shall conduct its evaluation based on revenues and resource needs from July 1, 2014, to June 30, 2016, and shall complete its assessment by September 1, 2016. Every VSMP authority and VESCP authority shall submit information to the Department by August 1, 2016, concerning its use of the fees that it received under the Virginia Stormwater Management Program and Virginia Erosion and Sediment Control Program between July 1, 2014, and June 30, 2016. The information shall be submitted on a form to be provided by the Department. The Department shall then convene a Stakeholders Advisory Group (SAG) to review the Department's evaluation and consider the need to establish revised fees to fund the consolidated VESMP and any other issues of concern regarding the Virginia Erosion and Stormwater Management Program. The Department shall report the results of its evaluation and the SAG's discussion to the Governor and the chairs of the Senate Finance Committee, the House Appropriations Committee, the Senate Agriculture, Conservation and Natural Resources Committee, and the House Agriculture, Chesapeake and Natural Resources Committee by the first day of the 2017 Regular Session.

9. That the State Water Control Board (the Board) shall adopt regulations to implement the requirements of this act. The adoption of such regulations shall be exempt from the requirements of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq.) of the Code of Virginia. However, the Department shall (i) provide a Notice of Intended Regulatory Action, (ii) form a stakeholders advisory group, (iii) provide for a 60-day public comment period prior to the Board's adoption of the regulations, and (iv) provide the Board with a written summary of comments received and responses to comments prior to the Board's adoption of the regulations.

10. That the provisions of this act shall become effective July 1, 2017, or 30 days after the adoption by the State Water Control Board of the regulations required by the ninth enactment of this act, whichever occurs later.