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HOUSE BILL NO. 1774

Offered January 11, 2017

Prefiled January 9, 2017

A BILL to amend and reenact § 62.1-44.15:24, as it is currently effective and as it shall become effective, of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 62.1-44.15:25.2 and 62.1-44.15:25.3, relating to stormwater and erosion control; local rural development growth areas; regional stormwater best management practices bank.

Patron—Hodges

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.15:24, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 62.1-44.15:25.2 and 62.1-44.15:25.3 as follows:

§ 62.1-44.15:24. (For expiration date, see Acts 2016, cc. 68 and 758) Definitions.

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

"Agreement in lieu of a stormwater management plan" means a contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a single-family residence; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.

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

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

"Department" means the Department of Environmental Quality.

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

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

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

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

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

2. Designed or used for collecting or conveying stormwater;

3. That is not a combined sewer; and

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

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

"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.

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

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59 particular location.

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

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

64 *"Regional stormwater best management practices bank" or "RSP bank" means a bank operated by a*
65 *qualified entity that has been designated by a locality to provide off-site credits for an RDG area.*

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

68 *"Rural development growth area" or "RDG area" means an area of land that follows the route of a*
69 *highway and is designated by a locality for the application of certain regulatory minimum standards.*

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

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

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

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

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

88 "Virginia Stormwater Management Program authority" or "VSMP authority" means an authority
89 approved by the Board after September 13, 2011, to operate a Virginia Stormwater Management
90 Program or the Department. An authority may include a locality; state entity, including the Department;
91 federal entity; or, for linear projects subject to annual standards and specifications in accordance with
92 subsection B of § 62.1-44.15:31, electric, natural gas, and telephone utility companies, interstate and
93 intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to
94 § 15.2-5102.

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

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

101 **§ 62.1-44.15:24. (For effective date, see Acts 2016, cc. 68 and 758) Definitions.**

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

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

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

112 "CWA" means the federal Clean Water Act (33 U.S.C. § 1251 et seq.), formerly referred to as the
113 Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, P.L.
114 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
115 revisions thereto.

116 "Department" means the Department of Environmental Quality.

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

118 "Erosion impact area" means an area of land that is not associated with a current land-disturbing
119 activity but is subject to persistent soil erosion resulting in the delivery of sediment onto neighboring
120 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 may result in soil erosion or has the potential to change its runoff characteristics, including construction activity such as the clearing, grading, excavating, or filling of land.

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

"Municipal separate storm sewer" or "MS4" means the same as that term is defined in § 62.1-44.3.

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

"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" means 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 whom the permit is issued.

"Regional stormwater best management practices bank" or "RSP bank" means a bank operated by a qualified entity that has been designated by a locality to provide off-site credits for an RDG area.

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

"Rural development growth area" or "RDG area" means an area of land that follows the route of a highway and is designated by a locality for the application of certain regulatory minimum standards.

"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

182 operate a VESCP pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.).

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

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

194 "Virginia Stormwater Management Program" or "VSMP" means a program established by the Board
195 pursuant to § 62.1-44.15:27.1 on behalf of a locality on or after July 1, 2014, to manage the quality and
196 quantity of runoff resulting from any land-disturbing activity that (i) disturbs one acre or more of land
197 or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale
198 that results in one acre or more of land disturbance.

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

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

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

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

211 **§ 62.1-44.15:25.2. Authority to designate local rural development growth areas; regulations.**

212 A. The Board shall adopt regulations establishing an RDG area program for adoption by any
213 locality that does not operate a regulated MS4 and for which the Department administers a VSMP as of
214 July 1, 2017. The RDG area program regulations shall provide for the use by the locality within an
215 RDG area of certain of the regulatory minimum standards set out in subdivision 19 of 9VAC25-840-40
216 (MS-19 regulations).

217 B. Pursuant to the RDG area program regulations, any locality that does not operate a regulated
218 MS4 and for which the Department administers a VSMP as of July 1, 2017, is authorized to designate
219 as an RDG area any land within the locality that measures no more than 100 acres in total and has a
220 compact, linear shape that conforms generally to the form of the road along which it is located.

221 C. The Board shall administer all Virginia programs for erosion control and stormwater
222 management for all portions of such a locality except those areas that are designated as RDG areas.

223 D. The designating locality shall administer no Virginia program for erosion control and stormwater
224 management except within its RDG areas, where it shall provide that:

225 1. Any land-disturbing activity within an RDG area incorporate, in greater amounts, numbers, and
226 scales than would be required outside the RDG area, the planting of vegetation and the installation of
227 stream buffers;

228 2. Certain land-disturbing activities within an RDG area comply with those MS-19 regulations
229 specified by the Board in regulations adopted pursuant to subsection A. The fees for certain stormwater
230 best management practices (BMPs) shall be paid directly to the locality; and

231 3. Of the stormwater BMP fees that the locality receives for an RDG area, an amount equal to 50
232 percent of the cost to the developer that is saved by the use of MS-19 regulations instead of standard
233 stormwater regulations shall be kept by the locality in a fund and directed to the operation of an RSP
234 bank pursuant to § 62.1-44.15:25.3.

235 E. Any existing legal non-conforming use recognized as "water-dependent" under the Chesapeake
236 Bay Preservation Act (§ 62.1-44.15:67 et seq.) shall be considered a part of the RDG area in which it
237 is located and shall, at the discretion of the property owner, either (i) be subject to MS-19 regulations
238 and be required to purchase off-site credits or (ii) be subject to standard stormwater regulations.

239 **§ 62.1-44.15:25.3. Regional stormwater practices banks.**

240 A. The Board shall adopt regulations to allow the operation of RSP banks. Such regulations shall:

241 1. Authorize any political subdivision of the Commonwealth that is located in Planning District 18
242 and is subject to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) to designate a qualified
243 entity to establish and administer an RSP bank. The Board shall establish the minimum standards an

entity must meet in order to become a qualified entity.

2. Authorize any RSP bank to provide off-site credits for an RDG area designated pursuant to § 62.1-44.15:25.2. The regulations shall allow an RSP bank to make excess credits available to any MS4 or non-MS4 locality or developer within Hydrologic Unit Code 6 or an adjoining unit.

3. Authorize any locality to designate, establish, or lease to a private or public entity any existing major outfall that drains a network of ditches lining the highways within the locality for the construction, operation, and maintenance of a major stormwater management facility. Such regulations shall require the locality to establish lease rates, reversionary terms, and operational standards necessary to ensure that the facility meets water quality and quantity standards and shall require any private developer to establish an in-perpetuity maintenance fund to be held by the locality.

4. Require a privately operated RSP bank annually to return eight percent of the credit revenue it generates to the locality in which it is located and two percent of the credit revenue it generates to the Department.

B. The Department of Transportation (VDOT) shall grant a qualified entity the exclusive right to use all of the untreated stormwater that is not located in an MS4 locality and flows through any open drainage abutting a highway or highway drainage system. The qualified entity shall use the stormwater within a stormwater bioretention BMP or a related, qualified BMP for the establishment of a BMP bank.