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## HOUSE BILL NO. 1307

House Amendments in [ ] — February 5, 2018

A BILL to amend and reenact §§ 62.1-44.15:24 and 62.1-44.15:27, as they are currently effective and as they shall become effective, of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 62.1-44.15:27.2, relating to stormwater management; rural Tidewater; tiered approach.

Patron Prior to Engrossment—Delegate 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 and 62.1-44.15:27, as they are currently effective and as they shall become effective, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 62.1-44.15:27.2 as follows:

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

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

"Agreement in lieu of a stormwater management plan" means a contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a 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 "Runoff volume" means the volume of water that runs off the land development project from a  
65 prescribed storm event.

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

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

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

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

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

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

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

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

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

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

103 **§ 62.1-44.15:24. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c.**  
104 **345) Definitions.**

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

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

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

115 "CWA" means the federal Clean Water Act (33 U.S.C. § 1251 et seq.), formerly referred to as the  
116 Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, P.L.  
117 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  
118 revisions thereto.

119 "Department" means the Department of Environmental Quality.

120 "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 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.

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

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

"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

182 accordance with Article 2.4 (§ 62.1-44.15:51 et seq.). Only a locality for which the Department  
183 administered a Virginia Stormwater Management Program as of July 1, 2017, is authorized to choose to  
184 operate a VESCP pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.).

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

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

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

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

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

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

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

213 **§ 62.1-44.15:27. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017,**  
214 **c. 345) Establishment of Virginia Stormwater Management Programs.**

215 A. Any locality that operates a regulated MS4 or that notifies the Department of its decision to  
216 participate in the establishment of a VSMP shall be required to adopt a VSMP for land-disturbing  
217 activities consistent with the provisions of this article according to a schedule set by the Department.  
218 Such schedule shall require implementation no later than July 1, 2014. Thereafter, the Department shall  
219 provide an annual schedule by which localities can submit applications to implement a VSMP. Localities  
220 subject to this subsection are authorized to coordinate plan review and inspections with other entities in  
221 accordance with subsection H.

222 The Department shall operate a VSMP on behalf of any locality that does not operate a regulated  
223 MS4 and that does not notify the Department, according to a schedule set by the Department, of its  
224 decision to participate in the establishment of a VSMP. A locality that decides not to establish a VSMP  
225 shall still comply with the requirements set forth in this article and attendant regulations as required to  
226 satisfy the stormwater flow rate capacity and velocity requirements set forth in the Erosion and Sediment  
227 Control Law (§ 62.1-44.15:51 et seq.). A locality that is subject to the provisions of the Chesapeake Bay  
228 Preservation Act (§ 62.1-44.15:67 et seq.) also shall adopt requirements set forth in this article and  
229 attendant regulations as required to regulate Chesapeake Bay Preservation Act land-disturbing activities  
230 in accordance with § 62.1-44.15:28. *To comply with the water quantity technical criteria set forth in this*  
231 *article and attendant regulations, a rural Tidewater locality may adopt a tiered approach to water*  
232 *quantity management for Chesapeake Bay Preservation Act land-disturbing activities pursuant to*  
233 *§ 62.1-44.15:27.2.*

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

243 B. 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, to become subject to the county's VSMP. Any town lying within a county that operates an MS4 that became a regulated MS4 on or after January 1, 2014 may elect 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. 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.

C. In support of VSMP 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 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 localities in the establishment of their 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. The Department shall develop a model ordinance for establishing a VSMP 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. Each locality that administers an approved VSMP shall, by ordinance, establish a VSMP 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.), and which shall include the following:

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

2. 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. Provisions for the integration of the VSMP with local erosion and sediment control, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing construction 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.

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 authority may enter into agreements or contracts with soil and water conservation districts, adjacent localities, or other public or private entities to carry out or assist with the responsibilities of this article. A VSMP authority may enter into contracts with third-party professionals who hold certificates of competence in the appropriate subject areas, as provided in subsection A of § 62.1-44.15:30, to carry out any or all of the responsibilities that this article requires of a VSMP authority, including plan review and inspection but not including enforcement.

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 authority shall then be required to obtain evidence of state VSMP permit coverage where it is required prior to providing 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

305 under the stormwater management provisions of the Chesapeake Bay Preservation Act.

306 L. All VSMP authorities shall comply with the provisions of this article and the stormwater  
307 management provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and related  
308 regulations. The VSMP authority responsible for regulating the land-disturbing activity shall require  
309 compliance with the issued permit, permit conditions, and plan specifications. The state shall enforce  
310 state permits.

311 § 62.1-44.15:27. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c.  
312 345) Virginia Programs for Erosion Control and Stormwater Management.

313 A. Any locality that operates a regulated MS4 or that administers a Virginia Stormwater Management  
314 Program (VSMP) as of July 1, 2017, shall be required to adopt and administer a VESMP consistent  
315 with the provisions of this article that regulates any land-disturbing activity that (i) disturbs 10,000  
316 square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a  
317 Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et  
318 seq.). The VESMP shall be adopted according to a process established by the Department.

319 B. Any locality that does not operate a regulated MS4 and for which the Department administers a  
320 VSMP as of July 1, 2017, shall choose one of the following options and shall notify the Department of  
321 its choice according to a process established by the Department:

322 1. Adopt and administer a VESMP consistent with the provisions of this article that regulates any  
323 land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or  
324 more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the  
325 Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.);

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

332 3. Adopt and administer a VESCP pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.) that regulates any  
333 land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or  
334 more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the  
335 Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). For such a land-disturbing activity in a  
336 Chesapeake Bay Preservation Area, the VESCP authority also shall adopt requirements set forth in this  
337 article and attendant regulations as required to regulate those activities in accordance with  
338 §§ 62.1-44.15:28 and 62.1-44.15:34.

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

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

345 1. Any town, including a town that operates a regulated MS4, lying within a county may enter into  
346 an agreement with the county to become subject to the county's VESMP. If a town lies within the  
347 boundaries of more than one county, it may enter into an agreement with any of those counties that  
348 operates a VESMP.

349 2. Any town that chooses not to adopt and administer a VESMP pursuant to subdivision B 3 and that  
350 lies within a county may enter into an agreement with the county to become subject to the county's  
351 VESMP or VESCP, as applicable. If a town lies within the boundaries of more than one county, it may  
352 enter into an agreement with any of those counties.

353 3. Any town that is subject to the provisions of the Chesapeake Bay Preservation Act  
354 (§ 62.1-44.15:67 et seq.) may enter into an agreement with a county pursuant to subdivision C 1 or 2  
355 only if the county administers a VESMP for land-disturbing activities that disturb 2,500 square feet or  
356 more.

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

366 E. To comply with the water quantity technical criteria set forth in this article and attendant

regulations for land-disturbing activities that disturb an area of 2,500 square feet or more but less than one acre, any rural Tidewater locality may adopt a tiered approach to water quantity management pursuant to § 62.1-44.15:27.2.

F. In support of VESMP authorities, the Department shall provide technical assistance and training and general assistance to localities in the establishment and administration of their individual or regional programs.

G. The Department shall develop a model ordinance for establishing a VESMP consistent with this article.

H. Each locality that operates a regulated MS4 or that chooses to administer a VESMP shall, by ordinance, establish a VESMP that shall be administered in conjunction with a local MS4 management program, if applicable, and which shall include the following:

1. Ordinances, policies, and technical materials consistent with regulations adopted in accordance with 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

6. Provisions for the coordination of the VESMP with flood insurance, flood plain management, and other programs requiring compliance prior to authorizing land disturbance in order to make the submission and approval of plans, issuance of 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.

I. The Board shall approve a VESMP when it deems a program consistent with this article and associated regulations.

J. 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 plan review and inspections. A VESMP authority may enter into contracts with third-party professionals who hold certifications in the appropriate subject areas, as provided in subsection A of § 62.1-44.15:30, to carry out any or all of the responsibilities that this article requires of a VESMP authority, including plan review and inspection but not including enforcement.

K. A VESMP authority shall be required to obtain evidence of permit coverage from the Department's online reporting system, where such coverage is required, prior to providing land-disturbance approval.

L. The VESMP authority responsible for regulating the land-disturbing activity shall require compliance with its applicable ordinances and the conditions of its land-disturbance approval and plan specifications. The Board shall enforce permits and require compliance with its applicable regulations, including when serving as a VESMP authority in a locality that chose not to adopt a VESMP in accordance with subdivision B 3.

**§ 62.1-44.15:27.2. Rural Tidewater localities; water quantity technical criteria; tiered approach.**

A. For determining the water quantity technical criteria applicable to a land disturbance equal to or greater than 2,500 square feet but less than one acre, any rural Tidewater locality may elect to use certain tiered water quantity control standards based on the percentage of impervious cover in the watershed as provided in this section. The establishment and conduct of the tiered approach by the locality pursuant to this section shall be subject to review by the Department. The Board shall adopt regulations to carry out provisions of this section.

B. 1. The local governing body shall make, or cause to be made, a watershed map showing the boundaries of the locality. The governing body shall use the most recent version of Virginia's 6th order National Watershed Boundary Dataset to show the boundaries of each watershed located partially or

428 wholly within the locality. The map shall indicate the percentage of impervious cover within each  
429 watershed. Data provided by the Virginia Geographic Information Network (VGIN) shall be sufficient  
430 for the initial determination of impervious cover percentage at the time of the initial adoption of the  
431 map.

432 2. The watershed map also shall show locations at which the governing body expects or proposes  
433 that development should occur and may indicate the projected future percentage of impervious cover  
434 based on proposed development. The governing body may designate certain areas within a watershed in  
435 which it proposes that denser-than-average development shall occur and may designate environmentally  
436 sensitive areas in which the energy balance method for water quantity management, as set forth in the  
437 regulations adopted by the Board pursuant to this article, shall apply.

438 3. After the watershed map has been made, the governing body may then approve and adopt the map  
439 by a majority vote of its membership and publish it as the official watershed map of the locality. No  
440 official watershed map shall be adopted by the governing body or have any effect until it is approved by  
441 an ordinance duly passed by the governing body of the locality after a public hearing, preceded by  
442 public notice as required by § 15.2-2204. Within 30 days after adoption of the official watershed map,  
443 the governing body shall cause the map to be filed in the office of the clerk of the circuit court.

444 4. At least once each year, the local governing body shall by majority vote make additions to or  
445 modifications of the official watershed map to reflect actual development projects. The governing body  
446 shall change the indication on the map of the impervious cover percentage within a watershed where  
447 the percentage has changed and shall update the map and supporting datasets with actual development  
448 project information, including single-family housing projects and any projects covered by the General  
449 Permit for Discharges of Stormwater from Construction Activities and administered by the Department  
450 for opt-out localities pursuant to § 62.1-44.15:27. The governing body may incorporate into the official  
451 watershed map the most recent VGIN data, including data on state and federal projects that are not  
452 reviewed or approved by the locality. The governing body shall keep current its impervious cover  
453 percentage for each watershed located within the locality, as reflected in the official watershed map,  
454 and shall make the map and such percentages available to the public.

455 5. The locality shall notify the Department and update the official map within 12 months of the  
456 approval of the development plan for any project that exceeds the impervious cover percentage of the  
457 watershed in which it is located and causes the percentage for that watershed to rise such that the  
458 watershed steps up to the next higher tier pursuant to subsection C.

459 6. No official watershed map or its adopting or amending ordinances shall take precedence over any  
460 duly adopted zoning ordinance, comprehensive plan, or other local land-use ordinance, and in the case  
461 of a conflict, the official watershed map or ordinance shall yield to such land-use ordinance.

462 C. When the locality evaluates any development project in a watershed that is depicted on the  
463 official watershed map as having an impervious cover percentage of:

464 1. Less than five percent, the locality shall apply the regulatory minimum standards and criteria  
465 adopted by the Board pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.) [ and in effect prior to July 1,  
466 2014, ] for the protection of downstream properties and waterways from sediment deposition, erosion,  
467 and damage due to increases in volume, velocity, and peak flow rate of stormwater runoff for the stated  
468 frequency storm of 24-hour duration.

469 2. Five percent or more but less than 7.5 percent, the locality shall require practices designed to  
470 detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour  
471 storm, which practices shall be exempt from any flow rate capacity and velocity requirements for  
472 natural or man-made channels.

473 3. Seven and one-half percent or more, the locality shall apply the energy balance method as set  
474 forth in regulations adopted by the Board.

475 D. The locality shall require that any project whose construction would cause the impervious cover  
476 percentage of the watershed in which it is located to rise, such that the watershed steps up to the next  
477 higher tier, shall meet the current water quantity technical criteria using the energy balance method or  
478 a more stringent alternative.

479 2. That the Department of Environmental Quality shall utilize an appropriate new or existing  
480 Regulatory Advisory Panel to assist in clarifying the interpretation and application of subdivision  
481 19 of 9VAC25-840-40 (Minimum Standard 19).