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## HOUSE BILL NO. 2282

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources  
on February 1, 2023)

(Patron Prior to Substitute—Delegate Edmunds)

A *BILL to amend and reenact §§ 62.1-44.15:34, as it is currently effective and as it shall become effective, 62.1-44.15:51, as it is currently effective, and 62.1-44.15:55, as it shall become effective, of the Code of Virginia, relating to Virginia Stormwater Management Program; Virginia Erosion and Sediment Control Program; exemptions for the harvesting of forest crops.*

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

**1. That §§ 62.1-44.15:34, as it is currently effective and as it shall become effective, 62.1-44.15:51, as it is currently effective, and 62.1-44.15:55, as it shall become effective, of the Code of Virginia are amended and reenacted as follows:**

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

A. A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance. A locality that is not a VSMP 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 VSMP authority shall be required to obtain evidence of state VSMP permit coverage where it is required prior to providing approval to begin land disturbance. The VSMP authority shall act on any permit application within 60 days after it has been determined by the VSMP authority to be a complete application. The VSMP authority may either issue project approval or denial and shall provide written rationale for the denial. The VSMP 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 VSMP authority may also require an applicant, excluding state 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 VSMP authority, to ensure that measures could be taken by the VSMP 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 as a result of his land-disturbing activity. If the VSMP authority takes such action upon such failure by the applicant, the VSMP 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 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.

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

1. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.2;

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

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

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

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

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

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

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

84 9. *Clearing lands for the harvesting of forest crops when the areas on which harvesting occurs is not*  
85 *intended to be reforested artificially or naturally in accordance with the provisions of Chapter 11*  
86 *(§ 10.1-1100 et seq.) of Title 10.1 or converted to bona fide agricultural or improved pasture use as*  
87 *described in subsection B of § 10.1-1163, provided that the land-disturbing activity is the minimum land*  
88 *disturbance necessary, including clearing, grading, excavating, or removal of stumps, for the harvesting*  
89 *of timber and the construction of roads and trails for forest management purposes.*

90 **§ 62.1-44.15:34. (Contingent effective date) Regulated activities; submission and approval of a**  
91 **permit application; security for performance; exemptions.**

92 A. A person shall not conduct any land-disturbing activity until (i) he has submitted to the  
93 appropriate VESMP authority an application that includes a permit registration statement, if required, a  
94 soil erosion control and stormwater management plan or an executed agreement in lieu of a plan, if  
95 required, and (ii) the VESMP authority has issued its land-disturbance approval. In addition, as a  
96 prerequisite to engaging in an approved land-disturbing activity, the name of the individual who will be  
97 assisting the owner in carrying out the activity and holds a Responsible Land Disturber certificate  
98 pursuant to § 62.1-44.15:30 shall be submitted to the VESMP authority. Any VESMP authority may  
99 waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan for  
100 construction of a single-family detached residential structure; however, if a violation occurs during the  
101 land-disturbing activity for the single-family detached residential structure, then the owner shall correct  
102 the violation and provide the name of the individual holding a Responsible Land Disturber certificate as  
103 provided by § 62.1-14:30. Failure to provide the name of an individual holding a Responsible Land  
104 Disturber certificate prior to engaging in land-disturbing activities may result in revocation of the  
105 land-disturbance approval and shall subject the owner to the penalties provided in this article.

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

115 2. A VESMP authority implementing its program in coordination with the Department pursuant to  
116 subdivision B 2 of § 62.1-44.15:27 shall determine the completeness of any application within 15 days  
117 after receipt, and shall act on any application within 60 days after it has been determined by the  
118 VESMP authority to be complete. The VESMP authority shall forward a soil erosion control and  
119 stormwater management plan to the Department for review within five days of receipt. If the plan is  
120 incomplete, the Department shall return the plan to the locality immediately and the application process  
121 shall start over. If the plan is complete, the Department shall review it for compliance with the water

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

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

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

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

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

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

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

4. Prior to issuance of any land-disturbance approval, the VESMP authority may also require an applicant, excluding state agencies and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the VESMP authority, to ensure that measures could be taken by the VESMP authority at the applicant's expense should he fail, after proper notice, within the time specified to comply with the conditions imposed by the VESMP authority as a result of his land-disturbing activity. If the VESMP authority takes such action upon such failure by the applicant, the VESMP authority may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the completion of the VESMP authority's conditions, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.

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

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

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

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

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

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

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

2. For a land-disturbing activity occurring in an area not designated as a Chesapeake Bay

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

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

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

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

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

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

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

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

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

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

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

219 5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects  
220 conducted pursuant to Title 45.2;

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

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

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

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

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

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

activity; and

12. Clearing lands for the harvesting of forest crops when the areas on which harvesting occurs is not intended to be reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 or converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163, provided that the land-disturbing activity is the minimum land disturbance necessary, including clearing, grading, excavating, or removal of stumps, for the harvesting of timber and the construction of roads and trails for forest management purposes.

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:

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

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

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

**§ 62.1-44.15:51. (Contingent expiration date) Definitions.**

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

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

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

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

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

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

"Department" means the Department of Environmental Quality.

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

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

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

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

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

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

2. Individual service connections;

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

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

5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2;

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

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

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

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

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

11. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are 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; *and*

*13. Clearing lands for the harvesting of forest crops when the areas on which harvesting occurs is not intended to be reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 or converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163, provided that the land-disturbing activity is the minimum land disturbance necessary, including clearing, grading, excavating, or removal of stumps, for the harvesting of timber and the construction of roads and trails for forest management purposes.*

"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 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.

"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 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 § 15.2-5102.

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

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

A. Except as provided in § 62.1-44.15:31 for a land-disturbing activity conducted by a state agency, federal entity, or other specified entity, no person shall engage in any land-disturbing activity until he has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved. Where Virginia Pollutant Discharge Elimination System permit coverage is required, a VESCP authority shall be required to obtain evidence of such coverage from the Department's online reporting system prior to approving the erosion and sediment control plan. A VESCP authority may enter into an agreement with an adjacent VESCP or VESMP authority regarding the administration of multijurisdictional projects specifying who shall be responsible for all or part of the administrative procedures. Should adjacent authorities fail to come to such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction. Where the land-disturbing activity results from the construction of a 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 to the VESCP authority, as provided by § 62.1-44.15:52, who will be in charge of and responsible for carrying out the land-disturbing activity. However, any VESCP authority may waive the certificate requirement for an agreement in lieu of a plan for construction of a single-family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate, as provided by § 62.1-44.15:52. Failure to provide the name of an individual holding a certificate prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this article.

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

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

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

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

E. For the purposes of subsections A and B, when land-disturbing activity will be required of a

contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.

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

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

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

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

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

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

6. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2;

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

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

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

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

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

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

13. *Clearing lands for the harvesting of forest crops when the areas on which harvesting occurs is not intended to be reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 or converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163, provided that the land-disturbing activity is the minimum land disturbance necessary, including clearing, grading, excavating, or removal of stumps, for the harvesting of timber and the construction of roads and trails for forest management purposes.*