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SENATE BILL NO. 1178

Offered January 11, 2023

Prefiled January 10, 2023

A *BILL to amend and reenact § 62.1-44.15:31, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to soil erosion control and stormwater management plans; Phase I Utility.*

Patron—Lewis

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.15:31, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.15:31. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Standards and specifications for state agencies, federal entities, and other specified entities.

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

B. As an alternative to submitting soil erosion control and stormwater management plans pursuant to § 62.1-44.15:34, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, and authorities created pursuant to § 15.2-5102 may submit standards and specifications for Department approval that describe how land-disturbing activities shall be conducted. Such standards and specifications may be submitted for the following types of projects:

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

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

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

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

D. *As an alternative to submitting soil erosion control and stormwater management plans pursuant to § 62.1-44.15:34 for a permanent gravel access road associated with the construction and maintenance of electric transmission lines by a Phase I Utility as defined in subdivision A 1 of § 56-585.1, such utility shall be deemed to have satisfied the required water quantity technical criteria and shall not be required to obtain coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities if such access road is constructed using clean, open-graded, angular aggregate at a depth of no less than six inches and if the following conditions are met:*

1. *The project is managed so that less than one acre of land disturbance occurs on a daily basis;*

2. *The disturbed land where the work has been completed is adequately stabilized on a daily basis;*

3. *The environment is protected from erosion and sedimentation damage associated with the land-disturbing activity; and*

4. *The project owner or construction activity operator designs, installs, implements, and maintains*

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pollution prevention measures to (i) minimize the discharge of pollutants from equipment and vehicle wash water, wheel wash water, and other wash waters; (ii) minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on site to precipitation and to stormwater; (iii) minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures; (iv) prohibit the discharge of wastewater from the washout of concrete; (v) prohibit the discharge of wastewater from the washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials; and (vi) prohibit the discharge of fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance.

The Phase I Utility shall provide in its annual standards and specifications reasonable assurance that the conditions of this subsection will be satisfied. The Phase I Utility may achieve such reasonable assurance by incorporating the conditions of this subsection into an erosion and sediment control plan developed for the project under the utility's annual standards and specifications.

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

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

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

3. Provisions for administration of the standards and specifications program, project-specific plan design, plan review and plan approval, and construction inspection and compliance;

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

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

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

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

F. The Department shall perform random site inspections or inspections in response to a complaint to ensure compliance with this article and regulations adopted thereunder.

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

§ 62.1-44.15:31. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Annual standards and specifications for state agencies, federal entities, and other specified entities.

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

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

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

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

4. Provisions for ensuring that responsible personnel and contractors obtain certifications or

121 qualifications for erosion and sediment control and stormwater management comparable to those
122 required for local government;

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

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

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

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

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

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

134 C. *A Phase I Utility as defined in subdivision A 1 of § 56-585.1, for a permanent gravel access road*
135 *associated with the construction and maintenance of electric transmission lines by such utility, shall be*
136 *deemed to have satisfied the required water quantity technical criteria and shall not be required to*
137 *obtain coverage under the General VPDES Permit for Discharges of Stormwater from Construction*
138 *Activities if such access road is constructed using clean, open-graded, angular aggregate at a depth of*
139 *no less than six inches and if the following conditions are met:*

140 1. *The project is managed so that less than one acre of land disturbance occurs on a daily basis;*

141 2. *The disturbed land where the work has been completed is adequately stabilized on a daily basis;*

142 3. *The environment is protected from erosion and sedimentation damage associated with the*
143 *land-disturbing activity; and*

144 4. *The project owner or construction activity operator designs, installs, implements, and maintains*
145 *pollution prevention measures to (i) minimize the discharge of pollutants from equipment and vehicle*
146 *wash water, wheel wash water, and other wash waters; (ii) minimize the exposure of building materials,*
147 *building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides,*
148 *detergents, sanitary waste, and other materials present on site to precipitation and to stormwater; (iii)*
149 *minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak*
150 *prevention and response procedures; (iv) prohibit the discharge of wastewater from the washout of*
151 *concrete; (v) prohibit the discharge of wastewater from the washout and cleanout of stucco, paint, form*
152 *release oils, curing compounds, and other construction materials; and (vi) prohibit the discharge of*
153 *fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance.*

154 *The Phase I Utility shall provide in its annual standards and specifications reasonable assurance*
155 *that the conditions of this subsection will be satisfied. The Phase I Utility may achieve such reasonable*
156 *assurance by incorporating the conditions of this subsection into an erosion and sediment control plan*
157 *developed for the project under the utility's annual standards and specifications.*

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

162 ~~D.~~ E. The Department shall assess an administrative charge to cover the costs of services rendered
163 associated with its responsibilities pursuant to this section.