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SENATE BILL NO. 1374

Offered January 11, 2023

Prefiled January 11, 2023

A BILL to amend and reenact §§ 62.1-44.15:34, as it is currently effective and as it may become effective, 62.1-44.15:51, as it is currently effective, and 62.1-44.15:55, as it may become effective, of the Code of Virginia, relating to water control; agricultural exemptions; terracing.

Patron—Vogel

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

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

§ 62.1-44.15:34. (For expiration date, see notes) 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 (i) 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.) or is

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59 converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163
60 or (ii) any activity that involves bringing onto the property more than 5,000 cubic yards of fill material
61 in any 12-month period or raising the ground surface more than three feet above the existing ground
62 surface. For purposes of this exception, "terrace" means multiple continuous lines of earth embankments
63 constructed across a field slope at a line spacing that reduces sheet and rill erosion and gully erosion
64 to tolerable soil loss limits under the most intense cropping system planned for the field; typically, the
65 cuts and fills of soil are balanced, meaning there is no import or export of soil material necessary to
66 construct the terrace system;

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

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

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

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

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

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

91 **§ 62.1-44.15:34. (For effective date, see notes) Regulated activities; submission and approval of a**
92 **permit application; security for performance; exemptions.**

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

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

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

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

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

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

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

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

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

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

4. Prior to issuance of any land-disturbance approval, the VESMP authority may also require an applicant, excluding state agencies and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the VESMP authority, to ensure that measures could be taken by the VESMP authority at the applicant's expense should he fail, after proper notice, within the time specified to 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

182 obtain permit coverage.

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

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

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

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

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

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

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

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

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

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

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

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

222 6. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting,
223 or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural
224 engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins,
225 dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land
226 drainage, and land irrigation; or as additionally set forth by the Board in regulations. However, this
227 exception shall not apply to (i) harvesting of forest crops unless the area on which harvesting occurs is
228 reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.)
229 or is converted to bona fide agricultural or improved pasture use as described in subsection B of
230 § 10.1-1163 or (ii) *any activity that involves bringing onto the property more than 5,000 cubic yards of*
231 *fill material in any 12-month period or raising the ground surface more than three feet above the*
232 *existing ground surface. For purposes of this exception, "terrace" means multiple continuous lines of*
233 *earth embankments constructed across a field slope at a line spacing that reduces sheet and rill erosion*
234 *and gully erosion to tolerable soil loss limits under the most intense cropping system planned for the*
235 *field; typically, the cuts and fills of soil are balanced, meaning there is no import or export of soil*
236 *material necessary to construct the terrace system;*

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

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

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

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

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

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

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

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

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

263 **§ 62.1-44.15:51. (For expiration date, see notes) Definitions.**

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

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

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

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

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

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

284 "Department" means the Department of Environmental Quality.

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

286 "District" or "soil and water conservation district" means a political subdivision of the
287 Commonwealth organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of Chapter
288 5 of Title 10.1.

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

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

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

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

305 and maintenance work;

306 2. Individual service connections;

307 3. Installation, maintenance, or repair of any underground public utility lines when such activity

308 occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is

309 confined to the area of the road, street, or sidewalk that is hard surfaced;

310 4. Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity

311 relating to construction of the building to be served by the septic tank system;

312 5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects

313 conducted pursuant to Title 45.2;

314 6. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot

315 operations, or as additionally set forth by the Board in regulation, including engineering operations as

316 follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip

317 cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;

318 however, this exception shall not apply to (i) harvesting of forest crops unless the area on which

319 harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11

320 (§ 10.1-1100 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as

321 described in subsection B of § 10.1-1163 or (ii) *any activity that involves bringing onto the property*

322 *more than 5,000 cubic yards of fill material in any 12-month period or raising the ground surface more*

323 *than three feet above the existing ground surface. For purposes of this exception, "terrace" means*

324 *multiple continuous lines of earth embankments constructed across a field slope at a line spacing that*

325 *reduces sheet and rill erosion and gully erosion to tolerable soil loss limits under the most intense*

326 *cropping system planned for the field; typically, the cuts and fills of soil are balanced, meaning there is*

327 *no import or export of soil material necessary to construct the terrace system;*

328 7. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other

329 related structures and facilities of a railroad company;

330 8. Agricultural engineering operations, including but not limited to the construction of terraces,

331 terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of

332 the Dam Safety Act (§ 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating,

333 contour furrowing, land drainage, and land irrigation. *This exception shall not apply to any activity that*

334 *involves bringing onto the property more than 5,000 cubic yards of fill material in any 12-month period*

335 *or raising the ground surface more than three feet above the existing ground surface. For purposes of*

336 *this exception, "terrace" means multiple continuous lines of earth embankments constructed across a*

337 *field slope at a line spacing that reduces sheet and rill erosion and gully erosion to tolerable soil loss*

338 *limits under the most intense cropping system planned for the field; typically, the cuts and fills of soil*

339 *are balanced, meaning there is no import or export of soil material necessary to construct the terrace*

340 *system;*

341 9. Disturbed land areas of less than 10,000 square feet in size or 2,500 square feet in all areas of the

342 jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and

343 Management Regulations; however, the governing body of the program authority may reduce this

344 exception to a smaller area of disturbed land or qualify the conditions under which this exception shall

345 apply;

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

347 poles;

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

349 within the regulatory authority of and approved by local wetlands boards, the Marine Resources

350 Commission, or the United States Army Corps of Engineers; however, any associated land that is

351 disturbed outside of this exempted area shall remain subject to this article and the regulations adopted

352 pursuant thereto; and

353 12. Emergency work to protect life, limb, or property, and emergency repairs; however, if the

354 land-disturbing activity would have required an approved erosion and sediment control plan, if the

355 activity were not an emergency, then the land area disturbed shall be shaped and stabilized in

356 accordance with the requirements of the VESCP authority.

357 "Natural channel design concepts" means the utilization of engineering analysis and fluvial

358 geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the

359 purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and

360 allows larger flows to access its bankfull bench and its floodplain.

361 "Owner" means the owner or owners of the freehold of the premises or lesser estate therein,

362 mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person,

363 firm, or corporation in control of a property.

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

365 location.

366 "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. (For effective date, see notes) 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 (i) 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 or (ii) *any activity that involves bringing onto the property more than 5,000 cubic yards of fill material in any 12-month period or raising the ground surface more than three feet above the existing ground surface. For purposes of this exception, "terrace" means multiple continuous lines of earth embankments constructed across a field slope at a line spacing that reduces sheet and rill erosion and gully erosion to tolerable soil loss limits under the most intense cropping system planned for the field; typically, the cuts and fills of soil are balanced, meaning there is no import or export of soil material necessary to construct the terrace system;*

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.