

ARTICLE 1. Wetlands Ordinance.

Division 1. General.

Sec. 1-1-1. Purpose.

- (A) The governing body of King George County, Virginia, acting pursuant to Code of Virginia § 28.2-1300 et seq., as amended, adopts this Ordinance regulating the use and development of wetlands.

Sec. 1-1-2. Definition of Terms.

- (A) As used in this Ordinance, unless the context requires a different meaning, the following words and terms shall have the meanings ascribed to them in this Article:

- (1) *Back Bay and its tributaries.* The following as shown on the U.S. Geological Survey Quadrangle Sheets for Virginia Beach, North Bay, and Knotts Island: Back Bay north of the Virginia-North Carolina State line; Capsies Creek north of the Virginia-North Carolina State line; Deal Creek; Devil Creek; Nawney Creek; Redhead Bay, Sand Bay, Shipps Bay, North Bay, and the waters connecting them; Beggars Bridge Creek; Muddy Creek; Ashville Bridge Creek; Hells Point Creek; Black Gut; and all coves, ponds, and natural waterways adjacent to or connecting to or connecting with the above-named bodies of water.
- (2) *Commission.* The Virginia Marine Resources Commission.
- (3) *Commissioner.* The Commissioner of Marine Resources.
- (4) *Governmental activity.* Any of the services provided by King George County to its citizens for the purpose of maintaining this county, and shall include but shall not be limited to such services as constructing, repairing and maintaining roads; providing sewage facilities and streetlights; supplying and treating water; and constructing public buildings.
- (5) *Non-vegetated wetlands.* Unvegetated lands lying contiguous to mean low water and between mean low water and mean high water, including those unvegetated areas of Back Bay and its tributaries and the North Landing River and its tributaries subject to flooding by normal and wind tides but not hurricane or tropical storm tides.
- (6) *North Landing River and its tributaries.* The following as shown on the U.S. Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: The North Landing River from the Virginia-North Carolina line to Virginia Highway 165 at North Landing Bridge; the Chesapeake and Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks at Great Bridge; and all named as unnamed streams, creeks, and rivers flowing into the North Landing River and the Chesapeake and Albemarle Canal except West Neck Creek north of Indian River Road; Pocaty River west of Blackwater Road; Blackwater River west of its forks located at a point approximately 6400 feet due west of the point where Blackwater Road crosses the Blackwater River at the village of Blackwater; and Millbank Creek west of Blackwater Road.
- (7) *Person.* Any individual, corporation, partnership, association, company, business trust, joint venture or other legal entity.

- (8) *Vegetated wetlands.* Lands lying between and contiguous to mean low water and an elevation above mean low water equal to the factor one and one-half times the mean tide range at the site of the proposed project in King George County, and upon which is growing any of the following species: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), saltgrass (*Distichlis spicata*), black needlerush (*Juncus roemerianus*), saltwort (*Salicornia* spp.), Sea lavender (*Limonium* spp.), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), sea oxeye (*Borrchia frutescens*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), sea rocket (*Cakile edentula*), southern wildrice (*Zizaniopsis miliacea*), cattail (*Typha* spp.), three-squares (*Scirpus* spp.), buttonbush (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), black gum (*Nyssa sylvatica*), tupelo (*Nyssa aquatica*), dock (*Rumex* spp.), yellow pond lily (*Nuphar* sp.) marsh fleabane (*Pluchea purpurascens*), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), smartweed (*Polygonum* sp.), arrowhead (*Sagittaria* spp.), sweet flag (*Acorus calamus*), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), and switch grass (*Panicum virgatum*).
- (9) *Vegetated wetlands of Back Bay and its tributaries or vegetated wetlands of the North Landing River and its tributaries.* All marshes subject to flooding by normal and wind tides but not hurricane or tropical storm tides, and upon which is growing any of the following species: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), black needlerush (*Juncus roemerianus*), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), cattail (*Typha* spp.), three square (*Scirpus* spp.), dock (*Rumex* sp.), smartweed (*Polygonum* sp.) yellow pond lily (*Nuphar* sp.), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), arrowhead (*Sagittaria* sp.), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), or switch grass (*Panicum virgatum*).
- (10) *Wetlands.* Both vegetated and non-vegetated wetlands.
- (11) *Wetlands Board or Board.* A board created pursuant to Code of Virginia, § 28.2-1303, as amended.

Sec. 1-1-3. Authorized Activities.

- (A) The following uses of land and activities in wetlands are authorized, if otherwise permitted by law:
- (1) The construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences, duckblinds, wildlife management shelters, footbridges, observation decks and shelters and other similar structures; provided that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the wetlands;
 - (2) The cultivation and harvesting of shellfish, and worms for bait;

- (3) Noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing, shellfishing, horseback riding, swimming, skeet and trap shooting, and shooting on shooting preserves, provided that no structure shall be constructed except as permitted in subsection (A) (1), above;
- (4) Other outdoor recreational activities, provided they do not impair the natural functions or alter the natural contour of the wetlands;
- (5) Grazing, haying, and cultivating and harvesting agricultural, forestry or horticultural products;
- (6) Conservation, repletion and research activities of the commission, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, and other conservation-related agencies;
- (7) The construction or maintenance of aids to navigation which are authorized by governmental authority;
- (8) Emergency measures decreed by any duly appointed health officer of a governmental subdivision acting to protect the public health;
- (9) The normal maintenance and repair of, or addition to, presently existing roads, highways, railroad beds, or facilities abutting on or crossing wetlands, provided that no waterway is altered and no additional wetlands are covered;
- (10) Governmental activity in wetlands owned or leased by the Commonwealth of Virginia, or a political subdivision thereof;
- (11) The normal maintenance of man-made drainage ditches, provided that no additional wetlands are covered. This subdivision does not authorize the construction of any drainage ditch; and
- (12) The construction of living shoreline projects authorized pursuant to a general permit developed under subsection B of the Code of Virginia, § 28.2-104.1, as amended.

Division 2. Permitting.

Sec. 1-2-1. Application Requirements.

- (A) Any person who desires to use or develop any wetland within King George County other than for the purpose of conducting the activities specified in **Sec. 1-3-3, Authorized Activities**, of this Article, shall first file an application for a permit directly with the Wetlands Board or with the Virginia Marine Resources Commission (Commission.)
- (B) The permit application shall include the following:
- (1) The name and address of the applicant;
 - (2) A detailed description of the proposed activities;
 - (3) A map, drawn to an appropriate and uniform scale, showing:
 - (i) The area of wetlands directly affected;
 - (ii) The location of the proposed work thereon;
 - (iii) The area of existing and proposed fill and excavation;
 - (iv) The location, width, depth, and length of any proposed channel and disposal area; and
 - (v) The location of all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands;
 - (4) A statement indicating whether use of a living shoreline as defined in Code of Virginia, § 28.2-104.1, as amended, for a shoreline management practice is not suitable, including reasons for the determination;
 - (5) A description of the type of equipment to be used and the means of equipment access to the activity site;
 - (6) The names and addresses of owners of record of adjacent land and known claimants of water rights in or adjacent to the wetland of whom the applicant has notice;
 - (7) An estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project;
 - (8) A complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects;
 - (9) The completion date of the proposed work, project, or structure; and
 - (10) Such additional materials and documentation as the Wetlands Board may require.
- (C) A nonrefundable processing fee shall accompany each permit application. The fee shall be set by the governing body with due regard for the services to be rendered, including the time, skill, and administrator's expense involved.

Sec. 1-2-2. Public Review of Applications.

- (A) All applications, maps, and documents submitted shall be open for public inspection at the office designated by the applicable governing body and specified in the advertisement for public hearing required under **Sec. 1-2-3, Public Hearing Requirements**, of this Article.

Sec. 1-2-3. Public Hearing Requirements.

- (A) Not later than 60 days after receipt of a complete application, the Wetlands Board shall hold a public hearing on the application.
- (B) The following parties shall be notified of the public hearing:
 - (1) The applicant;
 - (2) Local governing body;
 - (3) The Commissioner;
 - (4) Owner(s) of record of any land adjacent to the wetlands in question;
 - (5) Known claimants of water rights in or adjacent to the wetlands in question;
 - (6) The Virginia Institute of Marine Science;
 - (7) The Department of Wildlife Resources;
 - (8) The Water Control Board;
 - (9) The Department of Transportation; and
 - (10) Any governmental agency expressing an interest in the application.
- (C) The Wetlands Board shall mail the public hearing notices not less than 20 days prior to the date set for the hearing.
- (D) The Wetlands Board shall also cause notice of such hearing to be published at least once a week for 2 weeks prior to such hearing in a newspaper having a general circulation in King George County.
- (E) The published notice shall specify the place or places within King George County where copies of the application may be examined. The costs of publication shall be paid by the applicant.

Sec. 1-2-4. Determination of Board at Public Hearing.

- (A) Approval of a permit application shall require the affirmative vote of 3 members of a five-member board or 4 members of a seven-member board.
- (B) The chairman of the Wetlands Board, or in their absence the acting chairman, may administer oaths and compel the attendance of witnesses.
 - (1) Any person may testify at the public hearing.
 - (2) Each witness at the hearing may submit a concise written statement of their testimony.
 - (3) The Wetlands Board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the Wetlands Board, and the rationale for the decision.

- (C) The Wetlands Board shall make its determination within 30 days of the hearing.
 - (1) If the Wetlands Board fails to act within that time, the application shall be deemed approved.
 - (i) For purposes of this Section, "act" means taking a vote on the application.
 - (2) If the application receives less than 4 affirmative votes from a seven-member board or less than 3 affirmative votes from a five-member board, the permit shall be denied.
- (D) Within 48 hours of its determination, the Wetlands Board shall notify the applicant and the commissioner of such determination.
- (E) If the Wetlands Board's decision is reviewed or appealed, the Wetlands Board shall transmit the record of its hearing to the Commissioner.
 - (1) Upon a final determination by the Commission, the record shall be returned to the Wetlands Board
 - (2) The record shall be open for public inspection at the same office as was designated under **Sec. 1-2-2, Public Review of Applications**, of this Article.
 - (3) No permit shall be issued until the period within which a request for review or an appeal to the Commission may be made has expired. If a request for review is made or an appeal is noted, no activity for which the permit is required shall be commenced until the Commission has notified the parties of its determination.

Sec. 1-2-5. Bonding or Letter of Credit.

- (A) The Wetlands Board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it, securing to the Commonwealth compliance with the conditions and limitations set forth in the permit.
- (B) The Wetlands Board may, after a hearing held pursuant to this Ordinance, suspend or revoke a permit if the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work described in the application.
- (C) The Wetlands Board may, after a hearing, suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

Sec. 1-2-6. Basis and Criteria for Board Decision.

- (A) **Basis.** In fulfilling its responsibilities under this Article, the Wetlands Board shall preserve and prevent the despoliation and destruction of wetlands within its jurisdiction while accommodating necessary economic development in a manner consistent with wetlands preservation and any standards set by the Commonwealth, in addition to those identified in Code of Virginia, § 28.2-1308, as amended, to ensure protection of shorelines and sensitive coastal habitats from sea level rise and coastal hazards, including the provisions of guidelines and minimum standards promulgated by the Commission pursuant to Code of Virginia, § 28.2-1301, as amended.
- (B) **Criteria.**
 - (1) In deciding whether to grant, grant in modified form, or deny a permit, the Wetlands Board shall consider the following:

- (i) The testimony of any person in support of or in opposition to the permit application;
 - (ii) The impact of the proposed development on the public health, safety, and welfare; and
 - (iii) The proposed development's conformance with standards prescribed in Code of Virginia, § 28.2-1308, as amended, and guidelines promulgated pursuant to Code of Virginia, § 28.2-1301, as amended.
- (2) The Wetlands Board shall grant the permit if all of the following criteria are met:
- (i) The anticipated public and private benefit of the proposed activity exceed its anticipated public and private detriment.
 - (ii) The proposed development conforms with the standards prescribed in Code of Virginia, § 28.2-1308, as amended, and guidelines promulgated pursuant to Code of Virginia, § 28.2-1301, as amended.
 - (iii) The proposed activity does not violate the purposes and intent of this Ordinance or Code of Virginia § 28.2-1300 et seq., as amended.
- (C) If the Wetlands Board finds that any of the criteria listed in **subsection (B), above**, are not met, the Wetlands Board shall deny the permit application but allow the applicant to resubmit the application in modified form.

Sec. 1-2-7. Permit Required.¹

- (A) It shall be unlawful for any person to conduct any activity requiring a permit under this Article without first having obtained a permit authorizing such activity.
- (B) The permit shall be in writing, signed by the chairman of the Wetlands Board, or their authorized representative, and notarized. A copy of the permit shall be transmitted to the Commissioner.

Sec. 1-2-8. Permit Expiration.

- (A) No permit shall be granted without an expiration date established by the Wetlands Board. Upon proper application, the Wetlands Board may extend the permit expiration date.

¹ Editor's Note: (A) added.

Division 3. Compliance and Enforcement.

Sec. 1-3-1. Compliance with Other Ordinances.

- (A) No permit granted by a Wetlands Board shall in any way affect the applicable zoning and land use ordinances of King George County or the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity.

Sec. 1-3-2. Enforcement.²

- (A) **Investigations and Prosecutions.** The Wetlands Board shall have the authority to investigate all projects as provided in the Code of Virginia § 28.2-1316, as amended, whether proposed or ongoing, which alter wetlands within the County. The Wetlands Board shall have the authority to prosecute violations of its orders, or any violation of any of the provisions of this Article.
- (B) **Monitoring and Site Inspections.** Pursuant to Code of Virginia § 28.2-1317, as amended, the Wetlands Board may require such on-site inspections deemed necessary to determine whether the measures required by the permit are being properly performed, or whether the provisions of this Article are being violated.
- (1) Prior to conducting any such inspections, notice shall be provided by the Wetlands Board to the resident owner, occupier or operator, who shall be given an opportunity to accompany the site inspector.
 - (2) If it is determined that there is a failure to comply with the permit, the chairperson shall serve notice upon the permittee at the address specified in the application, or by delivery at the site of the permitted activities to the person supervising such activities and designated in the permit to receive the notice.
 - (3) Such notice shall describe the measures needed for compliance and the time within which such measures shall be completed.
 - (4) Failure of such person to comply within the specified period, shall constitute a violation of this Article.
- (C) **Stop-Work Order.**
- (1) Upon receipt of a sworn complaint of a substantial violation of this Article from the of the Wetlands Board, the Board chairperson may, in conjunction with or subsequent to a notice to comply as specified in (B), above, issue an order requiring all or part of the activities on the site to be stopped until the specified corrective measures have been taken.
 - (i) In the case of an activity not authorized by this Article, or where the alleged permit noncompliance is causing, or is in imminent danger of causing, significant harm to the wetlands protected by this Article, such an order may be issued without regard to whether the person has been issued a notice to comply as specified in (B), above. Otherwise, such an order may be issued only after the permittee has failed to comply with a notice to comply.

² Editor's Note: Section added per the Code of Virginia.

- (ii) The order shall be served in the same manner as a notice to comply and shall remain in effect for a period of 7 days from the date of service pending application by the enforcing authority, permittee, resident owner, occupier or operator for appropriate relief to the circuit court.
 - (iii) Upon completion of corrective action, the order shall immediately be lifted.
- (2) Upon receipt of a sworn complaint of a substantial violation of this Article from a designated enforcement officer, the Wetlands Board may order that the affected site be restored to predevelopment conditions if the Board finds that restoration is necessary to recover lost resources or to prevent further damage to resources.
- (i) The order shall specify the restoration necessary and establish a reasonable time for its completion.
 - (ii) The order shall be issued only after a hearing with at least 30 days' notice to the affected person of the hearing's time, place and purpose, and shall become effective immediately upon issuance by the Board.
 - (iii) The Wetlands Board shall require any scientific monitoring plan it believes necessary to ensure the successful reestablishment of wetlands protected by this Article and may require that a prepaid contract acceptable to the Board be in effect for the purpose of carrying out the scientific monitoring plan.
 - (iv) The Wetlands Board may also require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it securing to the Commonwealth compliance with the conditions set forth in the restoration order.
 - (v) Failure to complete the required restoration is a violation of this Article.

Sec. 1-3-3. Violations.³

- (A) Pursuant to Code of Virginia § 28.2-1318, as amended, any person who knowingly, intentionally, negligently, or continually violates any order, rule or regulation of the Wetlands Board or violates any provision of a permit granted by the Board pursuant to this Article shall be guilty of a Class 1 misdemeanor.
- (B) Following a conviction, every day the violation continues shall be deemed a separate offense.

Sec. 1-3-4. Injunctions.⁴

- (A) Upon petition of the Wetlands Board to the circuit court, the court may enjoin an act which is unlawful under the provisions of this Article and may order the defendant to take such steps as are necessary to restore, protect, and preserve the wetlands involved. This remedy shall be exclusive of, and in addition to, any criminal penalty which may be imposed under **Sec. 1-3-5, Penalties**, of this Article.

³ Editor's Note: Section added per the Code of Virginia.

⁴ Editor's Note: Section added per the Code of Virginia.

Sec. 1-3-5. Penalties.⁵

- (A) Pursuant to Code of Virginia § 28.2-1320, as amended, without limiting the remedies which may be obtained under this Article, any person who violates any provision of this Article or who violates or fails, neglects, or refuses to obey any Wetlands Board notice, order, rule, regulation, or permit condition authorized by this Article shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$25,000 for each day of violation.
- (1) Such civil penalties may, at the discretion of the court, be directed to be paid into the treasury of the County for the purpose of abating environmental damage to or restoring wetlands in the County, in such manner as the court may, by order, direct; except that in the event the County or its agent is the violator, the court shall direct the penalty to be paid into the State treasury.
- (B) Without limiting the remedies which may be obtained under this Article, and with the consent of any person who has violated any provision of this Article or who has violated or failed, neglected, or refused to obey any Wetlands Board order, rule, regulation, or permit condition authorized by this Article, the Wetlands may provide, in an order issued by the Board against such person, for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation.
- (1) Civil charges shall be in lieu of any appropriate civil penalty which could be imposed under this Section.
- (2) Civil charges may be in addition to the cost of any restoration ordered by the Wetlands Board.

⁵ Editor's Note: Section added per the Code of Virginia.

ARTICLE 2. Stormwater Management Ordinance.

Division 1. General.

Sec. 2-1-1. Purpose and Authority.

(A) **Purpose.** The purpose of this Ordinance is to:

- (1) Ensure the general health, safety, and welfare of the citizens of King George County, Virginia;
- (2) Protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources; and
- (3) To establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.

(B) **Authority.** This Ordinance is adopted pursuant to Code of Virginia, § 62.1-44.15:24 et seq., as amended.

Sec. 2-1-2. Conflict of Provisions.

To the extent possible, the provisions of the County Code should be interpreted so as to not be in conflict with one another. In any case where the requirements of this Article conflict with any other provisions of the County Code, whichever imposes the more stringent restrictions shall apply. Approvals issued pursuant to this Article do not relieve the applicant of the responsibility to secure applicable federal, state and county permits or approvals for regulated activities. When any referenced Code of Virginia or County Code section is subsequently amended, the amended Code section shall be the applied standard.

Sec. 2-1-3. Severability.

If any provision or application of this Article to any person, property, or circumstance is held invalid by a court of competent jurisdiction, the remainder of this Article shall remain in full force and effect and its application to other persons, property, or circumstances shall not be affected.

Sec. 2-1-4. Definitions.

(A) In addition to the definitions set forth in 9VAC25-870-10⁶ of the Virginia Stormwater Management Program Permit (VSMP) Regulations, 9VAC25-840-10 of the Virginia Erosion and Sediment Control (VESC) Regulations, and 9VAC25-850-10 of the Virginia Erosion and Sediment Control and Stormwater Management Certification (VSMC) Regulations which are expressly adopted and incorporated herein by reference, the following words and terms used in this Article have the following meanings unless the context clearly indicates otherwise.

- (1) *Administrator.* The person responsible for administering the Article, in this case, the Director of the Department of Community Development, King George County Virginia, or their designated agent.

⁶ Editor's Note: References updated.

- (2) *Agreement in lieu of a stormwater management plan.* A contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a single-family residence; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.
- (3) *Applicant.* Any person submitting an application for a permit or requesting issuance of a permit under this Article.
- (4) *As-built plan.* A set of engineering or site drawings that adequately depict stormwater management facilities and stormwater drainage systems as they were actually constructed.
- (5) *Best management practice or BMP.*⁷ Schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.
- (6) *Best management practice implementation plan or BMP implementation plan.* A site-specific design plan for the implementation of BMPs on an individual single-family lot or other parcel with less than one acre of land disturbance within a larger common plan of development. The BMP implementation plan provides detailed information on the implementation of the SWM pollutant load and volume reduction BMPs and other requirements for the individual lot or parcel as detailed in the SWPPP and SWM plans of the VSMP permit for the larger common plan of development.
- (7) *Chesapeake Bay Preservation Act land disturbing activity.* A land disturbing activity including clearing, grading, or excavation that results in a land disturbance equal or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to the regulations adopted pursuant to the Chesapeake Bay Preservation Act, 9VAC25-830-10 et seq., as amended.
- (8) *Clean Water Act or CWA.* The federal Clean Water Act (33 U.S.C §1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.
- (9) *Common plan of development.* A contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.
- (10) *Control measure.* Any best management practice or stormwater facility, or other method used to minimize the discharge of pollutants to state waters.
- (11) *County.* King George County, Virginia.
- (12) *Department.* Virginia Department of Environmental Quality (DEQ).
- (13) *Development.* Land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures or the clearing of land for nonagricultural or nonsilvicultural purposes. The

⁷ Editor's Note: Added.

- regulation of discharges from development, for purposes of these regulations, does not include the exemptions found in 9VAC25-870-300.
- (14) *General permit.* A state permit authorizing a category of discharges under the CWA and the Act within a geographical area.
- (15) *Land disturbance or land disturbing activity.* A manmade change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation except that the term shall not include those exemptions specified in **Sec. 2-1-7, Exemptions**, of this Article and those exemptions specified in Code of Virginia, § 62.1-44.15:34.
- (16) *Layout.* A conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.
- (17) *Minor modification.* An amendment to an existing general permit before its expiration not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor general permit modification or amendment does not substantially alter general permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.
- (18) *Operator.* The owner or operator of any facility or activity subject to the Act and this chapter. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other state permit or VSMP authority permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s), operator means the operator of the regulated MS4 system.
- (19) *Permit or VSMP authority permit.* An approval to conduct a land disturbing activity issued by the Administrator for the initiation of a land disturbing activity, in accordance with this ordinance, and which may only be issued after evidence of general permit coverage has been provided by the department.
- (20) *Permittee.* The person to whom the state permit or VSMP authority permit is issued, including any owner or operator whose construction site is covered under a state construction general permit.
- (21) *Person.* Any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including federal, state, or local entity as applicable, any interstate body or any other legal entity.

- (22)*Regulations*. The Virginia Stormwater Management Program (VSMP) Permit Regulations, 9VAC25-870 et seq., as amended.
- (23)*Site* means the land or water area where any facility or land disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land disturbing activity. Areas channel ward of mean low water in tidal Virginia shall not be considered part of a site.
- (24)*State*. Commonwealth of Virginia.
- (25)*State board*. The Virginia Water Control Board.
- (26)*State permit*. An approval to conduct a land disturbing activity issued by the board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the board for stormwater discharges from an MS4. Under these state permits, the commonwealth imposes and enforces requirements pursuant to the Federal Clean Water Act and regulations, the Act and this Article.
- (27)*State Water Control Law*. Code of Virginia § 62.1-44.2 et seq., as amended.
- (28)*State waters*. All water, on the surface and under the ground, wholly or partially within or bordering the commonwealth or within its jurisdiction, including wetlands.
- (29)*Stormwater*. Precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.
- (30)*Stormwater management plan*. A document(s) containing material for describing methods for complying with the requirements of the VSMP or this article.
- (31)*Stormwater pollution prevention plan or SWPPP*. A document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site, and otherwise meets the requirements of this ordinance. In addition the document shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.
- (32)*Subdivision*. See King George County Code Appendix A, Zoning and Subdivision Ordinance.
- (33)*Total maximum daily load or TMDL*. The sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.
- (34)*Virginia Stormwater Management Act or Act*. Code of Virginia § 62.1-44.15:24 et seq., as amended.
- (35)*Virginia Stormwater BMP Clearinghouse website*. A website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.

- (36) *Virginia Stormwater Management Program or VSMP*. A program approved by the state board after September 13, 2011, that has been established by a locality to manage the quality and quantity of runoff resulting from land disturbing activities and shall include such items 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 associated regulations.
- (37) *Virginia Stormwater Management Program Authority or VSMP authority*. An authority approved by the state board after September 13, 2011, to operate a Virginia Stormwater Management Program.
- (38) *Watershed*. A defined area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which water drains may be considered the single outlet for the watershed.

Sec. 2-1-5. Stormwater Management Program (VSMP).

- (A) Pursuant to Code of Virginia, § 62.1-44.15:27, as amended, King George County hereby establishes a Virginia stormwater management program for land disturbing activities and adopts the applicable regulations that specify standards and specifications for VSMPs promulgated by the state board for the purpose set out in **Sec. 2-1-1, Purpose and Authority**, of this Article.
- (B) The King George County Board of Supervisors hereby designates the director of the Department of Community Development as the Administrator of the Virginia Stormwater Management Program (VSMP).
- (C) No VSMP authority permit shall be issued by the Administrator, until the following items have been submitted to and approved by the Administrator as prescribed herein:
- (1) A permit application that includes a general permit registration statement, if such statement is required;
 - (2) An erosion and sediment control plan approved in accordance with the Erosion and Sediment Control Ordinance of King George County; and
 - (3) A stormwater management plan that meets the requirements of this Chapter of County Code.
- (D) No VSMP authority permit shall be issued unless and until:
- (1) Evidence of general permit coverage is obtained;
 - (2) The fees required are received, and a performance bond is provided; and
 - (3) The permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit.
- (E) No grading, building, or other local permit shall be issued for a property unless a VSMP authority permit has been issued by the Administrator.

Sec. 2-1-6. Grandfathering.

- (A) Any land disturbing activity shall be considered grandfathered and shall be subject to technical criteria of 9VAC25-870-93 through 9VAC25-870-99, provided:
- (1) A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, special exception, or any document determined by the locality to be equivalent thereto was:
 - (i) Approved prior to July 1, 2012, or such later date as authorized by actions of the general assembly.
 - (ii) Provided a layout as defined by 9VAC25-870-10;
 - (iii) Will comply with the technical criteria of Virginia Administrative Code 9VAC25-870-93 through 9VAC25-870-99; and
 - (iv) Has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge and such that there is no increase in the volume or rate of runoff.
 - (2) A state permit has been issued prior to July 1, 2014; and
 - (3) Land disturbance did not commence prior to July 1, 2014.
- (B) Locality, state, and federal projects shall be considered grandfathered by a VSMP authority and shall be subject to 9VAC25-870-93 through 9VAC25-870-99 technical criteria, provided:
- (1) There has been an obligation of locality, state, or federal funding in whole or in part, prior to July 1, 2012 or, the department has approved a stormwater management plan prior to July 1, 2012;
 - (2) A state permit has not been issued prior to July 1, 2014; and
 - (3) Land disturbance did not commence prior to July 1, 2014.
- (C) Land-disturbing activities grandfathered under **subsections (A) and (B)**, above, shall remain subject to 9VAC25-870-93 through 9VAC25-870-99 for one additional permit cycle. After such time, portions of the project not under construction shall be subject to any new technical criteria adopted by the State Water Control Board.
- (D) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of 9VAC25-870-93 through 9VAC25-870-99.
- (E) Nothing in this section shall preclude an operator from constructing to a more stringent standard at his discretion.

Sec. 2-1-7. Exemptions.

- (A) Except as provided herein, no person shall engage in any land disturbing activity until a VSMP authority permit has been issued by the Administrator in accordance with the provisions of this ordinance.

- (B) Notwithstanding any other provisions of this ordinance, the following activities are exempt, unless otherwise required by federal law:
- (1) **Chesapeake Bay Preservation Act Land Disturbing Activity.** In order to protect the quality of state waters and to control the discharge of stormwater pollutants from land disturbing activities, runoff associated with Chesapeake Bay Preservation Act land disturbing activities shall be controlled. Such land disturbing activities shall not require completion of a registration statement or require coverage under the general permit for discharges of stormwater from construction activities but shall be subject to the following technical criteria and program and administrative requirements:
 - (i) An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during land disturbing activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.
 - (ii) A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during the land disturbing activity. The stormwater management plan shall be developed and submitted in accordance with **Sec. 2-2-1, Stormwater Management Plans**, of this Article. Prior to land disturbance, this plan must be approved by the VSMP authority.
 - (iii) Exceptions may be requested in accordance with **Sec. 2-1-8, Exceptions**, of this Article.
 - (iv) Long-term maintenance of stormwater management facilities shall be provided for and conducted in accordance with **Sec. 2-4-1, Long-term Maintenance of Permanent Stormwater Facilities**, of this Article.
 - (v) Water quality design criteria in **Sec. 2-3-2 (A)** shall be applied to the site.
 - (vi) Water quality compliance shall be achieved in accordance with **Sec. 2-3-2 (B)**.
 - (vii) Channel protection and flood protection shall be achieved in accordance with **Sec. 2-3-2 (C)**.
 - (viii) Offsite compliance options in accordance with **Sec. 2-3-2 (D)** shall be available to Chesapeake Bay Preservation Act land disturbing activities.
 - (ix) Such land disturbing activities, linear development controls, and criteria associated with stormwater impoundment structures or facilities shall be subject to the requirements set out in **Sec. 2-3-2 (G) and (H)**.
 - (2) **Mines, Minerals, and Energy.** Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Code of Virginia, tit. 45.2, as amended;
 - (3) **Agriculture.** 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 State 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;
- (i) 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 Code of Virginia § 10.1-1100 et seq., as amended, or is converted to bona fide agricultural or improved pasture use as described in subsection B of Code of Virginia, § 10.1-1163, as amended;
- (4) Single-family residences separately built and disturbing less than 2,500 square feet within or outside of a common plan of development or sale, including additions or modifications to existing single-family detached residential structures;
 - (5) Land disturbing activities that disturb less than 2,500 square feet;
 - (6) Discharges to a sanitary sewer or a combined sewer system;
 - (7) Activities under a State or Federal reclamation program to return an abandoned property to an agricultural or open land use;
 - (8) 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 section; and
 - (9) Conducting 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.
 - (i) In such situations, the Administrator shall be advised of the disturbance within seven days of commencing the land disturbing activity and compliance with the administrative requirements of subsection (A), above, is required within 30 days of commencing the land disturbing activity.

Sec. 2-1-8. Exceptions.

- (A) The Administrator may grant exceptions to the technical criteria of this Article, provided that:
 - (1) The exception is the minimum necessary to afford relief;
 - (2) Reasonable and appropriate conditions are imposed so that the intent of the Act and this Article are preserved;
 - (3) Granting the exception will not confer any special privileges that are denied in other similar circumstances; and
 - (4) Exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this ordinance.

- (B) Exceptions to the requirement that the land disturbing activity obtain required VSMP authority permit shall not be given by the Administrator, nor shall the Administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website.
- (C) Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to **Sec. 2-3-2 (D), Offsite Compliance Options**, have been considered and found not available.

Division 2. Plans and Permitting.

Sec. 2-2-1. Stormwater Management Plans.

- (A) A stormwater management plan shall be developed and submitted to the VSMP authority. The stormwater management plan shall be implemented as approved or modified by the VSMP authority and shall be developed in accordance with the following:
- (1) A stormwater management plan for a land disturbing activity shall apply the stormwater management technical criteria set forth in this Article to the entire land disturbing activity. Individual lots or parcels in a residential, commercial, or industrial common plan of development or sale shall not be considered to be separate land disturbing activities. Instead, the common plan shall be considered to be a single land disturbing activity. Approval of such plan shall govern the development of individual parcels within that plan, throughout the development life even if ownership changes.
 - (2) A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.
 - (3) 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 a stormwater management plan if executed by the VSMP authority.
- (B) A complete stormwater management plan shall include the following elements:
- (1) Information on the type of and location of stormwater discharges, information on the features to which stormwater is being discharged including surface waters or karst features if present, and predevelopment and post development drainage areas;
 - (2) Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected;
 - (3) A narrative that includes a description of current site conditions and final site conditions or if allowed by the VSMP authority, the information provided and documented during the review process that addresses the current and final site conditions;
 - (4) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
 - (5) Information on the proposed stormwater management facilities, including:
 - (i) The type of facilities;
 - (ii) Location, including geographic coordinates;
 - (iii) Acres treated; and
 - (iv) The surface waters or karst features into which the facility will discharge;
 - (6) Hydrologic and hydraulic computations, including runoff characteristics;
 - (7) Documentation and calculations verifying compliance with the water quality and quantity requirements of these regulations;
 - (8) A map or maps of the site that depicts the topography of the site and includes:

- (i) All contributing drainage areas;
 - (ii) Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
 - (iii) Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
 - (iv) Current and proposed land use, including buildings, roads, parking areas, utilities, and stormwater management facilities;
 - (v) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
 - (vi) The limits of clearing and grading, and the proposed drainage patterns on the site;
 - (vii) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.
- (9) If an operator intends to meet the water quantity requirements (Sec. 2-3-2 (C)) through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included; and
- (10) If payment of a fee is required with the stormwater management plan submission by the VSMP authority, the fee must have been submitted.
- (C) Elements of the stormwater management plans shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia.
- (D) A construction record drawing for permanent stormwater management facilities shall be submitted to the VSMP authority. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

Sec. 2-2-2. Review of Stormwater Management Plans.

- (A) Stormwater management plans shall be reviewed, approved and/or disapproved according to the following:
- (1) The VSMP authority shall plan review and determine the completeness of a plan in accordance with Sec. 2-2-2, Review of Stormwater Management Plans, below, and shall notify the applicant of any determination, within 15 calendar days of receipt. Where available to the applicant, electronic communication may be considered communication in writing.
 - (i) If within those 15 calendar days the plan is deemed to be incomplete, the applicant shall be notified in writing of the reasons the plan is deemed incomplete.
 - (ii) If a determination of completeness is made and communicated to the applicant within the 15 calendar days, an additional 60 calendar days from the date of the communication will be allowed for the review of the plan.
 - (iii) If a determination of completeness is not made and communicated to the applicant within the 15 calendar days, the plan shall be deemed complete as of the date of submission and

a total of 60 calendar days from the date of submission will be allowed for the review of the plan.

- (iv) The VSMP authority shall review, within 45 calendar days of the date of resubmission any plan that has been previously disapproved.
- (2) During the review period, the plan shall be approved or disapproved, and the decision communicated in writing to the person responsible for the land disturbing activity or his designated agent.
 - (i) If the plan is not approved, the reasons for not approving the plan shall be provided in writing.
 - (ii) Approval or denial shall be based on the plan's compliance with the requirements of this chapter and of the VSMP authority.
 - (iii) Where available to the applicant, electronic communication may be considered communication in writing.
- (3) If a plan meeting all requirements of this chapter and of the VSMP authority is submitted and no action is taken within the time specified above, the plan shall be deemed approved.
- (B) Each approved plan may be modified in accordance with the following:
 - (1) Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the VSMP authority. The VSMP authority shall have 60 calendar days to respond in writing either approving or disapproving such requests.
 - (2) Based on an inspection, the VSMP authority may require amendments to the approved stormwater management plan to address any deficiencies within a time frame set by the stormwater program administrative authority.
- (C) Upon the development of an online reporting system by the department, but no later than July 1, 2014, a VSMP authority shall then be required to obtain evidence of state permit coverage, where it is required, prior to providing approval to begin land disturbance.
- (D) The VSMP authority shall require the submission of a construction record drawing for permanent stormwater management facilities in accordance with 4VAC50-60-55. A VSMP authority may elect not to require construction record drawings for stormwater management facilities for which maintenance agreements are not required pursuant to 4VAC50-60-112.

Sec. 2-2-3. Pollution Prevention Plans.

- (A) A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary. The pollution prevention plan shall detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:
 - (1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

- (2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and
 - (3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.
- (B) The pollution prevention plan shall include effective best management practices to prohibit the following discharges:
- (1) Wastewater from washout of concrete, unless managed by an appropriate control;
 - (2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
 - (3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
 - (4) Soaps or solvents used in vehicle and equipment washing.
- (C) Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

Sec. 2-2-4. Stormwater Pollution Prevention Plans.

- (A) A stormwater pollution prevention plan shall include, but not be limited to:
- (1) An erosion and sediment control plan consistent with the requirements of the King George County Erosion and Sediment Control Ordinance (Chapter 6 of the County Code) and must be designed and implemented during construction activities.
 - (2) A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VSMP authority, except for land disturbing activities previously covered the General Permit for Discharges of Stormwater from Construction Activities issued July 1, 2009.
 - (3) A pollution prevention plan that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences.
 - (4) In addition to the requirements of above, if a specific WLA for a pollutant has been established in a TMDL and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the WLA in a state water control board approved TMDL.
- (B) The stormwater pollution prevention plan must address the following requirements, to the extent otherwise required by state law or regulations and any applicable requirements of a state permit:
- (1) Control stormwater volume and velocity within the site to minimize soil erosion;
 - (2) Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;

- (3) Minimize the amount of soil exposed during construction activity;
 - (4) Minimize the disturbance of steep slopes;
 - (5) Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;
 - (6) Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible; and
 - (7) Minimize soil compaction and, unless infeasible, preserve topsoil.
- (C) The stormwater pollution prevention plan must include requirements to stabilize disturbed areas during onsite activity.
- (1) Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days.
 - (i) Stabilization must be completed within a period of time determined by the VSMP authority.
 - (ii) In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the VSMP authority.
- (D) The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP. The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site.

Division 3. Design Methods and Criteria.

Sec. 2-3-1. Applicable Design Standards, Specifications, and Methods.

- (A) The standards contained within the Virginia Erosion and Sediment Control Regulations (VESCR), the Virginia Erosion and Sediment Control Handbook (VESCH) (latest edition), the Virginia Stormwater Management Handbook (VSMH) (latest edition), the King George County Erosion and Sediment Control Ordinance (Chapter 6 of the County Code), and any additional guidance provided by the VSMP authority are to be used by the applicant in the preparation and submission of an erosion and sediment control plan, and by the VSMP authority in considering the adequacy of a plan submittal. When the standards vary between the publications, the state regulations shall take precedence.
- (B) The latest approved version of BMPs found on the Virginia Stormwater BMP Clearinghouse Website shall be utilized to effectively reduce the pollutant load and runoff volume (if criteria for runoff volume are adopted) as required in this chapter in accordance with the Virginia Runoff Reduction Method.
- (C) Proposed residential, commercial, or industrial subdivisions shall apply these stormwater management criteria to the development project as a whole. Individual lots or parcels shall not be considered separate development projects, but rather the entire subdivision shall be considered a single development project. Hydrologic parameters shall reflect the ultimate development and shall be used in all engineering calculations.
- (D) Unless otherwise specified, the following shall apply to the hydrologic computations of this section:
 - (1) The prescribed design storms are the one-year, two-year, and ten-year 24-hour storms using the site-specific rainfall precipitation frequency data recommended by the U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14 and provided in the VA SWM Handbook.
 - (2) All hydrologic analyses shall be based on the existing watershed characteristics and how the ultimate development condition of the subject project will be addressed.
 - (3) The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) synthetic 24-hour rainfall distribution and models, including, but not limited to TR-55 and TR-20; hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or other NRCS standard hydrologic and hydraulic methods, shall be used to conduct the analyses described in this part.
 - (4) Design storms and hydrologic methods; 4VAC50-60-85. Stormwater management impoundment structures or facilities.

Sec. 2-3-2. Technical Criteria for Regulated Land Disturbing Activities.

- (A) **Water Quality Design Compliance.** In order to protect the quality of state waters and to control the discharge of stormwater pollutants from regulated activities, the following minimum design criteria and statewide standards for stormwater management shall be applied to the site.

- (1) New development. The total phosphorus load of new development projects shall not exceed 0.41 pounds per acre per year, as calculated pursuant to subsection (B), Water Quality Compliance, below.
- (2) Development on prior developed lands:
 - (i) For land disturbing activities disturbing greater than or equal to one acre that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load shall be reduced at least 20% below the predevelopment total phosphorus load.
 - (ii) For regulated land disturbing activities disturbing less than one acre that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load shall be reduced at least 10% below the predevelopment total phosphorus load.
 - (iii) For land disturbing activities that result in a net increase in impervious cover over the predevelopment condition, the design criteria for new development shall be applied to the increased impervious area. Depending on the area of disturbance, the criteria of subsection (A) (2) (i) or (ii), above, shall be applied to the remainder of the site.
 - (iv) In lieu of subsection (A) (2) (iii), above, the total phosphorus load of a linear development project occurring on prior developed lands shall be reduced 20% below the predevelopment total phosphorus load.
 - (v) The total phosphorus load shall not be required to be reduced to below the applicable standard for new development.
- (B) **Water Quality Compliance.** Compliance with the water quality design criteria shall be determined by utilizing the Virginia Runoff Reduction Method or another equivalent methodology that is approved by the Virginia Water Control Board.
 - (1) The BMPs listed in 9VAC25-870-65.B are approved for use, as necessary to effectively reduce the phosphorus load and runoff volume, in accordance with the Virginia Runoff Reduction Method. Other approved BMPs found on the Virginia Stormwater BMP Clearinghouse website may also be utilized. Design specifications and the pollutant removal efficiencies for all approved BMPs are found on the Virginia Stormwater BMP Clearinghouse website. BMPs differing from those listed shall be reviewed and approved in accordance with procedures established by the BMP Clearinghouse Committee and approved by the Virginia Water Control Board.
 - (2) The King George County VSMP authority may establish limitations on the use of specific BMPs following the submission of the proposed limitation and written justification to the Virginia Department of Environmental Quality (DEQ).
 - (3) The King George County VSMP authority shall have the discretion to allow for application of the design criteria to each drainage area of the site. Where a site drains to more than one Hydrologic Unit Code, the pollutant load reduction requirements shall be applied independently within each Hydrologic Unit Code unless reductions are achieved in accordance with a comprehensive watershed stormwater management plan in accordance with subsection (I), Comprehensive Stormwater Management Plans, below.

(4) Offsite alternatives, where allowed in accordance with subsection (D), Offsite Compliance Options, may be utilized to meet the design criteria of subsection (A), Water Quality Design Compliance.

(C) **Water Quantity.** Channel protection and flood protection shall be addressed in accordance with the minimum standards set out in this Section. Nothing in this Section shall prohibit the King George County VSMP authority from establishing a more stringent standard especially where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters. Compliance with the minimum standards set out in this Section shall be deemed to satisfy the requirements of minimum standard 19 of the Virginia Erosion and Sediment Control Regulations.

(1) **Channel protection.** Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet the following criteria, where applicable, from the point of discharge to a point to the limits of analysis:

(i) *Manmade stormwater conveyance systems.* When stormwater from a development is discharged to a manmade stormwater conveyance system, following the land disturbing activity, either:

(a) The manmade stormwater conveyance system shall convey the post development peak flow rate from the two-year 24-hour storm event without causing erosion of the system. Detention of stormwater or downstream improvements may be incorporated into the approved land disturbing activity to meet this criterion, at the discretion of the VSMP authority; or

(b) The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in subsection (C) (1) (iii), shall be met.

(ii) *Restored stormwater conveyance systems.* When stormwater from a development is discharged to a restored stormwater conveyance system that has been restored using natural design concepts, following the land disturbing activity, either:

(a) The development shall be consistent, in combination with other stormwater runoff, with the design parameters of the restored stormwater conveyance system that is functioning in accordance with the design objectives; or

(b) The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in subsection (C) (1) (iii), shall be met.

(iii) *Natural stormwater conveyance systems.* When stormwater from a development is discharged to a natural stormwater conveyance system, the maximum peak flow rate from the one-year 24-hour storm following the land disturbing activity shall be calculated either:

(a) In accordance with the following methodology:

$$Q_{\text{Developed}} \leq I.F. * (Q_{\text{Pre-developed}} * RV_{\text{Pre-Developed}}) / RV_{\text{Developed}}$$

(b) Under no condition shall $Q_{\text{Developed}}$ be greater than $Q_{\text{Pre-developed}}$ nor shall $Q_{\text{Developed}}$ be required to be less than that calculated in the equation ($Q_{\text{Forest}} * RV$

Forest)/RV Developed; where I.F. (Improvement Factor) equals 0.8 for sites > 1 acre or 0.9 for sites \leq 1 acre.

(c) Q Developed = The allowable peak flow rate of runoff from the developed site. RV Developed = The volume of runoff from the site in the developed condition.

(d) Q Pre-developed = The peak flow rate of runoff from the site in the pre-developed condition. RV Pre-Developed = The volume of runoff from the site in pre-developed condition.

(e) Q Forest = The peak flow rate of runoff from the site in a forested condition. RV Forest = The volume of runoff from the site in a forested condition;

(f) Or in accordance with another methodology that is demonstrated by the King George County VSMP authority to achieve equivalent results and is approved by the Virginia Soil and Water Conservation Board or Water Control Board.

(iv) **Limits of analysis.** Unless subsection (C) (1) (iii), above, is utilized to show compliance with the channel protection criteria, stormwater conveyance systems shall be analyzed for compliance with channel protection criteria to a point where either:

(a) Based on land area, the site's contributing drainage area is less than or equal to 1.0 percent of the total watershed area; or

(b) Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm is less than or equal to 1.0 percent of the existing peak flow rate from the one-year 24-hour storm prior to the implementation of any stormwater quantity control measures.

(2) **Flood protection.** Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet one of the following criteria as demonstrated by use of acceptable hydrologic and hydraulic methodologies:

(i) Concentrated stormwater flow to stormwater conveyance systems that currently do not experience localized flooding during the ten-year 24-hour storm event. The point of discharge releases stormwater into a stormwater conveyance system that, following the land disturbing activity, confines the post development peak flow rate from the ten-year 24-hour storm event within the stormwater conveyance system. Detention of stormwater or downstream improvements may be incorporated into the approved land disturbing activity to meet this criterion, at the discretion of the VSMP authority.

(ii) Concentrated stormwater flow to stormwater conveyance systems that currently experience localized flooding during the ten-year 24-hour storm event; the point of discharge either:

(a) Confines the post-development peak flow rate from the ten-year 24-hour storm event within the stormwater conveyance system to avoid the localized flooding. Detention of stormwater or downstream improvements may be incorporated into the approved

land disturbing activity to meet this criterion, at the discretion of the VSMP authority;
or

- (b) Releases a post-development peak flow rate for the ten-year 24-hour storm event that is less than the predevelopment peak flow rate from the ten-year 24-hour storm event. Downstream stormwater conveyance systems do not require any additional analysis to show compliance with flood protection criteria if this option is utilized.
 - (iii) *Limits of analysis.* Unless subsection (C) (2) (ii), above, is utilized to comply with the flood protection criteria, stormwater conveyance systems shall be analyzed for compliance with flood protection criteria to a point where:
 - (a) The site's contributing drainage area is less than or equal to 1.0 percent of the total watershed area draining to a point of analysis in the downstream stormwater conveyance system;
 - (b) Based on peak flow rate, the site's peak flow rate from the ten-year 24-hour storm event is less than or equal to 1.0 percent of the existing peak flow rate from the ten-year 24-hour storm event prior to the implementation of any stormwater quantity control measures; or
 - (c) The stormwater conveyance system enters a mapped floodplain or other flood-prone area, adopted by ordinance, of any locality.
 - (3) Increased volumes of sheet flow resulting from pervious or disconnected impervious areas, or from physical spreading of concentrated flow through level spreaders, must be identified and evaluated for potential impacts on down-gradient properties or resources. Increased volumes of sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient properties or resources shall be diverted to a stormwater management facility or a stormwater conveyance system that conveys the runoff without causing down-gradient erosion, sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of subsection (C), Water Quantity, are met, no further water quantity controls are required.
 - (4) For purposes of computing predevelopment runoff, all pervious lands on the site shall be assumed to be in good hydrologic condition in accordance with the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of conditions existing at the time of computation. Predevelopment runoff calculations utilizing other hydrologic conditions may be utilized provided that it is demonstrated to and approved by the VSMP authority that actual site conditions warrant such considerations.
 - (5) Predevelopment and post-development runoff characteristics and site hydrology shall be verified by site inspections, topographic surveys, available soil mapping or studies, and calculations consistent with good engineering practices. Guidance provided in the Virginia Stormwater Management Handbook and by the Virginia Stormwater BMP Clearinghouse shall be considered appropriate practices.
- (D) **Offsite Compliance Options.**
- (1) Offsite compliance options that a VSMP authority may allow an operator to use to meet required phosphorus nutrient reductions include the following:

- (i) Offsite controls utilized in accordance with a comprehensive stormwater management plan adopted pursuant to comprehensive stormwater management plan, subsection (I), Comprehensive Stormwater Management Plans, for the local watershed within which a project is located;
 - (ii) A King George County pollutant loading pro rata share program established pursuant to Code of Virginia, § 15.2-2243 or similar local funding mechanism;
 - (iii) The nonpoint nutrient offset program established pursuant to Code of Virginia, § 62.1-44.15:35;
 - (iv) Any other offsite options approved by an applicable state agency or state board; and
 - (v) When an operator has additional properties available within the same Hydrologic Unit Code or upstream Hydrologic Unit Code that the land disturbing activity directly discharges to or within the same watershed as determined by the King George County VSMP authority, offsite stormwater management facilities on those properties may be utilized to meet the required phosphorus nutrient reductions from the land disturbing activity.
- (2) Notwithstanding subsection (D) (1), above, and pursuant to Code of Virginia, § 62.1-44.15:35, operators shall be allowed to utilize offsite options identified in [subsection] a. of this section under any of the following conditions:
- (i) Less than five acres of land will be disturbed;
 - (ii) The post-construction phosphorus control requirement is less than ten pounds per year; or at least 75% of the required phosphorus nutrient reductions are achieved on-site; or
 - (iii) If at least 75% of the required phosphorus nutrient reductions cannot be met on-site, and the operator can demonstrate to the satisfaction of the VSMP authority that (i) alternative site designs have been considered that may accommodate on-site best management practices, (ii) on-site best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate on-site best management practices will be implemented, and (iv) full compliance with post-development nonpoint nutrient runoff compliance requirements cannot practicably be met on-site, then the required phosphorus nutrient reductions may be achieved, in whole or in part, through the use of off-site compliance options.
- (3) Notwithstanding subsection (D) (1) and (2), above, offsite options shall not be allowed:
- (i) Unless the selected offsite option achieves the necessary nutrient reductions prior to the commencement of the operator's land disturbing activity. In the case of a phased project, the operator may acquire or achieve offsite nutrient reductions prior to the commencement of each phase of land disturbing activity in an amount sufficient for each phase.
 - (ii) In contravention of local water quality-based limitations at the point of discharge that are:
 - (a) Consistent with the determinations made pursuant to subsection B of Code of Virginia, § 62.1-44.19:7;

- (b) Contained in a municipal separate storm sewer system (MS4) program plan accepted by the department; or
 - (c) As otherwise may be established or approved by the board.
- (4) In order to meet the requirements of subsection (C), Water Quantity, offsite options described in subsections (D) (1) (i) and (ii) may be utilized.
- (E) Design Storms and Hydrologic Methods.**
 - (1) Unless otherwise specified, the prescribed design storms are the one-year, two-year, and ten-year 24-hour storms using the site-specific rainfall precipitation frequency data recommended by the U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14. Partial duration time series shall be used for the precipitation data.
 - (2) Unless otherwise specified, all hydrologic analyses shall be based on the existing watershed characteristics and how the ultimate development condition of the subject project will be addressed.
 - (3) The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) synthetic 24-hour rainfall distribution and models, including, but not limited to TR-55 and TR-20; hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or other standard hydrologic and hydraulic methods, shall be used to conduct the analyses described in this part.
 - (4) For drainage areas of 200 acres or less, the VSMP authority may allow for the use of the rational method for evaluating peak discharges.
 - (5) For drainage areas of 200 acres or less, the VSMP authority may allow for the use of the modified rational method for evaluating volumetric flows to stormwater conveyances.
- (F) Stormwater Harvesting.** In accordance with Code of Virginia, § 62.1-44.15:28, as amended, stormwater harvesting is encouraged for the purposes of landscape irrigation systems, fire protection systems, flushing water closets and urinals, and other water handling systems to the extent such systems are consistent with federal, state, and local regulations.
- (G) Linear Development Projects.** Linear development projects shall control post-development stormwater runoff in accordance with a site-specific stormwater management plan or a comprehensive watershed stormwater management plan developed in accordance with these regulations.
- (H) Stormwater Management Impoundment Structures or Facilities.**
 - (1) Stormwater management wet ponds and extended detention ponds that are not covered by the Impounding Structure Regulations (4VAC50-20) shall, at a minimum, be engineered for structural integrity for the 100-year storm event.
 - (2) Construction of stormwater management impoundment structures or facilities may occur in karst areas only after a study of the geology and hydrology of the area has been conducted to determine the presence or absence of karst features that may be impacted by stormwater runoff and BMP placement.

- (3) Discharge of stormwater runoff to a karst feature shall meet the water quality criteria set out in 4VAC50-60-63 and the water quantity criteria set out in 4VAC50-60-66. Permanent stormwater management impoundment structures or facilities shall only be constructed in karst features after completion of a geotechnical investigation that identifies any necessary modifications to the BMP to ensure its structural integrity and maintain its water quality and quantity efficiencies. The person responsible for the land disturbing activity is encouraged to screen for known existence of heritage resources in the karst features. Any Class V Underground Injection Control Well registration statements for stormwater discharges to improved sinkholes shall be included in the SWPPP.
- (l) **Comprehensive stormwater management plans.** King George County VSMP authority may develop comprehensive stormwater management plans to be approved by the department that meet the water quality objectives, quantity objectives, or both of this Article:
 - (1) Such plans shall ensure that offsite reductions equal to or greater than those that would be required on each contributing site are achieved within the same HUC or within another locally designated watershed. Pertaining to water quantity objectives, the plan may provide for implementation of a combination of channel improvement, stormwater detention, or other measures that are satisfactory to the locality's VSMP authority to prevent downstream erosion and flooding.
 - (2) If the land use assumptions upon which the plan was based change or if any other amendments are deemed necessary by the locality's VSMP authority, such authority shall provide plan amendments to the department for review and approval.
 - (3) During the plan's implementation, the locality's VSMP authority shall document nutrient reductions accredited to the BMPs specified in the plan.
 - (4) State and federal agencies may develop comprehensive stormwater management plans and may participate in locality-developed comprehensive stormwater management plans where practicable and permitted by the locality's VSMP authority.

Division 4. Maintenance and Inspections.

Sec. 2-4-1. Long-term Maintenance of Permanent Stormwater Facilities.

- (A) The Administrator shall require the provision of long-term responsibility for, and maintenance of, stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the local land records prior to general permit termination or earlier as required by the Administrator and shall at a minimum:
- (1) Be submitted to the Administrator for review and approval prior to the approval of the stormwater management plan;
 - (2) Be stated to run with the land;
 - (3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
 - (4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator; and
 - (5) Be enforceable by all appropriate governmental parties.
- (B) At the discretion of the Administrator, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the Administrator that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the Administrator.
- (C) If a recorded instrument is not required; the Administrator shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the Administrator.

Sec. 2-4-2. Monitoring and Inspections.

- (A) All erosion and sediment control measures must be periodically inspected by the individual responsible for carrying out the plan and properly maintained in effective operating condition in accordance with the approved plans and the VESCH. If site inspections identify control measures that are not operating effectively, maintenance shall be performed as soon as practicable to maintain the continued effectiveness of stormwater controls.
- (B) All land disturbing activities covered by a King George County Land Disturbing Permit or a VSMP permit shall be inspected by the individual responsible for carrying out the plan in accordance with the requirements of the VSMP construction general permit and as follows:
- (1) At least every seven calendar days; or
 - (2) At least once every 14 calendar days and within 48 hours following any rainfall event of 0.25 inches or greater.

- (3) Where areas have been temporarily stabilized such inspections shall be conducted at least once every month.
- (C) The individual responsible for carrying out the plan shall maintain records of inspections and maintenance in order to determine whether the measures required in the plan are effective in controlling erosion and sedimentation and to ensure compliance with the approved plan. Records shall be made available to the VSMP authority inspector upon request.
- (D) The Administrator may require every permit applicant or permittee to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this article.
- (E) All land disturbing activities covered by a King George County Land Disturbing Permit or a VSMP permit that are required to implement a TMDL and/or an EW Action Plan in accordance with VSMP CGP 4VAC50-60-1170 Section I.B, shall be inspected by the individual responsible for carrying out the plan in accordance with the VSMP CGP and the following:
- (1) At least once every four days; or
 - (2) At least once every seven days and no later than 48 hours following any rainfall event of 0.25 inches or more. In the event that a 0.25-inch storm event occurs when there are more than 48 hours between normal working days, the inspection shall be conducted on the next working day.
- (F) The VSMP authority will inspect all regulated land disturbing activities in accordance with the approved alternate inspection schedule to ensure compliance with the approved SWPPP. The owner, permittee or person responsible for carrying out the plan or agreement shall be given notice of the inspection.
- (G) Inspection of the construction of permanent stormwater management facilities will be required at critical stages of construction by the VSMP authority to ensure compliance with the approved plans and BMP specifications. As an alternative, the VSMP authority may accept the submittal of inspection reports certifying that the stormwater management facilities are being constructed in accordance with the approved stormwater management plan conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Code of Virginia, art. 1 (§ 54.1-400 et seq.) of ch. 4 of tit. 54.1; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the board.
- (H) Prior to the release of any performance bonds or termination of the King George County Land Disturbing Permit or VSMP Authority Permit, the applicant shall submit the required as-built drawings for the stormwater management facilities. Final certification of compliance with the construction specifications and integrity of all storm drainage and stormwater management facilities and their appurtenant structures shall be provided on the as-built plans by a professional licensed in Virginia to perform such work.
- (I) The right-of-entry for the VSMP authority to conduct such inspections shall be expressly reserved in the permit. The permit holder, or his duly designated representative, shall be afforded the opportunity to accompany the inspectors.

- (J) Monitoring and inspections of permanent stormwater management facilities:
 - (1) Owners of stormwater management facilities shall be responsible for conducting inspections and performing maintenance in accordance with the recorded Stormwater BMP Maintenance Agreement.
 - (2) Owners shall conduct and document an annual inspection of stormwater BMPs in accordance with the VSMP Authority BMP Inspection and Maintenance Program Manual.
 - (3) Owners of stormwater BMPs shall provide for a comprehensive BMP inspection and report in accordance with the VSMP Authority BMP Inspection and Maintenance Program Manual at least once every five-years and submitted to the VSMP authority. The inspection shall be conducted by an individual who is licensed as a professional engineer, architect, landscape architect, or land surveyor practicing within the area of expertise as described pursuant to Code of Virginia, art. 1 (§ 54.1-400 et seq.) of ch. 4 of tit. 54.1, a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor, or who holds a certificate of competence in project inspection for SWM from the board.
- (K) The property owner or designated agent responsible for inspecting and ensuring all necessary maintenance and repairs to the stormwater management facility in accordance with the recorded maintenance agreement shall keep written records of inspections and maintenance/repairs in accordance with the VSMP Authority BMP Inspection and Maintenance Program Manual.
- (L) Inspection of stormwater management facilities designed to treat stormwater runoff primarily from the individual residential lot on which they are located shall be conducted by the property owner in accordance with VSMP Authority Residential Lot BMP Inspection and Maintenance Agreement and the VSMP Authority BMP Inspection and Maintenance Program Manual and are not subject to the comprehensive inspection and documentation provisions of items 2 and 3, respectively, of this section.
- (M) The VSMP authority will ensure that all stormwater management facilities are being inspected and maintained according to the following:
 - (1) Ensure that each stormwater management facility is inspected by the VSMP authority, or its designee, not to include the owner, except as provided in subsections (M) (2) and (3), below, at least once every five years; and be documented by records.
 - (2) The VSMP authority may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established in this section if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Code of Virginia, art. 1 (§ 54.1-400 et seq.) of ch. 4 of tit. 54.1; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the board.
 - (3) If a recorded instrument is not required pursuant to 4VAC50-60-112, a VSMP authority shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and

education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the VSMP authority.

Division 5. Enforcement and Appeal.

Sec. 2-5-1. Enforcement.

- (A) If the Administrator determines that there is a failure to comply with the VSMP authority permit conditions or determines there is an unauthorized discharge, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by any of the following:
- (1) Informal proceedings by:
 - (i) Verbal warnings; and
 - (ii) Inspection reports; or
 - (2) Formal proceedings by:
 - (i) Notices of corrective action;
 - (ii) Consent special orders; and
 - (iii) Notices to comply.
- (B) Written notices shall be served by registered or certified mail to the address specified in the permit application or by delivery at the site of the development activities to the agent or employee supervising such activities.
- (C) The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued or the permit may be revoked by the Administrator.
- (D) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the Administrator may be compelled in a proceeding instituted in King George County to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
- (E) Violations for which a penalty may be imposed under this Section shall include but not be limited to the following:
- (1) No state permit registration;
 - (2) No SWPPP;
 - (3) Incomplete SWPPP;
 - (4) SWPPP not available for review;
 - (5) No approved erosion and sediment control plan;
 - (6) Failure to install stormwater BMPs or erosion and sediment controls;
 - (7) Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
 - (8) Operational deficiencies
 - (9) Failure to conduct required inspections;
 - (10) Incomplete, improper, or missed inspections; and

(11) Discharges not in compliance with the requirements of Section 4VAC 50-60-1170 of the general permit.

(F) The Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court. In imposing a civil penalty pursuant to this section, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.

(G) Any civil penalties assessed by a court as a result of a summons issued by the locality shall be paid into the treasury of the King George County to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

(H) **Stop work order:**

(1) The VSMP authority may issue a stop work order requiring the owner, permittee, or person responsible for carrying out the approved plan, to cease all land disturbing activities when:

(i) Land disturbing activities have commenced without an approved plan, agreement in lieu of a plan, King George County Land Disturbing Permit, or a VSMP authority permit where required; or

(ii) If a permittee fails to comply with a notice to comply within the time specified.

(2) Such order requires that all land disturbing activities be stopped until an approved plan, an agreement in lieu of a plan, or any required permits are obtained.

(3) Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the registration statement, or by personal delivery by an agent of the VSMP authority or department.

(4) In addition to the cessation of all land disturbing activities as described in **subsection (H) (1) above**, the permittee may also be subject to having the VSMP authority permit revoked; and furthermore, he shall be deemed to be in violation of this ordinance and, upon conviction, shall be subject to the penalties as provided in the Code of Virginia or by this ordinance.

(5) The stop work order shall remain in effect for a period of 7 calendar days from the date of service pending application by the director or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation is alleged to have occurred.

(6) Where the alleged noncompliance is causing or is in imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.

(I) **Conflict with approved plan:**

(1) If, at any stage of the land disturbing activity, the VSMP authority determines that the physical conditions on the site are not as stated or shown on the approved erosion and sediment

control plan or stormwater management plan, or determines that the storm drainage system or stormwater management facility is inadequate or not constructed as shown on the approved stormwater management final plan, the VSMP authority may refuse to approve further work and the VSMP authority may revoke existing permits or approvals until a revised stormwater management final plan has been submitted and approved.

(J) Maintenance of permanent stormwater facilities:

(1) If during periodic inspections to ensure that stormwater management facilities are being adequately maintained as designed, the VSMP authority identifies operational deficiencies and/or determines that the owner of the stormwater management facility has failed to perform maintenance or conduct maintenance inspections in accordance with the recorded SWM BMP maintenance and inspection agreement, the VSMP authority shall notify the person or organization responsible for carrying out the requirements of the agreement. The notice shall specify the deficiencies, the corrective actions required to restore the facility, and the time frame within which the corrective actions shall be completed.

(K) In accordance with the Code of Virginia 62.1-44.15:48, any person who violates any provision of this chapter or of any regulations or ordinances, or standards and specifications adopted or approved hereunder, including those adopted pursuant to the a VSMP permit, or who fails, neglects or refuses to comply with any order of the VSMP authority, the department, the board, or court, shall be guilty of a class 1 misdemeanor subject to a civil penalty not to exceed \$32,500.00 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.

(1) Violations for which a penalty may be imposed under this section shall include but not be limited to the following:

(i) No permit registration, if such registration statement is required, no SWPPP, incomplete SWPPP; SWPPP not available for review; no approved erosion and sediment control plan; failure to install stormwater BMPs or erosion and sediment controls; operational deficiencies; failure to conduct required inspections; incomplete, improper, or missed inspections; and discharges not in compliance with the requirements of Section 4VAC 50-60-1170 of the VSMP construction general permit.

(ii) The VSMP authority may issue a summons for collection of the civil penalty and the action may be prosecuted in court.

(iii) In imposing a civil penalty pursuant to this section, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.

(iv) Any civil penalties assessed by a court as a result of a summons issued by King George County shall be paid into the treasury of the VSMP authority to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of King George County and abating environmental pollution therein in such manner as the court may, by order, direct.

(v) Notwithstanding any other civil or equitable remedy provided by this section, any person who willfully or negligently violates any provision of this chapter, any order of King George

County or the Department, any condition of a permit, or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not less than \$2,500.00 nor more than \$32,500.00, either or both.

Sec. 2-5-2. Hearings and Appeals.

- (A) Any permit applicant or permittee aggrieved by any action of the VSMP Administrator taken without a formal hearing, or by inaction of King George County, may demand in writing a formal hearing by the locality causing such grievance, provided a petition requesting such hearing is filed within 30 days after notice of such action is given by the Administrator.
- (B) Any hearings under this Article shall be conducted in accordance with such procedures established by the Administrator, which shall include at a minimum:
 - (1) An opportunity for the applicant or permittee to be heard on the subject matter of the hearing; and
 - (2) Procedures required by Code of Virginia, § 62.1-44.15-45, as amended, to the extent applicable.
- (C) Any person, including the county, aggrieved by a decision of the County may seek judicial review of such decision in the King George County Circuit Court.

Sec. 2-5-3. Fees.

- (A) Fees to cover costs associated with implementation of a VSMP related to land disturbing activities and issuance of general permit coverage and VSMP authority permits shall be imposed in accordance with Table 1.
 - (1) When a site or sites has been purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees ("total fee to be paid by applicant" column) in accordance with the disturbed acreage of their site or sites according to Table 1.
- (B) Fees for the modification or transfer of registration statements from the general permit issued by the state board shall be imposed in accordance with Table 2.
- (C) If the general permit modifications result in changes to stormwater management plans that require additional review, such reviews shall be subject to the fees set out in Table 2.
- (D) The fee assessed shall be based on the total disturbed acreage of the site. In addition to the general permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee that would have applied for the total disturbed acreage in Table 1.
- (E) The following annual permit maintenance shall be imposed in accordance with Table 3, including fees imposed on expired permits that have been administratively continued. With respect to the general permit, these fees shall apply until the permit coverage is terminated.
- (F) General permit coverage maintenance fees shall be paid annually, by the anniversary date of general permit coverage. No permit will be reissued or automatically continued without payment

of the required fee. General permit coverage maintenance fees shall be applied until a notice of termination is effective.

(G) The fees set forth in subsections (A) through (F), above, shall apply to:

- (1) All persons seeking coverage under the general permit.
- (2) All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit.
- (3) Persons whose coverage under the general permit has been revoked shall apply to the department for an individual permit for discharges of stormwater from construction activities.
- (4) Permit and permit coverage maintenance fees outlined under subsection (C) may apply to each general permit holder.
- (5) No general permit application fees will be assessed to:
 - (i) Permittees who request minor modifications to general permits as defined in Sec. 2-1-7, Exemptions, of this Article. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the Administrator shall not be exempt pursuant to this section.
 - (ii) Permittees whose general permits are modified or amended at the initiative of the department, excluding errors in the registration statement identified by the Administrator or errors related to the acreage of the site.
 - (iii) All incomplete payments will be deemed as non payments, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in Code of Virginia, § 58.1-15 and is calculated on a monthly basis at the applicable periodic rate. A ten-percent late payment fee shall be charged to any delinquent (over 90 days past due) account. The King George County shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.
- (6) Prior to issuance of any permit, the owner shall furnish to the county an irrevocable letter of credit, or cash escrow or bond, from a Certified Virginia Lending Institution or by corporate surety in a form and amount sufficient to guarantee the completion of all required public improvements. The cost of the required improvements shall be determined by a bona fide estimate of construction costs prepared by a duly licensed engineer. The developer shall provide the estimate. The amount of the performance bond or other guarantee shall be for 125 percent of the estimated construction cost.

(7)

Table 1: Fees for Permit Issuance

Fee Type	Total Fee <small>(includes both VSMP authority and Department portions)</small>	Department Portion <small>(based on 28% of total fee paid*)</small>
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to general permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre)	\$0.00	\$0.00
Single-family residential structures that disturb less than five (5) acres, regardless of their inclusion in a common plan of development.	0.00	0.00
General/stormwater management—Small construction activity/land clearing (areas within common plans of development or sale with land disturbance acreage less than 1 acre.)	156.00	81.00
General/stormwater management—Small construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 acre and less than 5 Acres)	1,365.00	756.00
General/stormwater management—Large construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	3,400.00	952.00
General/stormwater management—Large construction activity/land clearing [sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres]	4,500.00	1,260.00
General/stormwater management—Large construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	6,100.00	1,708.00
General/stormwater management—Large construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)	9,600.00	2,688.00
* If the project is completely administered by the department such as may be the case for a state or federal project or projects covered by individual permits, the entire applicant fee shall be paid to the department.		

Table 2: Fees for the Modification or Transfer of Registration Statements for the General Permit for Discharges of Stormwater from Construction Activities

Type of Permit	Fee Amount
General/stormwater management—Small construction activity/land clearing (areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$20.00
General/stormwater management—Small construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 and less than 5 acres)	200.00
General/stormwater management—Large construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	250.00
General/stormwater management—Large construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)	300.00
General/stormwater management—Large construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	450.00
General/stormwater management—Large construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)	700.00

Table 3: Permit Maintenance Fees

Type of Permit	Fee Amount
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to general permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre)	\$50.00
General/stormwater management—Small construction activity/land clearing (areas within common plans of development or sale with land disturbance acreage less than 1 acre)	50.00
General/stormwater management—Small construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance equal to or greater than 1 acre and less than 5 acres)	400.00
General/stormwater management—Large construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	500.00
General/stormwater management—Large construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)	650.00
General/stormwater management—Large construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	900.00
General/stormwater management—Large construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater 100 acres)	1,400.00