



*Commonwealth of Virginia*

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**MEMORANDUM**

To: All Local Virginia Erosion and Sediment Control Program Administrators  
All Local Virginia Stormwater Management Program Administrators

From: Megan Mayfield, Director, Division of Water Permitting

Date: December 27, 2023

Subject: Virginia Erosion and Stormwater Management Program and Virginia Erosion and Sediment Control Program Model Ordinances

At the June 22, 2023 State Water Control Board (Board) meeting, the Board approved and adopted the Virginia Erosion and Stormwater Management (VESM) Regulation (9VAC25-875) and approved the repeal of the Erosion and Sediment Control Regulations (9VAC25-840), Erosion and Sediment Control and Stormwater Management Certification Regulations (9VAC25-850), and Virginia Stormwater Management Program Regulation (9VAC25-870). The VESM Regulation and repeal of the other regulations, will be effective July 1, 2024. The Final VESM Regulation was published on December 4, 2023 in the *Virginia Register of Regulations*, Volume 40 Issue 8. Below is a link to the final regulation:

[Vol. 40 Iss. 8 \(Final\) 9VAC25-840, Erosion And Sediment Control Regulations December 04, 2023 \(virginia.gov\)](#)

Also on July 1, 2024, Chapters 68 and 758 of the 2016 Acts of Assembly become effective. Those Acts, referred to as the “Consolidation Bill,” combine stormwater management and erosion and sediment control requirements under the Virginia Erosion and Stormwater Management Act (VESMA), §§ 62.1-44.15:24 through 62.1-44.15:50 of the Code of Virginia. Requirements for a Virginia Erosion and Sediment Control Program (VЕСP) are in the Erosion and Sediment Control Law (ESCL) for Localities Not Administering a Virginia Erosion and Stormwater Management Program, §§ 62.1-44.15:51 through 62.1-44.15:66 of the Code of Virginia. With the Consolidation Bill and VESM Regulation becoming effective on July 1, 2024, local ordinances for the administration of a Virginia Erosion and Sediment Control Program

(VESCP) or Virginia Stormwater Management Program (VSMP) will need to be updated to reflect both the new law and regulations.

Consistent with § 62.1-44.15:27 of the Code of Virginia, the Virginia Department of Environmental Quality (DEQ) has prepared a Virginia Erosion and Stormwater Management Program (VESMP) Model Ordinance and a Virginia Erosion and Sediment Control Program (VESCP) Model Ordinance to assist in the development of the appropriate local ordinance for your locality. The model ordinances incorporate requirements in the VESMA, ESCL for Localities Not Administering a Virginia Erosion and Stormwater Management Program, and VESM Regulation. Copies of each are attached for your use.

The DEQ is not required to review and/or approve the local ordinances, or associated documents, manuals, etc., prior to adoption. Please note that a locality may, by local ordinance adopted pursuant to § 62.1-44.15:33 or 62.1-44.15:65 of the Code of Virginia, establish more stringent local requirements. If a VESMP authority elects to adopt more stringent ordinances, the authority shall submit a letter report to the DEQ when more stringent stormwater management ordinances or more stringent requirements are authorized by such stormwater management ordinances. If a VESCP authority elects to adopt more stringent ordinances, the authority shall report to the DEQ when more stringent erosion and sediment control ordinances are determined to be necessary.

Please feel free to contact Rebecca Rochet if you have any questions or need additional assistance ([Rebecca.Rochet@deq.virginia.gov](mailto:Rebecca.Rochet@deq.virginia.gov) or 804-801-2950).

## ATTACHMENT A

### VIRGINIA EROSION AND STORMWATER MANAGEMENT PROGRAM

#### MODEL ORDINANCE

Pursuant to §62.1-44.15:27 of the Code of Virginia, this ordinance is adopted as part of an initiative to integrate the [locality] stormwater management requirements with the [locality] erosion and sediment control, flood insurance, [and] flood plain management[, and Chesapeake Bay Preservation Act] requirements into a consolidated erosion and stormwater management program. The erosion and stormwater management program is intended to facilitate the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities for land-disturbing activities into a more convenient and efficient manner for both the [locality] and those responsible for compliance with these programs.

#### **Section 1.1. TITLE, PURPOSE, AND AUTHORITY.**

- A. This ordinance shall be known as the "Erosion and Stormwater Management Ordinance of [locality / VESMP authority].
- B. The purpose of this ordinance is to ensure the general health, safety, and welfare of the citizens of [locality], protect the quality and quantity of state waters from the potential harm of unmanaged stormwater and soil erosion, including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.
- C. This ordinance is authorized by § 62.1-44.15:27 of the Code of Virginia.

#### **Section 1.2. DEFINITIONS.**

The following words and terms, when used in this ordinance, shall have the following meanings, unless the context clearly indicates otherwise.

"Adequate channel" means a channel that will convey the designated frequency storm event without overtopping the channel bank nor causing erosive damage to the channel bed or banks.

**[OPTIONAL – ONLY INCLUDE IF LOCALITY WILL EXECUTE AN AGREEMENT IN LIEU]** "Agreement in lieu of a plan" means a contract between the [VESMP authority] and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of the VESMA and this ordinance for the construction of a (i) single-family detached residential structure or (ii) farm building or structure

on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent; such contract may be executed by the [VESMP authority] in lieu of a soil erosion control and stormwater management plan.

"Applicant" means person submitting a soil erosion control and stormwater management plan to a VESMP authority for approval in order to obtain authorization to commence a land-disturbing activity.

"Best management practice" or "BMP" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices, including both structural and nonstructural practices, to prevent or reduce the pollution of surface waters and groundwater systems.

1. "Nonproprietary best management practice" means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are in the public domain and are not protected by trademark or patent or copyright.
2. "Proprietary best management practice" means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are privately owned and controlled and may be protected by trademark or patent or copyright.

"Board" means the State Water Control Board.

"Causeway" means a temporary structural span constructed across a flowing watercourse or wetland to allow construction traffic to access the area without causing erosion damage.

"Channel" means a natural stream or manmade waterway.

"Chesapeake Bay Preservation Act" means Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Chesapeake Bay Preservation Area" means any land designated by a local government pursuant to Part III (9VAC25-830-70 et seq.) of the Chesapeake Bay Preservation Area Designation and Management Regulations and § 62.1-44.15:74 of the Code of Virginia. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area as defined in the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).

"Clean Water Act" or "CWA" means the federal Clean Water Act (33 USC § 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.

"Cofferdam" means a watertight temporary structure in a river, lake, etc., for keeping the water from an enclosed area that has been pumped dry so that bridge foundations, dams, etc., may be constructed.

"Common plan of development or sale" means a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.

"Comprehensive stormwater management plan" means a plan, which may be integrated with other land use plans or regulations that specifies how the water quality components, quantity components, or both of stormwater are to be managed on the basis of an entire watershed or a portion thereof. The plan may also provide for the remediation of erosion, flooding, and water quality and quantity problems caused by prior development.

"Construction activity" means any clearing, grading, or excavation associated with large construction activity or associated with small construction activity.

"Control measure" means any BMP, stormwater facility, or other method used to minimize the discharge of pollutants to state waters.

"CWA and regulations" means the Clean Water Act and applicable regulations published in the Code of Federal Regulations promulgated thereunder. For the purposes of this ordinance, it includes state program requirements.

"Dam" means a barrier to confine or raise water for storage or diversion, to create a hydraulic head, to prevent gully erosion, or to retain soil, rock or other debris.

"Denuded" means a term applied to land that has been physically disturbed and no longer supports vegetative cover.

"Department" means the Virginia Department of Environmental Quality.

"Development" means 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 regulation of discharges from development, for purposes of stormwater management, does not include the exclusions found in 9VAC25-875-860.

"Dike" means an earthen embankment constructed to confine or control water, especially one built along the banks of a river to prevent overflow of lowlands; levee.

"Discharge" when used without qualification, means the discharge of a pollutant.

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to state waters from any point source; or

2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

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

"Diversion" means a channel with a supporting ridge on the lower side constructed across or at the bottom of a slope for the purpose of intercepting surface runoff.

"Dormant" means denuded land that is not actively being brought to a desired grade or condition.

"Drainage area" means a land area, water area, or both from which runoff flows to a common point.

"Energy dissipator" means a nonerodible structure which reduces the velocity of concentrated flow to reduce its erosive effects.

"Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

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

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

"ESC" means erosion and sediment control.

"ESM plan" means a soil erosion control and stormwater management plan, commonly referred to as the erosion control and stormwater management plan.

**[OPTIONAL – ONLY INCLUDE IF LOCALITY WILL EXECUTE AN AGREEMENT IN LIEU]** "Farm building or structure" means the same as that term is defined in § 36-97 of the Code of Virginia and also includes any building or structure used for agritourism activity, as defined in § 3.2-6400 of the Code of Virginia, and any related impervious services including roads, driveways, and parking areas.

"Flood fringe" means the portion of the floodplain outside the floodway that is usually covered with water from the 100-year flood or storm event. This includes the flood or floodway fringe designated by the Federal Emergency Management Agency.

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body, or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

"Floodplain" means the area adjacent to a channel, river, stream, or other water body that is susceptible to being inundated by water normally associated with the 100-year flood or storm event. This includes the floodplain designated by the Federal Emergency Management Agency.

"Flood-prone area" means the component of a natural or restored stormwater conveyance system that is outside the main channel. Flood-prone areas may include the floodplain, the floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas, usually associated with flowing water, that must be reserved in order to discharge the 100-year flood or storm event without cumulatively increasing the water surface elevation more than one foot. This includes the floodway designated by the Federal Emergency Management Agency.

"Flume" means a constructed device lined with erosion-resistant materials intended to convey water on steep grades.

"General permit" means a permit authorizing a category of discharges under the CWA and the VESMA within a geographical area.

"Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset unless specifically identified as another order.

"Impervious cover" means a surface composed of material that significantly impedes or prevents natural infiltration of water into soil.

"Incorporated place" means a city, town, township, or village that is incorporated under the Code of Virginia.

"Inspection" means an on-site review of the project's compliance with any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the implementation or enforcement of the VESMA and applicable regulations.

"Karst area" means any land area predominantly underlain at the surface or shallow subsurface by limestone, dolomite, or other soluble bedrock regardless of any obvious surface karst features.

"Karst features" means sinkholes, sinking and losing streams, caves, large flow springs, and other such landscape features found in karst areas.

"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including construction activity such as the clearing, grading, excavating, or filling of land.

"Land-disturbance approval" means an approval allowing a land-disturbing activity to commence issued by the VESMP authority after the requirements of § 62.1-44.15:34 of the Code of Virginia have been met.

"Large construction activity" means construction activity including clearing, grading, and excavation, except operations that result in the disturbance of less than five acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

"Linear development project" means a land-disturbing activity that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; (iii) highway construction projects; (iv) construction of stormwater channels and stream restoration activities; and (v) water and sewer lines. Private subdivision roads or streets shall not be considered linear development projects.

"Live watercourse" means a definite channel with bed and banks within which concentrated water flows continuously.

"Locality" means **[county, city, or town]**.

"Localized flooding" means smaller scale flooding that may occur outside of a stormwater conveyance system. This may include high water, ponding, or standing water from stormwater runoff, which is likely to cause property damage or unsafe conditions.

"Main channel" means the portion of the stormwater conveyance system that contains the base flow and small frequent storm events.



"Manmade" means constructed by man.

"Minimize" means to reduce or eliminate the discharge of pollutants to the extent achievable using stormwater controls that are technologically available and economically practicable.

"Minor modification" means modifications and amendments not requiring extensive review and evaluation including 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 permit modification or amendment does not substantially alter 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.

"Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

"Natural stream" means a tidal or nontidal watercourse that is part of the natural topography. It usually maintains a continuous or seasonal flow during the year and is characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams; however, channels designed utilizing natural channel design concepts may be considered natural streams.

"Nonerodible" means a material, e.g., riprap, concrete, plastic, etc., that will not experience surface wear due to natural forces.

"Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorous, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater.

"Operator" means the owner or operator of any facility or activity subject to the VESMA and this ordinance. 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 permit or VESMP 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).

"Owner" means the same as that term is defined in § 62.1-44.3 of the Code of Virginia. For a regulated land-disturbing activity that does not require a permit, "owner" also means the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in

possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

"Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a particular location.

"Percent impervious" means the impervious area within the site divided by the area of the site multiplied by 100.

"Permit" means a VPDES permit issued by the department pursuant to § 62.1-44.15 of the Code of Virginia for stormwater discharges from a land-disturbing activity.

"Permittee" means the person to whom the permit is issued.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

"Point of discharge" means a location at which concentrated stormwater runoff is released.

"Point source" means any discernible, confined, and discrete conveyance including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

"Pollutant discharge" means the average amount of a particular pollutant measured in pounds per year or other standard reportable unit as appropriate, delivered by stormwater runoff.

"Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are "pollution" for the terms and purposes of this ordinance.

"Post-development" refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

"Predevelopment" refers to the conditions that exist at the time that plans for the land-disturbing activity are submitted to the VESMP authority. Where phased development or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities, etc.), the existing conditions at the time prior to the commencement of land-disturbing activity shall establish predevelopment conditions.

"Prior developed lands" means land that has been previously utilized for residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures, and that will have the impervious areas associated with those uses altered during a land-disturbing activity.

"Qualified personnel" means a person knowledgeable in the principles and practices of erosion and sediment and stormwater management controls who possesses the skills to assess conditions at the construction site for the operator that could impact stormwater quality and quantity and to assess the effectiveness of any sediment and erosion control measures or stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity.

"Responsible land disturber" or "RLD" means an individual holding a certificate issued by the department who is responsible for carrying out the land-disturbing activity in accordance with the approved erosion and sediment control plan or ESM plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the erosion and sediment control plan, ESM plan, or permit as defined in this ordinance as a prerequisite for engaging in land disturbance.

"Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

"Runoff characteristics" includes maximum velocity, peak flow rate, volume, and flow duration.

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

"Sediment basin" means a temporary impoundment built to retain sediment and debris with a controlled stormwater release structure.

"Sediment trap" means a temporary impoundment built to retain sediment and debris which is formed by constructing an earthen embankment with a stone outlet.

"Sheet flow" (also called overland flow) means shallow, unconcentrated and irregular flow down a slope. The length of strip for overland flow usually does not exceed 200 feet under natural conditions.

"Shoreline erosion control project" means an erosion control project approved by local wetlands boards, the Virginia Marine Resources Commission, the department, or the United States Army Corps of Engineers and located on tidal waters and within nonvegetated or vegetated wetlands as defined in Title 28.2 of the Code of Virginia.

"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 channelward of mean low water in tidal Virginia shall not be considered part of a site.

"Site hydrology" means the movement of water on, across, through, and off the site as determined by parameters including soil types, soil permeability, vegetative cover, seasonal water tables, slopes, land cover, and impervious cover.

"Slope drain" means tubing or conduit made of nonerosive material extending from the top to the bottom of a cut or fill slope with an energy dissipator at the outlet end.

"Small construction activity" means:

1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The department may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on an approved "total maximum daily load" (TMDL) that addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutants of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutants of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator shall certify to the department that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or provide an equivalent analysis. As of the start date in Table 1 of 9VAC25-31-1020, all certifications submitted in support of the waiver shall be submitted electronically by the owner or operator to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for

electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, permittees may be required to report electronically if specified by a particular permit.

2. Any other construction activity designated by either the department or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

"Soil erosion" means the movement of soil by wind or water into state waters or onto lands in the Commonwealth.

"Soil erosion control and stormwater management plan," commonly referred to as the erosion control and stormwater management plan, or "ESM plan" means a document describing methods for controlling soil erosion and managing stormwater in accordance with the requirements adopted pursuant to the VESMA. The ESM plan may consist of aspects of the erosion and sediment control plan and the stormwater management plan as each is described in this ordinance.

"Stabilized" means land that has been treated to withstand normal exposure to natural forces without incurring erosion damage.

"State" means the Commonwealth of Virginia.

"State application" or "application" means the standard form or forms, including any additions, revisions, or modifications to the forms, approved by the administrator and the department for applying for a permit.

"State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Storm sewer inlet" means a structure through which stormwater is introduced into an underground conveyance system.

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

"Stormwater conveyance system" means a combination of drainage components that are used to convey stormwater discharge, either within or downstream of the land-disturbing activity. This includes:

1. "Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or other stormwater conveyance system constructed by man except for restored stormwater conveyance systems;
2. "Natural stormwater conveyance system" means the main channel of a natural stream and the flood-prone area adjacent to the main channel; or

3. "Restored stormwater conveyance system" means a stormwater conveyance system that has been designed and constructed using natural channel design concepts. Restored stormwater conveyance systems include the main channel and the flood-prone area adjacent to the main channel.

"Stormwater detention" means the process of temporarily impounding runoff and discharging it through a hydraulic outlet structure to a downstream conveyance system.

"Stormwater management facility" means a control measure that controls stormwater runoff and changes the characteristics of that runoff including the quantity and quality, the period of release or the velocity of flow.

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

"Stormwater Pollution Prevention Plan" or "SWPPP" means 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. A SWPPP required under the VESMP for construction activities shall identify and require the implementation of control measures and shall include or incorporate by reference an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

"Subdivision" means the same as defined in § 15.2-2201 of the Code of Virginia.

"Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  - a. That are or could be used by interstate or foreign travelers for recreational or other purposes;
  - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - c. That are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as surface waters under this definition;
5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include

prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the CWA, the final authority regarding the CWA jurisdiction remains with the EPA.

"SWM" means stormwater management.

"Temporary vehicular stream crossing" means a temporary nonerodible structural span installed across a flowing watercourse for use by construction traffic. Structures may include bridges, round pipes or pipe arches constructed on or through nonerodible material.

"Ten-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 10 years. It may also be expressed as an exceedance probability with a 10% chance of being equaled or exceeded in any given year.

"Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources, load allocations (LAs) 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.

"Town" means an incorporated town.

"Two-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in two years. It may also be expressed as an exceedance probability with a 50% chance of being equaled or exceeded in any given year.

"Virginia Erosion and Stormwater Management Act" or "VESMA" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1, State Water Control Law, of Title 62.1 of the Code of Virginia.

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

"Virginia Erosion and Stormwater Management Program authority" or "VESMP authority" means **[locality or the locality's designated entity]** approved by the department to operate the VESMP.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means a document issued by the department pursuant to the State Water Control Law

authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

"Virginia Stormwater BMP Clearinghouse" means a collection that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the VESMA and associated regulations.

"Virginia Stormwater Management Handbook" means a collection of pertinent information that provides general guidance for compliance with the VESMA and associated regulations and is developed by the department with advice from a stakeholder advisory committee.

"Wasteload allocation" or "wasteload" means the portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. Wasteload allocations are a type of water quality-based effluent limitation.

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

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

"Watershed" means a defined land 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.

"Wetlands" means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

## **Section 2.1. VIRGINIA EROSION AND STORMWATER MANAGEMENT PROGRAM ESTABLISHED**

Pursuant to § 62.1-44.15:27 of the Code of Virginia, **[Locality]** hereby establishes a Virginia Erosion and Stormwater Management Program for land-disturbing activities and adopts the Virginia Erosion and Stormwater Management Regulation that specify standards and specifications for VESMPs promulgated by the State Water Control Board for the purposes set out in Section 1.1 of this Ordinance. The **[local governing body]** hereby designates the **[local official tasked with implementing the ordinance]** as the Administrator of the Virginia Erosion and Stormwater Management Program established by this Ordinance.



**Section 2.2. REGULATED LAND DISTURBING ACTIVITIES**

A. Land-disturbing activities that meet one of the criteria below are regulated as follows:

1. [Land-disturbing activity that disturbs [10,000] [smaller area specified by the locality] square feet or more, is less than one acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area, and not part of a common plan of development or sale, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V of the Virginia Erosion and Stormwater Management Regulation (Regulation).]

[COOSE APPLICABLE REQUIREMENT FOR No. 1 OR BOTH, AS APPLICABLE]

1. [Land-disturbing activity that disturbs [2,500] [smaller area specified by the locality] square feet or more, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of the Regulation is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.]
2. Land-disturbing activity that disturbs less than one acre, but is part of a larger common plan of development or sale that disturbs one acre or more, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of the Regulation is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.
3. Land-disturbing activity that disturbs one acre or more is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

B. Land-disturbing activities exempt per 9VAC25-875-90 are not required to comply with the requirements of the VESMA unless otherwise required by federal law.

**Section 3.1. REVIEW AND APPROVAL OF PLANS (§ 62.1-44.15:34 of the Code of Virginia); PROHIBITIONS.**

- A. [VESMP authority] shall review and approve soil erosion control and stormwater management (ESM) plans, except for activities not required to comply with the requirements of the Virginia Erosion and Stormwater Management Act (VESMA), pursuant to § 62.1-44.15:34 of the Code of Virginia. Activities not required to comply with VESMA are defined in 9VAC25-875-90.

- B. A person shall not conduct any land-disturbing activity in **[Locality]** until:
1. An application that includes a permit registration statement, if required, a soil erosion control and stormwater management plan or an executed agreement in lieu of a plan, if required, has been submitted to **[VESMP authority]**;
  2. The name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber certificate pursuant to § 62.1-44.15:30 of the Code of Virginia is submitted to **[VESMP authority]**. **[Optional]** **[except that such certificate shall not be required where an agreement in lieu of a plan for construction of a single-family detached residential structure is provided; however, if a violation occurs during the land-disturbing activity for the single-family detached residential structure, then the owner shall correct the violation and provide the name of the individual holding a Responsible Land Disturber certificate as provided by § 62.1-14:30 of the Code of Virginia.]** Failure to provide the name of an individual holding a Responsible Land Disturber certificate prior to engaging in land-disturbing activities may result in revocation of the land-disturbance approval and shall subject the owner to the penalties provided by the VESMA; and
  3. **[VESMP authority]** has issued its land-disturbance approval. In addition, as a prerequisite to engaging in an approved land-disturbing activity, the name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber certificate pursuant to § 62.1-44.15:30 of the Code of Virginia shall be submitted to **[VESMP authority]**. **[Optional]** **[[VESMP authority] may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan for construction of a single-family detached residential structure; however, if a violation occurs during the land-disturbing activity for the single-family detached residential structure, then the owner shall correct the violation and provide the name of the individual holding a Responsible Land Disturber certificate as provided by § 62.1-14:30 of the Code of Virginia.]** Failure to provide the name of an individual holding a Responsible Land Disturber certificate prior to engaging in land-disturbing activities may result in revocation of the land-disturbance approval and shall subject the owner to the penalties provided the Act.
- C. **[VESMP authority]** may require changes to an approved ESM plan in the following cases:
1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations or ordinances; or
  2. Where the owner finds that because of changed circumstances or for other reasons the plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of the Act, are agreed to by the VESMP authority and the owner.

- D. In order to prevent further erosion, **[VESMP authority]** may require approval of an erosion and sediment control plan and a stormwater management plan for any land it identifies as an erosion impact area. (*§ 62.1-44.15:34*)
- E. Prior to issuance of any land-disturbance approval, **[VESMP authority]** may also require an applicant, excluding state agencies and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement it finds acceptable, to ensure that it can take measures at the applicant's expense should he fail, after proper notice, within the time specified to comply with the conditions it imposes as a result of his land-disturbing activity. If **[VESMP authority]** takes such action upon such failure by the applicant, it may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the completion of **[VESMP authority's]** conditions, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.
- F. **[VESMP authority]** may enter into an agreement with an adjacent VESMP authority regarding the administration of multijurisdictional projects, specifying who shall be responsible for all or part of the administrative procedures. Should adjacent VESMP authorities fail to reach such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction.
- G. No exception to, or waiver of, post-development nonpoint nutrient runoff compliance requirements shall be granted unless offsite options have been considered and found not available in accordance with subsection D of § 62.1-44.15:35 of the Code of Virginia.
- H. **[VESMP authority]** is authorized to cooperate and enter into agreements with any federal or state agency in connection with the requirements for land-disturbing activities in accordance with § 62.1-44.15:50 of the Code of Virginia.

**Section 3.2. REVIEW OF A SOIL EROSION CONTROL AND STORMWATER MANAGEMENT PLAN (ESM Plan).**

- A. **[VESMP authority]** shall approve or disapprove an ESM plan according to the following:
1. **[VESMP authority]** shall determine the completeness of any application within 15 days after receipt, and shall act on any application within 60 days after it has been determined by the to be complete.
  2. **[VESMP authority]** shall issue either land-disturbance approval or denial and provide written rationale for any denial.

3. Prior to issuing a land-disturbance approval, **[VESMP authority]** shall be required to obtain evidence of permit coverage when such coverage is required.
  4. **[VESMP authority]** also shall determine whether any resubmittal of a previously disapproved application is complete within 15 days after receipt and shall act on the resubmitted application within 45 days after receipt.
- B. [Optional for localities choosing to coordinate ESM plan review with the department]** Pursuant to subdivision B 2 of § 62.1-44.15:27 of the Code of Virginia, **[Locality]** has elected to coordinate the plan review component of its program with the department through an executed agreement. Review and approval or disapproval of ESM plans shall be conducted according to the following:
1. **[VESMP authority]** shall determine the completeness of any application within 15 days after receipt, and shall:
    - i. Act on any application within 60 days after it has been determined to be complete;
    - ii. Forward a soil erosion control and stormwater management plan to the department for review within five days of receipt. If the plan is incomplete, the department will return the plan to **[VESMP Authority]** immediately and the application process shall start over. If the plan is complete, the department will review it for compliance with the water quality and water quantity technical criteria and provide its recommendation to **[VESMP authority]**; and
    - iii. Either (i) issue the land-disturbance approval or (ii) issue a denial and provide a written rationale for the denial. In no case shall **[VESMP authority]** have more than 60 days for its decision on an application after it has been determined to be complete. Prior to issuing a land-disturbance approval, **[VESMP authority]** shall be required to obtain evidence of permit coverage when such coverage is required.
  2. **[VESMP authority]** also shall forward to the department any resubmittal of a previously disapproved application within five days after receipt, and **[VESMP authority]** shall determine whether the plan is complete within 15 days of its receipt of the plan. The department will review the plan for compliance with the water quality and water quantity technical criteria and provide its recommendation to **[VESMP authority]**, and **[VESMP authority]** shall act on the resubmitted application within 45 days after receipt.

### **Section 3.3. STORMWATER PERMIT REQUIREMENT; EXEMPTIONS.**

- A. Except as provided herein, no person may engage in any land-disturbing activity until a permit has been issued by **[VESMP authority]** in accordance with the provisions of this ordinance and the Regulation.

- B. Notwithstanding any other provisions of this ordinance, the following activities are not required to comply with the requirements of this ordinance unless otherwise required by federal law:
1. Minor land-disturbing activities, including home gardens and individual home landscaping, repairs, and maintenance work;
  2. Installation, maintenance, or repair of any individual service connection;
  3. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
  4. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
  5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2 of the Code of Virginia;
  6. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally set forth by the Board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq. of the Code of Virginia) or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163 of the Code of Virginia;
  7. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
  8. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to the VESMA and the regulations adopted pursuant thereto;
  9. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;

10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, **[VESMP authority]** shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsection A is required within 30 days of commencing the land-disturbing activity; and
  11. Discharges to a sanitary sewer or a combined sewer system; that are not from a land-disturbing activity.
- C. Notwithstanding this ordinance and in accordance with the Virginia Erosion and Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia, the following activities are required to comply with the soil erosion control requirements but are not required to comply with the water quantity and water quality technical criteria, unless otherwise required by federal law:
1. Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;
  2. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and
  3. Discharges from a land-disturbing activity to a sanitary sewer or a combined sewer system.

**Section 4.1. STORMWATER POLLUTION PREVENTION PLAN; CONTENTS OF PLANS. (9VAC25-875-500)**

- A. A stormwater pollution prevention plan shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to subsection D of this section.
- B. A soil erosion control and stormwater management (ESM) plan consistent with the requirements of the Virginia Erosion and Stormwater Management Act (VESMA) and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by **[VESMP authority]** in accordance with the VESMA, this ordinance, and attendant regulations.
- C. 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.

- D. In addition to the requirements of subsections A through C of this section, if a specific wasteload allocation for a pollutant has been established in an approved 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 wasteload allocation.
- E. The stormwater pollution prevention plan must address the following requirements as specified in 40 CFR 450.21, 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;
  7. Minimize soil compaction and, unless infeasible, preserve topsoil;
  8. 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. Stabilization must be completed within a period of time determined by the VESMP authority. 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 VESMP authority; and
  9. Utilize outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.

- F. 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.

**Section 4.2. STORMWATER MANAGEMENT PLAN; CONTENTS OF PLAN. (9VAC25-875-510)**

- A. A stormwater management plan shall be developed and submitted to [VESMP authority]. The stormwater management plan shall be implemented as approved or modified by [VESMP 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 ordinance and Article 4 (9VAC25-875-670 et seq) of Part V of the Regulation to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments, including those developed under subsequent owners, shall not be considered separate land-disturbing activities.
  2. A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.
- 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, telephone number, and email address 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 VESMP 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) detailed narrative on the conversion to a long-term stormwater management facility if the



- facility was used as a temporary ESC measure; (ii) the type of facilities; (iii) location, including geographic coordinates; (iv) acres treated; and (v) 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 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 land use including existing structures, roads, and locations of known utilities and easements;
    - 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 buildings, roads, parking areas, utilities, and stormwater management facilities; and
    - viii. Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including planned locations of utilities, roads, and easements;
  9. If an operator intends to meet the requirements established in 9VAC25-875-580 or 9VAC25-875-600 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 **[VESMP authority]** requires payment of a fee with the stormwater management plan submission, the fee and the required fee form in accordance with Section 5-8 of this ordinance must have been submitted.
- C. All final plan elements, specifications, or calculations of the stormwater management plans whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth of

Virginia. Nothing in this subsection shall authorize any person to engage in practice outside his area of professional competence.

**Section 4.3. POLLUTION PREVENTION PLAN; CONTENTS OF PLANS. (9VAC25-875-520)**

- 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 as specified in 40 CFR 450.21(d) 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 in accordance with 40 CFR 450.21(e):
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 in accordance with 40 CFR 450.21(c).

**Section 4.4. EROSION AND SEDIMENT CONTROL PLAN; CONTENTS OF PLANS (9VAC25-875-550)**

- A. An erosion and sediment control plan, which is a component of the ESM plan, shall be filed for a development and the buildings constructed within, regardless of the phasing of

construction. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives in 9VAC25-875-560. The erosion and sediment control plan may include:

1. Appropriate maps;
  2. An appropriate soil and water plan inventory and management information with needed interpretations; and
  3. A record of decisions contributing to conservation treatment.
- B. The person responsible for carrying out the plan shall provide the name of an individual holding a certificate who will be in charge of and responsible for carrying out the land-disturbing activity to [VESMP authority]. **[Note: The VESMP authority may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan in accordance with § 62.1-44.15:34 or § 62.1-44.15:55 of the Code of Virginia.]**
- C. If individual lots or sections in a residential development are being developed by different property owners, all land-disturbing activities related to the building construction shall be covered by an erosion and sediment control plan **[Optional] [or an "Agreement in Lieu of a Plan" signed by the property owner]**.
- D. Land-disturbing activity of less than 10,000 square feet on individual lots in a residential development shall not be considered exempt from the provisions of the VESMA if the total land-disturbing activity in the development is equal to or greater than 10,000 square feet.

#### **Section 5.1. TECHNICAL CRITERIA FOR REGULATED LAND DISTURBING ACTIVITIES.**

- A. To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, **[Locality]** hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part V of 9VAC25-875 expressly to include 9VAC25-875-580 [water quality design criteria requirements]; 9VAC25-875-590 [water quality compliance]; 9VAC25-875-600 [water quantity]; 9VAC25-875-610 [offsite compliance options]; 9VAC25-875-620 [design storms and hydrologic methods]; 9VAC25-875-630 [stormwater harvesting]; 9VAC25-875-640 [linear development project]; and, 9VAC25-875-650 [stormwater management impoundment structures or facilities], which shall apply to all land-disturbing activities regulated pursuant to this ordinance, except as expressly set forth in Subsection B of this Section.
- B. Any land-disturbing activity shall be considered grandfathered and shall be subject to Article 4 (9VAC25-875-670 et seq) of Part V of the Regulation provided:

1. A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by **[locality]** to be equivalent thereto (i) was approved by **[locality]** prior to July 1, 2012, (ii) provided a layout as defined in 9VAC25-875-670, (iii) will comply with the technical criteria of Article 4 of Part V of 9VAC25-875, 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 permit has not been issued prior to July 1, 2014; and
  3. Land disturbance did not commence prior to July 1, 2014.
- C. Locality, state, and federal projects shall be considered grandfathered by **[VESMP authority]** and shall be subject to the technical criteria of Article 4 of Part V of 9VAC25-875 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 permit has not been issued prior to July 1, 2014; and
  3. Land disturbance did not commence prior to July 1, 2014.
- D. Land disturbing activities grandfathered under subsections A and B of this section shall remain subject to the technical criteria of Article 4 of Part V of 9VAC25-875 for one additional permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.
- E. 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 Article 4 of Part V of 9VAC25-875.
- F. Nothing in this section shall preclude an operator from constructing to a more stringent standard at his discretion.

## **Section 5.2. LONG-TERM MAINTENANCE OF PERMANENT STORMWATER FACILITIES**

- A. The operator shall submit a construction record drawing for permanent stormwater management facilities to **[VESMP authority]** in accordance with 9VAC25-875-535. The record drawing shall contain a statement signed by a professional registered in the Commonwealth of Virginia pursuant to Chapter 4 of Title 54.1 of the Code of Virginia, stating that to the best of their knowledge, the construction record drawing shows all adjustments and revisions to the Stormwater Management Plan made during

construction and serve as a permanent record of the actual location of all constructed elements.

- B. **[VESMP authority]** 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 **[VESMP authority]** and shall at a minimum:
1. Be submitted to **[VESMP authority]** 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 **[VESMP authority]**; and
  5. Be enforceable by all appropriate governmental parties.
- C. **[Optional]** At the discretion of **[VESMP authority]**, 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 **[VESMP authority]** that future maintenance for those facilities will be addressed through an enforceable mechanism at the discretion of **[VESMP authority]**.
- D. **[Optional]** If a recorded instrument is not required pursuant to Subsection C., **[VESMP 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 **[VESMP authority]** or its duly authorized agent.

### **Section 5.3. MONITORING AND INSPECTIONS.**

- A. **[VESMP authority]** shall inspect the land-disturbing activity during construction for:
1. Compliance with the approved erosion and sediment control plan;
  2. Compliance with the approved stormwater management plan;
  3. Development, updating, and implementation of a pollution prevention plan; and

4. Development and implementation of any additional control measures necessary to address a TMDL.
- B. **[VESMP authority]** shall conduct periodic inspections on all projects during construction. **[VESMP authority]** shall either:
1. Provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds; or
  2. Establish an alternative inspection program which ensures compliance with the approved erosion and sediment control plan. Any alternative inspection program shall be:
    - i. Approved by the department prior to implementation;
    - ii. Established in writing;
    - iii. Based on a system of priorities that, at a minimum, address the amount of disturbed project area, site conditions and stage of construction; and
    - iv. Documented by inspection records.
- C. **[VESMP authority]** shall establish an inspection program that ensures that permanent stormwater management facilities are being adequately maintained as designed after completion of land-disturbing activities. Inspection programs shall:
1. Be approved by the department;
  2. Ensure that each stormwater management facility is inspected by **[VESMP authority]**, or its designee, not to include the owner, except as provided in subsections D and E of this section, at least once every five years; and
  3. Be documented by records.
- D. **[VESMP authority]** may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established in subsection B of 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 Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 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 department.

- E. If a recorded instrument is not required pursuant to 9VAC25-875-130, **[VESMP 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 **[VESMP authority]**.

#### **Section 5.4. HEARINGS**

- A. Any permit applicant or permittee, or person subject to the requirements of this ordinance, aggrieved by any action of the **[Locality]** taken without a formal hearing, or by inaction of the **[Locality]**, may demand in writing a formal hearing by the **[Local governing or appeals body]** causing such grievance, provided a petition requesting such hearing is filed with the **[locally designated administrator]** within 30 days after notice of such action is given by the Administrator.
- B. The hearings held under this Section shall be conducted by the **[local governing or appeals body]** at a regular or special meeting of the **[local governing or appeals body]**, or by at least one member of the **[local governing or appeals body]** designated by the **[local governing or appeals body]** to conduct such hearings on behalf of the **[local governing or appeals body]** at any other time and place authorized by the **[local governing or appeals body]**.
- C. A verbatim record of the proceedings of such hearings shall be taken and filed with the **[local governing or appeals body]**. Depositions may be taken and read as in actions at law.
- D. The **[local governing or appeals body]** or its designated member, as the case may be, shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the local governing body, or its designated member, whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

#### **Section 5.5. APPEALS.**

**[NOTE: The locality shall adopt an appeals procedure. This procedure should be appropriate for the erosion and stormwater management ordinance provisions and be consistent with the limitations within § 10.1-603.13 of Chapter 6 of Title 10.1 of the Code of Virginia.]**

**Section 5.6. RIGHT OF ENTRY.**

- A. **[VESMP authority]** or any duly authorized agent thereof may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this ordinance.
- B. In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, **[VESMP authority]** may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions that are required by conditions imposed by **[VESMP authority]** on a land-disturbing activity when an owner, after proper notice, has failed to take acceptable action within the time specified.

**Section 5.7. ENFORCEMENT**

- A. If the **[locally designated administrator]** determines that there is a failure to comply with the 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: verbal warnings and inspection reports, notices of corrective action, consent special orders, and notices to comply. 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.
  1. 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 in accordance with Subsection 2 or the permit may be revoked by the Administrator.
  2. If a permittee fails to comply with a notice issued in accordance with this Section within the time specified, the **[locally designated administrator]** may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.

Such orders shall be issued in accordance with [refer to local procedures]. Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the Administrator. However, if the **[locally designated administrator]** finds that any such violation is grossly affecting or presents an 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. If a person who has been issued an order is not complying with the terms thereof, the **[locally designated administrator]** may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with Subsection 5.7.C.
- B. In addition to any other remedy provided by this Ordinance, if the **[locally designated administrator]** or his designee determines that there is a failure to comply with the provisions of this Ordinance, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with [reference local public facilities/engineering manual and/or specific policy].
- C. 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 **[locally designated administrator]** may be compelled in a proceeding instituted in **[insert appropriate local court]** by the **[Locality]** to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
- 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 **[locally designated administrator]** may be compelled in a proceeding instituted in **[insert appropriate local court]** by the Locality to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
1. Violations for which a penalty may be imposed under this Subsection shall include but not be limited to the following:
    - i. No state permit registration;
    - ii. No SWPPP;
    - iii. Incomplete SWPPP;
    - iv. SWPPP not available for review;
    - v. No approved erosion and sediment control plan;
    - vi. Failure to install stormwater BMPs or erosion and sediment controls;
    - vii. Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
    - viii. Operational deficiencies;

- ix. Failure to conduct required inspections;
  - x. Incomplete, improper, or missed inspections; and
  - xi. Discharges not in compliance with the requirements of 9VAC25-880-70.
2. The **[locally designated administrator]** may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.
  3. In imposing a civil penalty pursuant to this Subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.
  4. 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 **[Locality]** 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.
- E. Notwithstanding any other civil or equitable remedy provided by this ordinance or by law, any person who willfully or negligently violates any provision of this ordinance, any order of the Administrator, 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 or a fine of not less than \$2,500 nor more than \$32,500, or both.

**Section 5.8. FEES *[INCLUSION OF FEES IN THE ORDINANCE IS OPTIONAL]***

- A. Fees to cover costs associated with implementation of a VESMP related to land disturbing activities and issuance of general permit coverage and VESMP authority permits shall be imposed in accordance with Table 1. **[NOTE: Such fee attributes include the costs associated with plan review, VESMP registration statement review, permit issuance, state-coverage verification, inspections, reporting, and compliance activities associated with land-disturbing activities as well as state program oversight costs.]** 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.

**Table 1: Fees for permit issuance**

Fee type	Total fee to be paid by applicant (includes both VESMP authority and department portions where	Department portion of “total fee to be paid by applicant” (based on 28% of total fee paid*)
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)	\$290	\$0
General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre.)	\$290	\$81
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)	\$2,700	\$756
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	\$952
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	\$1,260
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	\$1,708
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	\$2,688

\* 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.

- B. Fees for the modification or transfer of registration statements from the general permit issued by the department shall be imposed in accordance with Table 2. If the general permit modifications result in changes to stormwater management plans that require additional review by [Locality], such reviews shall be subject to the fees set out in Table 2. 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.

**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
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
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
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
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
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

- C. 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. **[NOTE: Fees specified in this Subsection go to the locality.]**

**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
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
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
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
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
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
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

General permit coverage maintenance fees shall be paid annually to the **[Locality]**, 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.

D. The fees set forth in Subsections A through C of this section, 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.

- E. Permit and permit coverage maintenance fees outlined under Section 5.8 may apply to each general permit holder.
- F. No general permit application fees will be assessed to:
  - 1. Permittees who request minor modifications to general permits as defined in Section 1.2 of this ordinance. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the **[locally designated administrator]** shall not be exempt pursuant to this Section.
  - 2. Permittees whose general permits are modified or amended at the initiative of the department, excluding errors in the registration statement identified by the **[locally designated administrator]** or errors related to the acreage of the site.
- G. All incomplete payments will be deemed as nonpayments, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in §58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account. The **[Locality]** shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

**Section 5.9. Performance Bond (4VAC50-60-104.D and Code § 603.8(A)) [Optional]**

- A. Prior to issuance of any permit, the applicant shall be required to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the **[Locality]** Attorney, to ensure that measures could be taken by the **[Locality]** at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the permit conditions as a result of his land disturbing activity. If the **[Locality]** takes such action upon such failure by the applicant, the **[Locality]** may collect from the applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any. Within 60 days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.

## ATTACHMENT B

### VIRGINIA EROSION AND SEDIMENT CONTROL PROGRAM

#### MODEL ORDINANCE

This model ordinance is intended for any locality that has chosen not to establish a Virginia Erosion and Stormwater Management Program (VESMP) pursuant to subdivision B 3 of § 62.1-44.15:27 of the Code of Virginia. These localities are required to administer a Virginia Erosion and Sediment Control Program (VESCP) for land disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia). For such a land-disturbing activity in a Chesapeake Bay Preservation Area, the **[VESCP authority]** also shall adopt requirements set forth in the Virginia Erosion and Stormwater Management Act and attendant regulations as required to regulate those activities in accordance with §§ 62.1-44.15:28 and 62.1-44.15:34 of the Code of Virginia.

#### **Section 1.1. TITLE, PURPOSE, AND AUTHORITY**

- A. This ordinance shall be known as the ‘Erosion and Sediment Control Ordinance of **[locality]**.’ The purpose of this ordinance is to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources of the **[locality]** by establishing requirements for the effective control of soil erosion, sediment deposition and non-agricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced.
- B. This ordinance is authorized by § 62.1-44.15:54 of the Code of Virginia.

#### **Section 1.2. DEFINITIONS**

The following words and terms, when used in this ordinance, shall have the following meanings, unless the context clearly indicates otherwise.

#### **[OPTIONAL – ONLY INCLUDE IF LOCALITY WILL EXECUTE AN AGREEMENT**

**IN LIEU]** "Agreement in lieu of a plan" means a contract between the **[VESCP authority]** and the owner that specifies conservation measures that must be implemented to comply with the requirements of this ordinance for the construction of a (i) single-family detached residential structure or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent; this contract may be executed by the **[VESCP authority]** in lieu of formal site plan.

"Applicant" means any person submitting an erosion and sediment control plan for approval in order to obtain authorization for land-disturbing activities to commence.

"Board" means the State Water Control Board.

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

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

"Certified program administrator for ESC" means an employee or agent of the VЕСP authority who holds a certification from the department in the classification of program administrator or (ii) is enrolled in the department's training program for program administration and successfully completes such program within one year after enrollment.

**[INCLUDE ONLY IF THE LOCALITY IS IN A CBPA]** "Chesapeake Bay Preservation Act" means Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

**[INCLUDE ONLY IF THE LOCALITY IS IN A CBPA]** "Chesapeake Bay Preservation Area" means any land designated by a local government pursuant to Part III (9VAC25-830-70 et seq.) of the Chesapeake Bay Preservation Area Designation and Management Regulations and § 62.1-44.15:74 of the Code of Virginia. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area as defined in the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).

"City" means the City of **[locality]**. **(If applicable.)**

"Clearing" means any activity which removes the vegetative ground cover including, root mat removal or topsoil removal. **(Optional or local definition may be used.)**

"County" means the County of **[locality]**. **(If applicable.)**

"Department" means the Virginia Department of Environmental Quality.

"District" or "Soil and Water Conservation District" refers to the **[name of district]** Soil and Water Conservation District. **(If applicable.)**

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

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



**[OPTIONAL – ONLY INCLUDE IF LOCALITY WILL EXECUTE AN AGREEMENT IN LIEU]** "Farm building or structure" means the same as that term is defined in § 36-97 of the Code of Virginia and also includes any building or structure used for agritourism activity, as defined in § 3.2-6400, and any related impervious surfaces including roads, driveways, and parking areas.

"Excavating" means any digging, scooping or other methods of removing earth materials. **(Optional or local definition.)**

"Filling" means any depositing or stockpiling of earth materials. **(Optional or local definition.)**

"Grading" means any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions. **(Optional or local definition.)**

"Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including the clearing, grading, excavating, transporting, and filling of land.

"Land-disturbing permit or approval" means a permit or an approval allowing a land-disturbing activity to commence issued by [VESCP authority] after the requirements of § 62.1-44.15:55 of the Code of Virginia have been met. **(Optional or local definition.)**

"Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

"Owner" means the same as provided in § 62.1-44.3 of the Code of Virginia. For a land-disturbing activity that is regulated under Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia and this ordinance, "owner" also includes the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

"Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a particular location.

"Percent impervious" means the impervious area within the site divided by the area of the site multiplied by 100.

"Permittee" means the person to whom the permit is issued.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

"Responsible Land Disturber" or "RLD" means an individual holding a certificate issued by the department who is responsible for carrying out the land-disturbing activity in accordance with the approved erosion and sediment control plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the erosion and sediment control plan or permit as defined in the Virginia Erosion

and Stormwater Management Regulation (9VAC25-875) as a prerequisite for engaging in land disturbance. The RLD must be designated on the erosion and sediment control plan or permit as defined in this ordinance as a prerequisite for engaging in land disturbance.

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

"Single-family detached residential structure" means a noncommercial dwelling that is occupied exclusively by one family.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Transporting" means any moving of earth materials from one place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs. **(Optional or local definition.)**

"Town" means the incorporated town of **[locality]**. **(If applicable.)**

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the department that is established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, policies and guidelines, technical materials, and requirements for plan review, inspection, and evaluation consistent with the requirements of the Erosion and Sediment Control Law (ESCL).

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority," for purposes of this ordinance means **[locality]** that has been approved by the department to operate a Virginia Erosion and Sediment Control Program in accordance with Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1, the State Water Control Law, of Title 62.1 of the Code of Virginia.

"VESCP plan-approving authority" means the [local department or position title in locality] responsible for determining the adequacy of a plan submitted for land-disturbing activities on a unit or units of lands and for approving plans.

"VPDES Permit" means a General VPDES (Virginia Pollutant Discharge Elimination System) Permit for Discharges of Stormwater from Construction Activities, 9VAC25-880, issued by the department pursuant to § 62.1-44.15 of the Code of Virginia for stormwater discharges from a land-disturbing activity. **(Optional or local definition.)**

### **Section 1.3. LOCAL EROSION AND SEDIMENT CONTROL PROGRAM**

Pursuant to § 62.1-44.15:54 of the Code of Virginia, the **[VESCP authority]** hereby establishes a Virginia Erosion and Sediment Control Program (VESCP) and adopts the regulations promulgated by the Board (for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources) **[The following additional text is optional at the discretion of the VESCP authority:**

*and the Virginian Stormwater Management Handbook*]. In accordance with § 62.1-44.15:52 of the Code of Virginia, any plan approved prior to July 1, 2014 that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.

- A. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements for natural and man-made channels shall be satisfied by compliance with water quantity requirements specified 9VAC25-875-600, unless such land-disturbing activities are in accordance with the grandfathering provisions of 9VAC25-875-490.
- B. Pursuant to § 62.1-44.15:53 of the Code of Virginia, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer for ESC. Inspections of land-disturbing activities shall be conducted by a certified inspector for ESC. The Erosion and Sediment Control Program of [locality] shall contain a certified program administrator for ESC, a certified plan reviewer for ESC, and a certified inspector for ESC (who may be the same person.)
- C. The [locality] hereby designates [department or position title] as the VESCP plan-approving authority.
- D. The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the [department or position title].

#### **Section 1.4. REGULATED LAND-DISTURBING ACTIVITIES**

- A. Land-disturbing activities that meet one of the criteria below are regulated as follows:
  - 1. [Land-disturbing activity that disturbs [10,000] [smaller area specified by the locality] square feet or more, is less than one acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area, and not part of a common plan of development or sale, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V of the Virginia Erosion and Stormwater Management Regulation (Regulation).]
  - 2. Land-disturbing activity that disturbs [2,500] [smaller area specified by the locality] square feet or more, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of the Regulation is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.]

**Section 1.5. ACTIVITIES NOT REQUIRED TO COMPLY WITH THE ESCL**

- A. Notwithstanding any other provisions of the Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program (ESCL), the following activities are not required to comply with the ESCL unless otherwise required by federal law:
1. Disturbance of a land area of less than 10,000 [smaller area specified by the locality] square feet in size [USE ONLY IF LOCALITY HAS DESIGNATED CBPA -or less than 2,500 [smaller area specified by the locality] square feet in an area designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia)];
  2. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;
  3. Installation, maintenance, or repair of any individual service connection;
  4. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
  5. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
  6. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2 of the Code of Virginia;
  7. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally set forth by the board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163 of the Code of Virginia;
  8. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

9. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Virginia Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to the ESCL and the regulations adopted pursuant thereto;
10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VESCP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsections 1.6, 1.7 and 1.8 of this ordinance are required within 30 days of commencing the land-disturbing activity;
11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity; and
12. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

#### **Section 1.6. SUBMISSION AND APPROVAL OF PLANS; CONTENTS OF PLANS**

- A. Except as provided herein, no person may engage in any regulated land-disturbing activity until he or she has submitted to the **[VESCP authority]** an erosion and sediment control plan for the regulated land-disturbing activity and such plan has been approved by the **[VESCP authority]**. No approval to begin a land disturbing activity will be issued unless evidence of VPDES permit coverage is obtained where it is required.  
**[OPTIONAL – USE IF LOCALITY ACCEPTS AGREEMENT IN LIEU** Where the land-disturbing activity results from the construction of a (i) single-family detached residential structure or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP plan-approving authority.]
- B. The standards contained within the "Virginia Erosion and Stormwater Management Regulation (9VAC25-875)" [optional to include: the Virginia Stormwater Management Handbook, as amended] and **[any local handbook or publication]** are to be used by the applicant when making a submittal under the provisions of this ordinance and in the preparation of an erosion and sediment control plan. The VESCP plan-approving authority, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines. When the standards vary between the publications, the Virginia Erosion and Stormwater Management Regulation shall take precedence.
- C. The VESCP plan-approving authority shall review erosion and sediment control plans submitted to it and grant written approval within 60 days of the receipt of the plan if it

determines that the plan meets the requirements of the Erosion and Sediment Control Law for Localities not Administering a Virginia Erosion and Stormwater Management Program and 9VAC25-875, and if the person responsible for carrying out the plan certifies that he or she will properly perform the erosion and sediment control measures included in the plan and will comply with the provisions of this ordinance. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of the responsible land disturber to the VЕСP authority, as required by 9VAC25-875-300 and 9VAC25-875-550, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of the responsible land disturber, prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance.

**[The following additional text is optional at the discretion of the VЕСP authority:**

*However, the VЕСP plan-approving authority may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan for construction of a single-family detached residential structure. If a violation occurs during the land-disturbing activity associated with the construction of the single-family detached residential structure, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of the responsible land disturber to the VЕСP authority. Failure to provide the name of the responsible land disturber shall be a violation of this ordinance. End of optional text.]*

- D. When the plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken within 45 days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.
- E. The **[VЕСP authority]** shall act on any erosion and sediment control plan that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.
- F. The **[VЕСP authority]** may require changes to an approved plan when:
  - 1. The inspection reveals that the plan is inadequate to satisfy applicable regulations; or
  - 2. The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this ordinance, are agreed to by the VЕСP plan-approving authority and the person responsible for carrying out the plans.
- G. Variances: The VЕСP plan-approving authority may waive or modify any of the standards that are deemed to be inappropriate or too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:

1. At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the VESCP plan-approving authority shall be documented in the plan.
  2. During construction, the person responsible for implementing the approved plan may request a variance in writing from the VESCP plan-approving authority. The VESCP plan-approving authority shall respond in writing either approving or disapproving such a request. If the VESCP plan-approving authority does not approve a variance within 10 days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.
  3. The **[VESCP authority]** shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.
- H. In order to prevent further erosion, the **[locality]** may require approval of a plan for any land identified in the local program as an erosion impact area.
- I. When a land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.
- J. As an alternative to submitting soil erosion control and stormwater management plans pursuant to § 62.1-44.15:34 of the Code of Virginia to the **[VESCP authority]**, any person engaging in more than one jurisdiction in the creation and operation of a wetland mitigation or stream restoration bank that has been approved and is operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of (i) a wetlands mitigation or stream restoration bank, pursuant to a mitigation banking instrument signed by the Department, the Marine Resources Commission, or the U.S. Army Corps of Engineers, or (ii) a stream restoration project for purposes of reducing nutrients or sediment entering state waters may submit standards and specifications for Department approval that describe how land-disturbing activities shall be conducted.

### **Section 1.7. EROSION AND SEDIMENT CONTROL PLAN; CONTENTS OF PLANS**

- A. An erosion and sediment control plan shall be filed for a development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control plan shall be consistent with the criteria, techniques, and methods in 9VAC25-875-560. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives in 9VAC25-875-560. The erosion and sediment control plan may include:

1. Appropriate maps;
  2. An appropriate soil and water plan inventory and management information with needed interpretations; and
  3. A record of decisions contributing to conservation treatment.
- B. The person responsible for carrying out the plan shall provide the name of an individual holding a certificate who will be in charge of and responsible for carrying out the land-disturbing activity to the VESMP authority. [Note: The VESMP authority may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan in accordance with § 62.1-44.15:34 or § 62.1-44.15:55 of the Code of Virginia.]
- C. If individual lots or sections in a residential development are being developed by different property owners, all land-disturbing activities related to the building construction shall be covered by an erosion and sediment control plan **[OPTIONAL IF LOCALITY ACCEPTS AN AGREEMENT IN LIEU: or an "Agreement in Lieu of a Plan" signed by the property owner]**.
- D. Land-disturbing activity of less than 10,000 square feet on individual lots in a residential development shall not be considered exempt from the provisions of the VESMA, ESCL, or this ordinance if the total land-disturbing activity in the development is equal to or greater than 10,000 square feet.

### **Section 1.8. PERMITS; FEES; SECURITY FOR PERFORMANCE**

- A. Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities shall not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan, certification that the plan will be followed and evidence of VPDES permit coverage where it is required.
- B. No person may engage in any land-disturbing activity until he or she has acquired a land-disturbing permit (unless the proposed land-disturbing activity is specifically exempt from the provisions of this ordinance), has paid the fees and has posted the required bond.
- C. An administrative fee of **[amount, fee schedule, or reference to local ordinance]** shall be paid to **[locality]** at the time of submission of the erosion and sediment control plan.
- D. No land-disturbing permit shall be issued until the applicant submits with his or her application an approved erosion and sediment control plan [or agreement in lieu of an approved erosion and sediment control plan] and certification that the plan will be followed.



- E. *The following additional text is optional at the discretion of the VESCP authority: All applicants for permits shall provide to the [locality] a performance bond with surety, cash escrow, or an irrevocable letter of credit acceptable to the [position title], to ensure that measures could be taken by the [locality] at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of him or her by the approved plan as a result of his land-disturbing activity.*

*The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent of the cost of the conservation action. Should it be necessary for the [locality] to take such conservation action, the [locality] may collect from the applicant any costs in excess of the amount of the surety held. Within sixty (60) days of adequate stabilization, as determined by [department or position title] in any project or section of a project, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof, shall be either refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section. These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits. [End of optional language.]*

### **Section 1.9. MONITORING, REPORTS, AND INSPECTIONS**

- A. The responsible land disturber, as provided by § 62.1-44.15:52, shall be in charge of and responsible for carrying out the land-disturbing activity and provide for periodic inspections of the land-disturbing activity. The person responsible for carrying out the plan shall monitor the land-disturbing activity. The person responsible for carrying out the plan will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.
- B. The [department or position title] shall periodically inspect the land-disturbing activity in accordance with 9VAC25-875-330 to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection and shall such inspection in accordance with § 62.1-44.15:60 and the land-disturbing permit.

If the [position title] determines that there is a failure to comply with the plan, notice to comply may be served upon the permittee or person responsible for carrying out the plan. Such notice shall be served by delivery by facsimile, e-mail, or other technology; by mailing with confirmation of delivery to the address specified in the permit application or in the plan certification, if available, or in the land records of the locality; or by delivery

at the site of the land-disturbing activities to the agent or employee supervising such activities.

The notice to comply shall specify the measures needed to comply with the land-disturbance approval conditions or shall identify the plan approval or land-disturbance approval needed to comply with this article and shall specify a reasonable time within which such measures shall be completed. Upon failure to comply within the specified time, any plan approval or land-disturbance approval may be revoked and the permittee or person responsible for carrying out the plan shall be subject to the penalties provided by this ordinance.

- C. Upon issuance of an inspection report denoting a violation of § 62.1-44.15:55 of the Code of Virginia, the [position title] may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.

If land-disturbing activities have commenced without an approved plan, the [position title] may issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.

Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan, such a stop work order may be issued without regard to whether the alleged violator has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the alleged violator has failed to comply with such a notice to comply.

The stop work order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the [locality] or permit holder for appropriate relief to the Circuit Court of [locality] [or other appropriate court]. The [locality] shall serve such order for disturbance without an approved plan upon the owner by mailing with confirmation of delivery to the address specified in the land records. The order shall be posted on the site where the disturbance is occurring, and shall remain in effect until permits and plan approvals are secured, except in such situations where an agricultural exemption applies.

If the alleged violator has not obtained an approved plan within seven days from the date of service of the stop work order, the [position title] may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan has been obtained. Such an order shall be served upon the owner by mailing with confirmation of delivery to the address specified in the plan or the land records of [locality].

The owner may appeal the issuance of an order to the Circuit Court of **[locality]** **[or other appropriate court]**.

Any person violating or failing, neglecting or refusing to obey an order issued by **[position title]** may be compelled in a proceeding instituted in the Circuit Court of **[locality]** to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

Upon completion and approval of corrective action or obtaining an approved plan, the order shall immediately be lifted.

Nothing in this section shall prevent the **[position title]** from taking any other action authorized by this ordinance or other applicable laws.

### **Section 1.10. PENALTIES, INJUNCTIONS, AND OTHER LEGAL ACTIONS**

- A. Any person who has violated or failed, neglected, or refused to obey any order, notice, or requirement of the **[VESCP authority]**, any condition of a land-disturbance approval, or any provision of this ordinance shall, upon a finding of the District Court of **[locality]**, be assessed a civil penalty. The civil penalty for any one violation shall be not less than \$100 nor more than \$1,000, except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be \$1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$10,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000.
- B. The **[position title]**, or the owner or property which has sustained damage, or which is in imminent danger of being damaged, may apply to the Circuit Court of **[locality]** to enjoin a violation or a threatened violation of §§ 62.1-44.15:55 or 62.1-44.15:58 of the Code of Virginia, without the necessity of showing that an adequate remedy at law does not exist.

However, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the local program nor the program authority has taken corrective action within fifteen days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.

- C. In addition to any criminal or civil penalties provided under this ordinance, any person who violates any provision of the Erosion and Sediment Control Law may be liable to **[locality]** in a civil action for damages.
- D. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other

remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the **[locality]**.

Any civil penalties assessed by a court shall be paid into the treasury of **[locality]**, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

- E. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this ordinance, or order of the **[VESCP authority]** the **[locality]** may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection D of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Subsection A or D.
- F. The Commonwealth's Attorney shall, upon request of the **[locality]**, take legal action to enforce the provisions of this ordinance.

#### **Section 1.11. APPEALS AND JUDICIAL REVIEW**

- A. Final decisions of the **[locality]** under this ordinance shall be subject to review by the **[authority]** Circuit Court, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.