

**ORDINANCE NO. 24-17(\_\_\_\_)**

**AN ORDINANCE TO AMEND CHAPTER 17, WATER PROTECTION, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA**

BE IT ORDAINED by the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 17, Water Protection, is hereby reordained and amended as follows:

**By Amending:**

- Sec. 17-100 Authority.
- Sec. 17-101 Purposes.
- Sec. 17-102 Applicability.
- Sec. 17-103 Land disturbing activity prohibited without approved plan and permit; responsibility.
- Sec. 17-104 Assumptions.
- Sec. 17-200 Designation of program authority.
- Sec. 17-201 Designation of program administrator; powers and duties; express designations.
- Sec. 17-202 Administrator, plan reviewers and inspectors; certificates of competence.
- Sec. 17-203 Administrator; reporting and recordkeeping.
- Sec. 17-204 Rules of construction.
- Sec. 17-205 Definitions.
- Sec. 17-207 Fees for land disturbing activity.
- Sec. 17-209 Fees; payment.
- Sec. 17-211 Review of administrator's action; judicial review.
- Sec. 17-300 Land disturbing activities and site conditions subject to the VESMP.
- Sec. 17-301 Land disturbing activities exempt from the VESMP.
- Sec. 17-304 Determining the status of a land disturbing activity or a site condition.
- Sec. 17-305 Notice of determination regarding status of land disturbing activity or site condition.
- Sec. 17-306 Owner's obligation upon receipt of notice of determination.
- Sec. 17-400 Responsibility to prepare, submit and obtain approval of applications; multi-jurisdictional developments.
- Sec. 17-401 Land-disturbance permit application; form and content.
- Sec. 17-402 Erosion and sediment control plans, and agreements in lieu of a plan; form and content.
- Sec. 17-403 Stormwater management plans; form and content.
- Sec. 17-404 Pollution prevention plans; form and content.
- Sec. 17-405 Stormwater pollution prevention plan (SWPPP); form and content.
- Sec. 17-407 Variances.
- Sec. 17-408 Exceptions.
- Sec. 17-410 Review and action on application.
- Sec. 17-411 Deferral of review of application; when application deemed withdrawn.
- Sec. 17-413 Appeal of decision of the administrator.
- Sec. 17-415 Stormwater management maintenance agreement.
- Sec. 17-416 Effect of approvals.
- Sec. 17-417 Prerequisites to land disturbing activity.
- Sec. 17-418 Modifications and variances to approved erosion and sediment control plans.
- Sec. 17-419 Amendments and modifications to approved stormwater management plans.
- Sec. 17-421 Amendments to stormwater pollution prevention plans.
- Sec. 17-422 Construction record drawing; submittal.
- Sec. 17-423 Release of surety.
- Sec. 17-424 Effect of failure to obtain land disturbance, building or other permit; void for inactivity.
- Sec. 17-500 Erosion and sediment control plans; applicable technical criteria.
- Sec. 17-501 Applicability of other laws and regulations; time limits on applicability of approved design criteria.
- Sec. 17-502 Offsite nutrient credits.
- Sec. 17-600 Extent of stream buffers; retention and establishment.
- Sec. 17-602 Types of improvements and activities exempt from duties to retain, establish, or manage a stream buffer.

Sec. 17-701	Illicit discharges prohibited; exempt and authorized discharges.
Sec. 17-800	Duty to comply.
Sec. 17-801	Duty to maintain structures, systems, facilities, and techniques.
Sec. 17-802	Duty to maintain the functional performance of storm drainage systems and streams.
Sec. 17-803	Duty to maintain general permit, stormwater pollution prevention plan, and other documents onsite.
Sec. 17-804	Duty to inspect and take corrective action.
Sec. 17-805	Duty to provide information pertaining to discharges and compliance.
Sec. 17-806	Duty to report discharges or noncompliance.
Sec. 17-808	Duty to stabilize denuded areas with permanent vegetation within nine months after commencing land disturbing activity.
Sec. 17-809	Right of administrator to enter to obtain information, conduct surveys, or in accordance with a performance bond.
Sec. 17-811	Inspections by the administrator under the VSMP.
Sec. 17-813	Monitoring and sampling equipment by the administrator on VPDES permitted facilities.
Sec. 17-814	Third party complaints regarding impacts from land disturbing activities.
Sec. 17-900	Notice to comply.
Sec. 17-901	Failure to comply with notice; revocation; order to stop work, enforcement.
Sec. 17-902	Stop work orders; procedure.
Sec. 17-904	Remedies.

**By Removing:**

Sec. 17-208	Fees for land disturbing activity under VSMP.
Sec. 17-302	Land disturbing activities subject to the VSMP.
Sec. 17-303	Land disturbing activities exempt from the VSMP.
Sec. 17-810	Inspections by the administrator under the VESCP.
Sec. 17-903	Remedies under the VESCP.

## **CHAPTER 17. WATER PROTECTION**

### **ARTICLE I. GENERAL**

[Section 17-100 to remain unchanged]

**Sec. 17-101 Authority.**

Articles I through IX of this chapter are adopted pursuant to the authority conferred by the Virginia Erosion and Stormwater Management Act (Virginia Code § 62.1-44.15:24 *et seq.*), as authorized by Virginia Code § 62.1-44.15:27, the regulations implementing the Virginia Erosion and Stormwater Management Act in 9VAC25-830 through 9VAC25-890, as applicable, including the general Virginia Pollutant Discharge Elimination System permit for discharges from the County's small MS4, and Virginia Code § 62.1-44.15:73, which is a part of the Chesapeake Bay Preservation Act (Virginia Code § 62.1-44.15:67 *et seq.*).

(§ 7-1, 6-18-75, § 2, 2-11-87, 3-18-92; § 19.2-3, 6-19-91, § 3; § 19.3-2, 2-11-98; Code 1988, §§ 7-1, 19.2-3, 19.3-2; § 17-101, Ord. 98-A(1), 8-5-98; Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code §§ 62.1-44.15:27, 62.1-44.15:73; 9VAC25-830 through 9VAC25-890.

**Sec. 17-102 Purposes.**

The purposes of this chapter are to:

- A. *Protect public health, safety, and welfare.* Protect the health, safety, and general welfare of the citizens of the County and the Commonwealth of Virginia.

- B. *Protect quality and quantity of State waters from unmanaged stormwater.* Protect the quality and quantity of State waters from the potential harm of unmanaged stormwater and soil erosion, sediment deposition and nonagricultural runoff by requiring control measures that will maintain, protect and improve the water quality and quantity of receiving State waters.
- C. *Protect property and natural resources.* Prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources resulting from a land disturbing activity.
- D. *Reduce pollution and illicit discharges to protect water quality.* Establish a comprehensive program to manage sources of stormwater. Runoff from lands modified by human activities can harm surface water resources by, among other things, changing natural hydrologic patterns, increasing runoff velocity, and by elevating pollutant concentrations and loadings. Runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances, and floatables.
- E. *Sustainability of groundwater resources.* Promote the long-term sustainability of groundwater resources.
- F. *Implement State laws.* Implement the applicable parts of the State Water Control Law (Virginia Code § 62.1-44.2 *et seq.*), including the Virginia Erosion and Stormwater Management Act (Virginia Code § 62.1-44.15:24 *et seq.*), as required by Virginia Code § 62.1-44.15:27, and the regulations implementing the Virginia Erosion and Stormwater Management Act in 9VAC25-830 through 9VAC25-890, as applicable, and as required thereby, including the general Virginia Pollutant Discharge Elimination System permit for discharges from the County's small MS4, and to provide for the proper administration and enforcement of this chapter.

(§ 7-1, 6-18-75, § 2, 2-11-87, 3-18-92; § 19.1-4, 9-29-77, art. I, § 1, 7-11-90; § 19.2-2, 6-19-91, § 2; § 19.3-3, 2-11-98; Code 1988, §§ 7-1, 19.1-4, 19.2-2, 19.3-3; § 17-102, Ord. 98-A(1), 8-5-98; Ord. 04-17(1), adopted 12-8-04, effective 2-8-05; Ord. 07-17(1), 2-14-07; Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code §§ 62.1-44.15:2; 9VAC 25-875-970.

### **Sec. 17-103 Applicability.**

This chapter, or the applicable parts thereof, applies to:

- A. *Land disturbing activity within the County and the Town of Scottsville.* Any land-disturbing activity within the County and within the Town of Scottsville, including that portion of the Town of Scottsville located within the County of Fluvanna, to which the VESMP applies under this chapter and under State and Federal law.
- B. *Erosion impact areas.* Any land identified by the administrator as an erosion impact area within the County and the Town of Scottsville, to which the parts of this chapter pertaining to erosion and sediment control, including the requirement for the submittal and approval of an erosion and sediment control plan.
- C. *Stream buffers.* Any area within the County and the Town of Scottsville designated as a stream buffer under this chapter.
- D. *Permanent stormwater management facilities.* Any areas served by a public permanent stormwater management facility.
- E. *Discharges, connections and dumping.* All activities that cause or allow to be caused direct or indirect illicit discharges, illicit connections, and the prohibited dumping of refuse and pollutants, or that negatively impede the flow capacity of the County's MS4 or State waters.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code §§ 62.1-44.15:27, 62.1-44.15:33, 62.1-44.15:34, 62.1-44.15:73; 9VAC25-890-40.

**Sec. 17-104 Land-disturbing activity prohibited without approved plan and permit; responsibility.**

No owner may engage in land-disturbing activity subject to this chapter, or allow land-disturbing activity to occur, on its property, until:

- A. *Soil erosion control and stormwater management plan approved.* The owner has submitted to the administrator an ESM plan for the land disturbing activity, the administrator has reviewed and approved the plan, and all other prerequisites to engaging in land-disturbing activity have been satisfied, as provided in section 17-400 *et seq.*; and
- B. *Permit approved.* The owner has submitted to the administrator an application for a land-disturbance permit to conduct land-disturbing activity, the administrator has reviewed the plan and approved the permit, and all other prerequisites to engaging in land-disturbing activity have been satisfied, as provided in section 17-400 *et seq.*

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code §§ 62.1-44.15:27, 62.1-44.15:34; 9VAC25-890-40.

**Sec. 17-105 Assumptions.**

The administration of the requirements of this chapter is assumed to comply with the County’s obligations under its MS4 permit, that the control measures and best management practices approved by the administrator in conjunction with any ESM plan or land-disturbance permit are effective based upon current control technologies and best management practices. It also is assumed that control technologies and best management practices are constantly being refined and improved and, as a result, the requirements of State law, this chapter, and the Design Standards Manual will be responsive to these refinements and improvements in administering this chapter.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – 9VAC25-875-970.

[Sections 17-106 through 17-108 to remain unchanged]

**ARTICLE II. ADMINISTRATION**

**Sec. 17-200 Designation of program authority.**

The County of Albemarle, Virginia, is hereby designated the program authority (the “program authority”) for the purpose of administering the Virginia Erosion and Stormwater Management Program (“VESMP”) within the County and the Town of Scottsville. In addition, to further administer the VESMP:

- A. *Agreements.* The County may enter into agreements or contracts with DEQ, soil and water conservation districts, adjacent localities, planning district commissions, or other public or private entities to carry out or assist with plan review and inspections.
- B. *Cooperation with state and federal agencies.* The County may cooperate and enter into agreements with any state or federal agency in connection with the requirements for land disturbing activities.

(§ 7-9, 4-21-76, 2-11-87, 3-18-92; § 19.3-6, 2-11-98; Code 1988, §§ 7-9, 19.3-6; § 17-105, Ord. 98-A(1), 8-5-98; Ord. 07-17(1), 2-14-07; § 17-200, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code §§ 62.1-44.15:27, 62.1-44.15:50.

**Sec. 17-201 Designation of program administrator; powers and duties; express designations.**

The County Engineer is hereby designated the program administrator (the “administrator”) for the purpose of administering this chapter. The administrator has the powers and duties to administer and enforce the VESMP, and to exercise all powers and perform those duties of the program authority as provided in this chapter. In addition, the following officers and employees are hereby designated specific tasks in order to assist the administrator in administering this chapter:

- A. *Plan reviewers and inspectors.* County employees qualified under section 17-202 and under State law are designated to act as certified plan reviewers and certified inspectors under the VESMP.
- B. *Administrator for post-construction stormwater management facilities and best management practices.* The director of the County’s Department of Facilities and Environmental Services is hereby designated to administer the VESMP for post-construction stormwater management facilities and best management practices.
- C. *Administrator for the County’s MS4 permit and MS4 program plan.* The director of the County’s Department of Facilities and Environmental Services is hereby designated as the administrator of the County’s MS4 permit in order to ensure compliance therewith, and to develop and administer the County’s MS4 program plan.

(Ord. 14-17(1), 5-7-14, effective 7-1-14; Ord. 21-17(1), 4-21-21, effective 9-1-21)

State law reference – Va. Code § 62.1-44.15:27.

**Sec. 17-202 Administrator, plan reviewers and inspectors; certificates of competence.**

The administrator, any person reviewing VESMP plans, and each person conducting project inspections under either the VESMP, must hold a valid certificate of competence for the classification of the task to be performed, or its equivalent, as provided in 9VAC25-875-380 *et seq.* The administrator and any other person may hold certificates for more than one classified task.

For purposes of program compliance reviews and evaluations by DEQ, the enrollment of persons in certification programs is deemed to meet the certification requirements as provided in 9VAC25-875-420.

(§ 7-9, 4-21-76, 2-11-87, 3-18-92; § 19.3-6, 2-11-98; Code 1988, §§ 7-9, 19.3-6; § 17-105, Ord. 98-A(1), 8-5-98; Ord. 07-17(1), 2-14-07; § 17-202, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:30; 9VAC25-875-380 *et seq.*

**Sec. 17-203 Administrator; reporting and recordkeeping.**

The administrator, on behalf of the authority, shall report and keep records as follows:

- A. *Reporting.* On a fiscal year basis (July 1 to June 30), the administrator shall report to DEQ by October 1 of each year in a format provided by DEQ the following information:
  - 1. *Permanent stormwater management facilities completed.* Information, not previously reported to DEQ through other reporting requirements, on each permanent stormwater management facility completed during the fiscal year to include type of stormwater management facility, geographic coordinates, acres treated, and the surface waters or karst features into which the stormwater management facility will discharge;

2. *New land disturbing activities.* A listing of each land disturbing activity for which a plan has been approved by the County;
  3. *Enforcement actions.* The number and type of enforcement actions during the fiscal year; and
  4. *Exceptions granted.* The number of exceptions granted during the fiscal year.
- B. *Recordkeeping; period to retain.* The administrator shall keep records in accordance with the following:
1. *Project records.* Project records, including approved ESM plans, shall be kept for three (3) years after permit termination or project completion.
  2. *Inspection records.* Stormwater management facility inspection records shall be documented and retained for at least five (5) years from the date of inspection.
  3. *Construction record drawings.* Construction record drawings shall be maintained in perpetuity or until a stormwater management facility is removed.
  4. *Registration statements.* All registration statements submitted in accordance with section 17-401 shall be documented and retained for at least three (3) years after the date of project completion or permit termination.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – 9VAC25-875-180.

#### **Sec. 17-204 Rules of construction.**

This chapter protects paramount public interests and will be liberally construed to effectuate its several purposes. In addition to the rules of construction set forth in Albemarle County Code § 1-102, the following rules of construction apply to the construction of this chapter, unless the application would be contrary to the purposes of this chapter or the context clearly indicates otherwise:

- A. All references to any statute, regulation, guideline, handbook, manual or standard are to that statute, regulation, guideline, handbook, manual or standard as it exists on the date of adoption of this chapter, and includes any amendment thereafter or reissue in a subsequent edition.
- B. All references to the “administrator” include, in the appropriate context, a certified plan reviewer, certified inspector, or any other person designated to act under this chapter.
- C. All references to the “owner” include, in the appropriate context, the applicant, the permittee, the operator.
- D. All references to the “County,” when referring to physical territory in articles I through IX of this chapter, include the physical territory of both the County of Albemarle and the Town of Scottsville.
- E. All references to “this chapter,” when used in articles I through IX, are referring to articles I through IX.
- F. The word “days” means calendar days, unless otherwise expressly provided.
- G. All distances and areas will be measured in a horizontal plane unless otherwise expressly

- provided.
- H. The word “current” means the point in time at which a matter is under consideration and will not mean the date of adoption of the most recent amendment to this chapter.
  - I. The word “maintain” or “maintenance” also includes, repair, replace and reconstruct.
  - J. All provisions requiring that improvements be designed or constructed to prescribed standards, or otherwise comply with applicable standards, refer to the minimum standard and nothing in this chapter prohibits an improvement from exceeding the standard.
  - K. Any word or phrase used in this chapter that is not defined in section 17-205 will be defined as it is in the VESMA (Virginia Code § 62.1-44.15:24 *et seq.*) and in the applicable regulations in 9VAC25-830 through 9VAC25-890. If the word or phrase is not defined therein, the meaning of the word or phrase will be defined as it is in other chapters of this Code and if it is not defined therein, by resort to other sources determined to be appropriate.

(2-11-98; Code 1988, § 19.3-4; § 17-103, Ord. 98-A(1), 8-5-98; § 17-204, Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code § 62.1-44.15:27.

#### **Sec. 17-205 Definitions.**

The following definitions apply in the administration of this chapter:

*Administrator.* The term “administrator” means the County Engineer.

*Agreement in lieu of a plan.* The term “agreement in lieu of a plan” means a written contract between the County and the owner that specifies methods that must be implemented to comply with the requirements of the VESMA in the construction of a single-family residence, in lieu of an ESM plan.

*Agricultural land.* The term “agricultural land” means land used for horticulture, viticulture, silviculture, or other gardening that may involve the tilling of soil for the raising of crops; the keeping of livestock and/or poultry; and/or agricultural industries or businesses, such as, but not limited to, orchards, fruit packing plants, dairies, nurseries or wayside stands.

*Agricultural road.* The term “agricultural road” means a road or portion of a road that is constructed exclusively for access to agricultural land and is located on or serves a lot that is not the subject of a pending or approved preliminary or final plat, initial or final site plan, zoning map amendment to a non-agricultural zoning district, or a special use permit for a use or activity not directly related to agriculture.

*Amendment to approved plan.* The term “amendment to approved plan” means an owner-requested change to an approved plan or to land-disturbance permit conditions.

*Applicant.* The term “applicant” means any person submitting an ESM plan for approval in order to obtain authorization to commence a land-disturbing activity.

*Application.* The term “application,” as used in Article IV, means an application for a land-disturbance permit.

*Best management practice (BMP).* The term “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.

- A. "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.
- B. "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.* The term "Board" means the State Water Control Board, unless the context indicates that the term refers to the board of supervisors.

*Bypass.* The term "bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

*Certified inspector.* The term "certified inspector" means an employee or agent of the County who: (i) holds a certificate of competence from the State Water Control Board in the area of project inspection; or (ii) is enrolled in the State Water Control Board's training program for project inspection and successfully completes the program within one year after enrollment.

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

*Certified program administrator.* The term "certified program administrator" means an employee or agent of the County who: (i) holds a certificate of competence from the State Water Control Board in the area of program administration; or (ii) is enrolled in the State Water Control Board's training program for program administration and successfully completes the program within one year after enrollment.

*Channel.* The term "channel" means a natural stream or manmade waterway.

*Clean Water Act (CWA).* The term "Clean Water Act" or "CWA" means the federal Clean Water Act (33 U.S.C. § 1251 *et seq.*), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

*Common plan of development or sale.* The term "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.

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

*Contiguous nontidal wetlands.* The term "contiguous nontidal wetlands" means nontidal wetlands that lie within or adjacent to a stream channel or within the floodplain of that stream channel so that there is a hydrologic connection between the stream and the wetland, and that include impoundments of water along a natural stream channel.

*Control measure.* The term "control measure" means any best management practice (BMP) or stormwater facility, or other method used to minimize the discharge of pollutants to State waters, or otherwise restrict or alter the hydraulics of stormwater flow and discharge.

*Dam.* The term "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.* The term “denuded” means land that has been physically disturbed and no longer supports vegetative cover.

*Department or DEQ.* The terms “Department” or “DEQ” mean the Department of Environmental Quality, unless the context indicates that the term refers to a County department.

*Design Standards Manual.* The term “Design Standards Manual” means the manual developed and maintained by the administrator that includes, among other things, the technical criteria required under the VESMP, and best management practices.

*Development.* The term “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 non-silvicultural purposes. The regulation of discharges from development, for purposes of stormwater management, does not include the exclusions found in 9VAC25-875-860.

*Development area.* The term “development area” means any portion of the County designated as such in the Comprehensive Plan.

*Dike.* The term “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; a levee.

*Discharge.* The term “discharge,” when used without qualification, means the discharge of a pollutant.

*Discharge of a pollutant.* The term “discharge of a pollutant” means any addition of any pollutant or combination of pollutants to State waters from any point source, and 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 the State, the County, 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; provided that this definition does not include an addition of pollutants by any indirect discharger.

*Diversion.* The term “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.

*Drainage area.* The term “drainage area” means a land area, water area, or both from which runoff flows to a common point or boundary.

*Environmental Protection Agency (EPA).* The term “Environmental Protection Agency” or “EPA” means the United States Environmental Protection Agency.

*Erosion and sediment control plan.* The term “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 must contain all major conservation decisions and all information deemed necessary by the VESMP authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

*Erosion impact area.* The term “erosion impact area” means an area of land not associated with current land disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into State waters; provided that the area of land is not a lot or parcel of ten thousand (10,000) square feet or less used for residential purposes or a shoreline where the erosion results from wave action or other coastal processes.

*ESC.* The term “ESC” means erosion and sediment control.

*ESM plan.* The term “ESM plan” means a soil erosion control and stormwater management plan, commonly referred to as the erosion control and stormwater management plan.

*Facility or activity.* The term “facility or activity” means any point source or treatment works treating domestic sewage or any other facility or activity, including land or appurtenances thereto, that is subject to regulation under the VESMP.

*Floodplain.* The term “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 one hundred (100) year flood or storm event, and includes, but is not limited to, the floodplain designated by the Federal Emergency Management Agency on a Flood Insurance Rate Map.

*General permit.* The term “general permit” means a permit authorizing a category of discharges under the CWA and the VESMA within a geographical area..

*Hazardous substance.* The term “hazardous substance” means any substance designated under the Code of Virginia or 40 CFR Part 116 pursuant to section 311 of the Clean Water Act.

*Illicit discharge.* The term “illicit discharge” means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a separate VPDES or general permit (other than the state permit for discharges from the municipal separate storm sewer), discharges resulting from firefighting activities, and discharges identified by and in compliance with 9VAC25-875-970(D)(2)(c)(3).

*Inspection.* The term “inspection” means an onsite review of a project’s compliance with an approved ESM plan, an approved land-disturbance permit, the general permit, this Chapter, and any applicable design criteria, or an onsite review to obtain information or conduct surveys or investigations necessary for the implementation or enforcement of this chapter.

*Intermittent stream.* The term “intermittent stream” means a natural stream or portion of a natural stream that has a defined bed and defined banks within which water flows in response to precipitation, through near surface groundwater flow, or from springs, and which is not a perennial stream.

*Land disturbance or land disturbing activity.* The term “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.* The term “land disturbance approval” means an approval (including a land-disturbance permit) allowing a land-disturbing activity to commence issued by the VESMP authority after the requirements this chapter have been met.

*Large construction activity.* The term “large construction activity” means construction activity, including clearing, grading and excavation resulting in the disturbance of five (5) acres or more of total land area; provided that the disturbance of less than five (5) acres of total land area is a large construction activity if it is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five (5) 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.

*Layout.* The term “layout” means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

*Main channel.* The term “main channel” means the portion of the stormwater conveyance system that contains the base flow and small frequent storm events.

*Man-made.* The term “man-made” means constructed by a person.

*Maximum extent practicable (MEP).* The term “maximum extent practicable” or “MEP” means the technology-based discharge standard for MS4s established by CWA § 402(p) and that is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is an iterative standard, that evolves over time as urban runoff management knowledge increases. As such, the County’s MS4 program must continually be assessed and modified to incorporate improved programs, control measures, BMPs, and other practices, procedures, and requirements, to attain compliance with water quality standards.

*Minimize.* The term “minimize” means to reduce or eliminate the discharge of pollutants to the extent achievable using stormwater controls that are technologically available and economically practicable.

*Mitigation plan.* The term “mitigation plan” means a plan that meets the requirements of section 17-406 that describes how encroachments into a stream buffer will be mitigated through runoff treatment, revegetation, the addition of extra buffer areas, or other appropriate best management practices. A mitigation plan may be a component of a land-disturbance permit or an ESM plan.

*Municipal separate storm sewer.* The term “municipal separate storm sewer” means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system (MS4), including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains: (i) owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to State law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters; (ii) designed or used for collecting or conveying stormwater; (iii) that is not a combined sewer; and (iv) that is not part of a publicly owned treatment works.

*Municipal separate storm sewer system (MS4).* The term “municipal separate storm sewer system” or “MS4” means the same as the term “municipal separate storm sewer” is defined in Virginia Code § 62.1-44.3.

*Natural channel design concepts.* The term “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.* The term “natural stream” means a tidal or nontidal watercourse that is part of the natural topography, that 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 are not considered natural streams; however, channels designed using natural channel design concepts may be considered natural streams.

*Necessary infrastructure.* The term “necessary infrastructure” means components of a site development necessary for the protection of the public health, safety, or welfare, and environmental features and they include, but are not limited to, drainage channels, structures and facilities, best management practices, access roads for emergency vehicles, and access roads in order to maintain stormwater management facilities or water-dependent facilities, or both.

*Nonpoint source pollution.* The term “nonpoint source pollution” means pollution such as sediment, nitrogen, phosphorus, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by runoff.

*Nontidal wetlands.* The term “nontidal wetlands” means wetlands other than tidal wetlands that are inundated or saturated by surface or groundwater at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil

conditions, as defined by the EPA pursuant to section 404 of the Clean Water Act and its implementing regulations.

*Nutrient credit.* The term “nutrient credit” or “credit” means a nutrient credit certified pursuant to Virginia Code § 62.1-44.19:12 *et seq.*

*Operator.* The term “operator” means the owner or operator of any facility or activity subject to regulation under 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 an SWPPP for the site or other permit or land-disturbance permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions).

*Other rural land.* The term “other rural land” means any portion of the County that is designated Rural Area in the Comprehensive Plan but that is not within a water supply protection area.

*Outfall.* The term “outfall” means, when used in reference to municipal separate storm sewers, a point source at the point where a municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances that connect segments of the same stream or other surface waters and are used to convey surface waters.

*Owner.* The term “owner” means the same as that term is defined in Virginia Code § 62.1-44.3. 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.* The term “peak flow rate” means the maximum instantaneous flow from a prescribed design storm at a particular location.

*Perennial stream.* The term “perennial stream” means any stream that is depicted as a continuous blue line on the most recent United States Geological Survey 7.5 minute topographic quadrangle maps (scale 1:24,000), which is determined by the program authority to be perennial following a site-specific evaluation using the guidance entitled “Determinations of Water Bodies with Perennial Flow,” dated September 2003, issued by the Chesapeake Bay Local Assistance Department, or which is delineated as a perennial stream by the United States Army Corps of Engineers, the Virginia Department of Environmental Quality, or under the Virginia Water Protection program. or MS4.

*Permittee.* The term “permittee” means the person to whom the County or DEQ has issued a permit.

*Person.* The term “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.

*Plan of development.* The term “plan of development” means the process for site plan or plat review to ensure compliance with Virginia Code § 62.1-44.15:74 and this chapter which is required as a precedent to clearing, grading, or other land disturbing activity on a site or the issuance of a building permit.

*Plat.* The term “plat” means a preliminary or final plat, or a plat for any other class of subdivision as provided in the Subdivision Ordinance.

*Point of discharge.* The term “point of discharge” means a location at which concentrated runoff is released.

*Point source.* The term “point source” means any discernible, confined, and discrete conveyance including, but not limited to, 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.* The term “pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water; provided that this term does not mean: (i) sewage from vessels; or (ii) water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well is used either to facilitate production or for disposal purposes is approved by the State Water Control Board and if it determines that the injection or disposal will not result in the degradation of groundwater or surface water resources.

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

*Pollution prevention plan.* The term “pollution prevention plan” means a plan that meets the requirements of section 17-404 for implementing pollution prevention measures during construction activities and that details the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. A pollution prevention plan is a component of a land-disturbance permit.

*Post-development.* The term “post-development” means the conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site.

*Pre-development.* The term “pre-development” means the conditions that exist at the time that plans for the land development activity are submitted to the authority. Where phased development or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities, and similar acts), the existing conditions at the time prior to the commencement of the land-disturbing activity establish pre-development conditions.

*Program.* The term “program” means the Virginia Erosion and Stormwater Management Program.

*Qualified personnel.* The term “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.

*Regulations.* The term “regulations,” when referring to State regulations, means those regulations implementing the VESMA in 9VAC25-830 through 9VAC25-890.

*Runoff.* The term “runoff” means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

*Runoff characteristics.* The term “runoff characteristics” includes maximum velocity, peak flow rate, volume, flow duration, and any other measure of the nature of the discharge.

*Runoff volume.* The term “runoff volume” means the volume of runoff that runs off the site from a prescribed storm event.

*Sediment basin.* The term “sediment basin” means a temporary impoundment built to retain sediment and debris that is formed by constructing an earthen embankment with a stone outlet.

*Sewage disposal system.* The term “sewage disposal system” means a sewerage system or treatment works composed of a facility or combination of facilities constructed for the transport or treatment, or both, of domestic, commercial or industrial sewage, but not including plumbing, fixtures, lateral pipes from a dwelling unit to a septic tank, lateral pipes from a dwelling unit to a publicly owned sewerage facility, or publicly owned facilities for the transport or treatment, or both, of sewage.

*Site.* The term “site” means the land or water area composed of one or more parcels 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.

*Small construction activity.* The term “small construction activity” means:

- A. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than ten thousand (10,000) square feet, and less than five (5) acres, or a land disturbance of less than ten thousand (10,000) square feet 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 ten thousand (10,000) square feet and less than five (5) 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. DEQ may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five (5) acres where stormwater controls are not needed based on an approved TMDL that addresses the pollutant(s) of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) 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 pollutant(s) 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 must certify to DEQ that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis. As of the start date in Table 1 of [9VAC25-31-1020](#), all certifications submitted in support of the waiver must be submitted electronically by the owner or operator to DEQ 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; or
- B. Any other construction activity designated by either DEQ or the EPA’s 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.* The term “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.* The term “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 chapter.

*Source.* The term “source” means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

*Stabilized.* The term “stabilized” means land that has been treated to withstand normal exposure to natural forces without incurring erosion damage.

*State.* The term “State” means the Commonwealth of Virginia.

*State Water Control Law.* The term “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.* The term “State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the State or within its jurisdiction, including wetlands.

*Stormwater.* The term “stormwater” means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include runoff, snow melt runoff, and surface runoff and drainage.

*Stormwater conveyance system.* The term “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, and includes a man-made, natural, or restored stormwater conveyance system described as follows:

- A. *Man-made stormwater conveyance system.* The term “man-made stormwater conveyance system” means a pipe, ditch, vegetated swale, or other stormwater conveyance system constructed by man except for restored stormwater conveyance systems.
- B. *Natural stormwater conveyance system.* The term “natural stormwater conveyance system” means the main channel of a natural stream and the flood-prone area adjacent to the main channel.
- C. *Restored stormwater conveyance system.* The term “restored stormwater conveyance system” means a stormwater conveyance system that has been designed and constructed using natural channel design concepts, and they include the main channel and the flood-prone area adjacent to the main channel.

*Stormwater detention.* The term “stormwater detention” means the process of temporarily impounding runoff and discharging it through a hydraulic outlet structure to a downstream stormwater conveyance system.

*Stormwater discharge.* The term “stormwater discharge” means a discharge of runoff from sites where one or more of the following are located: (i) land disturbing activities including, but not limited to, clearing, grading, or excavation; (ii) construction materials or equipment storage or maintenance including, but not limited to, fill piles, borrow area, concrete truck washout, fueling; or (iii) other industrial stormwater directly related to the construction process including, but not limited to, concrete or asphalt batch plants.

*Stormwater management facility.* The term “stormwater management facility” means a control measure that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

*Stormwater management plan.* The term “stormwater management plan” means a plan that meets the requirements of section 17-403 containing information for describing methods for complying with the applicable requirements of this chapter, and that typically contains two major components: (i) measures addressing stormwater detention for water quantity and discharge characteristics impacts; and (ii) measures addressing nutrient loadings and water quality. A stormwater management plan is a component of a land-disturbance permit.

*Stormwater pollution prevention plan (SWPPP).* The term “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. An SWPPP required under the VESMP for construction activities must identify and require the implementation of control measures, and must include, but not be limited to the inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

*Stream buffer.* The term “stream buffer” means an area of land at or near a tributary streambank or nontidal wetland, or both, that has an intrinsic water quality value due to the ecological and biological processes it performs or is otherwise sensitive to changes that may result in significant degradation to the quality of State waters.

*Streamside Management Zone.* The term “streamside management zone” means an area of reduced management activity on both sides of the banks of perennial and intermittent streams and bodies of open water where extra precaution is used in carrying out forest practices to protect bank edges and water quality.

*Subdivision.* The term “subdivision” means the same as defined in the Subdivision Ordinance.

*Subdivision Ordinance.* The term “Subdivision Ordinance” means the subdivision regulations of the County of Albemarle, Virginia codified in Chapter 14 of the Albemarle County Code.

*Surface waters.* The term “surface waters” means: (i) 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; (ii) all interstate waters, including interstate wetlands; (iii) 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 that are or could be used by interstate or foreign travelers for recreational or other purposes; from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or that are used or could be used for industrial purposes by industries in interstate commerce; (iv) all impoundments of waters otherwise defined as surface waters under this definition; (v) tributaries of waters identified in subdivisions (i) through (iv) of this definition; and (vi) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions (i) through (v) of this definition; provided that waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act and the law, are not surface waters, and surface waters do not include prior converted cropland as determined by the EPA.

*Ten-year storm.* The term “ten-year storm” means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in ten (10) years, and which also may be expressed as an exceedance probability with a ten (10) percent chance of being equaled or exceeded in any given year.

*Total maximum daily load (TMDL).* The term “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, and which can be expressed in terms of either mass per time, toxicity, or other appropriate measure.

*Town of Scottsville.* The term “Town of Scottsville” means all of that territory within the incorporated boundaries of the Town of Scottsville, Virginia, located within the County of Albemarle, Virginia and the



County of Fluvanna, Virginia.

*Twenty-five year storm.* The term “twenty-five year storm” means a storm that is capable of producing rainfall expected to be equalled or exceeded on the average of once in twenty-five (25) years, and which also may be expressed as an exceedance probability with a four (4) percent chance of being equalled or exceeded in any given year.

*Upset.* The term “upset” means an exceptional incident in which there is unintentional and temporary noncompliance with technology based general permit effluent limitations because of factors beyond the reasonable control of the operator; provided that the term does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

*Virginia Erosion and Stormwater Management Act (VESMA).* The term “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 (VESMP).* The term “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 includes 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 (VESMP authority).* The term “Virginia Erosion and Stormwater Management Program authority”, “VESMP authority”, or “Program authority” means the County of Albemarle, which has been approved by DEQ to operate the VESMP. Within the boundaries of the County of Albemarle and the Town of Scottsville, the County is the VESMP authority.

*Virginia Erosion and Stormwater Management Regulation (Regulation).* The term “Virginia Erosion and Stormwater Management Regulation” or “Regulation” means 9VAC25-875-10 et seq., as may be amended from time to time.

*Virginia Stormwater BMP Clearinghouse.* The term “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 Pollutant Discharge Elimination System (VPDES) permit or VPDES permit.* The term “Virginia Pollutant Discharge Elimination System (VPDES) permit” or “VPDES permit” means a document issued by DEQ 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.

*Wasteload allocation (WLA) or wasteload.* The term “wasteload allocation”, “WLA” 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, and is a type of water quality-based effluent limitation.

*Water-dependent facility.* The term “water-dependent facility” means a development that cannot exist outside of the stream buffer and must be located on the shoreline because of the intrinsic nature of its operation and which include, but are not limited to: (i) the intake and outfall structures of power plants, sewage treatment plants, water treatment plants, and storm sewers; (ii) public water-oriented recreation areas; and (iii) boat docks and ramps.

*Water quality technical criteria.* The term “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 supply protection area.* The term “water supply protection area” means those areas of land within the County that are within the watershed of a public water supply reservoir or water supply intake, and those areas consist of all land within the County that drains naturally to the South Fork Rivanna Reservoir, Beaver Creek Reservoir, Totier Creek Reservoir, Sugar Hollow Reservoir, Ragged Mountain Reservoir, the North Fork Rivanna River intake, and to any impoundment or water supply intake designated in the future by the board of supervisors as a public water supply reservoir.

*Watershed.* The term “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; provided that in karst areas, the karst feature to which water drains may be considered the single outlet for the watershed.

*Wetlands.* The term “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, and which generally include swamps, marshes, bogs, and similar areas.

*Written notice.* The term “written notice” means a written communication from the administrator that is delivered either mailed by first class mail, personal delivery, or, if consented to by the owner in writing, in conjunction with submitting an application or otherwise, by fax or email.

*Zoning Ordinance.* The term “Zoning Ordinance” means the zoning regulations of the County of Albemarle, Virginia codified in Chapter 18 of the Albemarle County Code.

(§ 7-2, 6-18-75, § 4, 7-9-80, 2-11-87, 3-18-92, § 19.1-5, 9-29-77, art. I, § 2, 9-13-78, 7-11-90, 8-3-94; § 19.2-4, 6-19-91; § 19.3-5, 2-11-98; Code 1988, §§ 7-2, 19.1-5, 19.2-4, 19.3-5; § 17-104, Ord. 98-A(1), 8-5-98; Ord. 07-17(1), 2-14-07; Ord. 08-17(1), 2-6-08; Ord. 08-17(3), 8-6-08; § 17-205, Ord. 14-17(1), 5-7-14, effective 7-1-14; Ord. 21-17(1), 4-21-21, effective 9-1-21)

**State law reference** – Va. Code § 62.1-44.15:24; 9VAC25-875-20.

[Section 17-206 to remain unchanged]

#### **Sec. 17-207 Fees for land disturbing activity. [effective 7/1/2024]**

Fees for any land disturbing activity are as provided in County Code Chapter 1, Article 5.

(§ 7-4, 6-18-75, § 6, 10-22-75, 4-21-76, 11-10-76, 3-2-77, 4-17-85, 2-11-87, 12-11-91, 3-18-92; § 19.3-17, 2-11-98; Code 1988, §§ 7-4, 19.3-17; § 17-209, Ord. 98-A(1), 8-5-98; Ord. 98-17(1), 11-11-98; Ord. 02-17(1), 7-3-02; Ord. 08-17(3), 8-6-08; Ord. 11-17(1), 10-5-11; § 17-207, Ord. 14-17(1), 5-7-14, effective 7-1-14; Ord. 21-17(2), 4-21-21, effective 7-1-21; Ord. 23-17(1), 12-6-23, effective 7-1-24)

**State law reference** – 9VAC25-875-1290 *et seq.*

#### **Sec. 17-208 [Repealed]**

#### **Sec. 17-209 Fees; payment. [Previously amended 12/6/2023, effective 7/1/2024]**

Each owner must pay the fees as provided in County Code Chapter 1, Article 5.

(Ord. 14-17(1), 5-7-14, effective 7-1-14; Ord. 21-17(1), 4-21-21, effective 9-1-21; Ord. 23-17(1), 12-6-23, effective 7-1-24)

**State law reference** – Va. Code § 62.1-44.15:36; 9VAC25-875-1290 *et seq.*

**Sec. 17-210 [Previously repealed 12/6/2023, effective 7/1/2024]**

**Sec. 17-211 Review of administrator's action; judicial review.**

Any person aggrieved by an action or inaction of the administrator may request that the County review the action or inaction and may thereafter request judicial review of the County's final decision, as provided herein:

1. *Actions that may be reviewed.* Any of the following actions by the administrator may be reviewed: (i) the disapproval of an ESM plan or land-disturbance permit; (ii) the approval of an ESM plan or land-disturbance permit with conditions to which the owner objects; (iii) the disapproval of a variance or exception; (iv) any determination made under sections 17-300 through 17-306; (v) any general permit decision made by the administrator; (vi) any enforcement decision made by the administrator; (vii) the failure of the administrator to act within the time periods required by this chapter; and (viii) the approval of an ESM plan or land-disturbance permit where the issue is compliance with 9VAC25-875-560(19).
2. *Standing.* Any owner who is an applicant, permittee, operator, or any other person subject to general permit requirements under the VESMP who is aggrieved by any action or inaction under subsections (A)(i) through (vii) has standing to seek review under this section. Any downstream owner who is aggrieved by an action under subsection (A)(viii) has standing to seek review under this section.
3. *Request for hearing and time in which to make request; contents.* Any person who has standing under subsection (B) (hereinafter, the "appellant") may request in writing that the County conduct a hearing, provided that the request is filed with the clerk of the board of supervisors:
  1. within thirty (30) days after the date of notice of the action, when review is sought under subsections (A)(i) through (A)(vi);
  2. within thirty (30) days after the date by which the administrator was required to act but failed to do so, when review is sought under subsection (A)(vii); or
  3. within thirty (30) days after the date of the administrator's approval of the ESM plan or land-disturbance permit, when review is sought under subsection (A)(viii).

The request must specify the grounds for the appeal. The thirty (30) day period within which the hearing is held will not begin unless and until the request specifies the grounds for the appeal.

1. *Conduct of hearing.* The hearing will be conducted as follows:
2. *Hearing officer.* The hearing before the County will be conducted by the Director of Community Development, who will act as the hearing officer for the County.
3. *When the hearing will be held.* The hearing will be held within thirty (30) days after receipt of the petition requesting a hearing. The hearing will be held on a date and at a time at which both the appellant and the administrator may be present. At the request of the appellant, the hearing officer may extend the hearing date beyond the thirty (30) day period. The failure of the hearing officer to conduct the hearing within the thirty (30) day period or any extension thereof does not divest the hearing officer of jurisdiction to consider the appeal.
4. *Evidence and law.* When reviewing the administrator's action or inaction, the hearing officer will consider relevant and material laws and evidence presented by the owner, the administrator, and any other person as the hearing officer deems to be necessary for a

complete review of the matter.

5. *Record.* The record of the hearing will be composed of relevant files, a recording of the hearing, and other writings. The recording of the hearing will be transcribed only if judicial review of the decision is sought under subsection (F).
6. *Decision.* The hearing officer will make a final decision within forty-five (45) days after the hearing is concluded. The hearing officer may affirm, reverse, or modify the action of the administrator, or may take any action the administrator failed to take. The decision will be in writing and state the date of the decision and the reasons for the decision. Notice of the hearing officer's decision will be provided to the administrator and to the appellant.
7. *Judicial review.* A final decision by the hearing officer under this section may be subject to judicial review, provided that an appeal is filed by the person aggrieved in the circuit court within thirty (30) days after the date of the hearing officer's written decision. Judicial review will be conducted as provided in Virginia Code § 62.1-44.15:46.

(§ 17-210: § 7-7, 6-18-75, § 9, 2-11-87, 3-18-92; § 19.3-18, 2-11-98; Code 1988, §§ 7-7, 19.3-18; §17-210, Ord. 98-A(1), 8-5-98) (§ 17-311: 2-11-98; Code 1988, § 19.3-35; § 17-311, Ord. 98-A(1), 8-5-98; § 17-211, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:46; 9VAC25-875-160.

### **ARTICLE III. APPLICABILITY OF THE VESMP TO A LAND DISTURBING ACTIVITY OR A SITE CONDITION**

#### **Sec. 17-300 Land disturbing activities and site conditions subject to the VESMP.**

The following land disturbing activities and site conditions are subject to the VESMP, requiring the owner to comply with all applicable requirements of the VESMP in this Chapter and under state law:

- A. *Land disturbance of 10,000 square feet or more.* Any land disturbance of ten thousand (10,000) square feet or more, including the harvesting of forest crops, unless the activity is exempt under section 17-301.
- B. *Land disturbance of less than 10,000 square feet; common plan of development or sale.* Any land disturbance of less than ten thousand (10,000) square feet if the disturbance is part of a common plan of development or sale whose total land disturbance will exceed ten thousand (10,000) square feet, unless the activity is exempt under section 17-301.
- C. *Erosion impact area.* The administrator determines that a site is an erosion impact area under section 17-304, regardless of whether the activity resulting in the condition is otherwise exempt under section 17-301.
- D. *Agricultural road included within a plan of development.* The administrator determines that any previously constructed agricultural road, exempt at the time of its construction under section 17-301, is no longer exempt because the owner submitted an initial site plan, preliminary plat, any other subdivision plat, or special use permit for a use or activity not directly related to agriculture, for the site on which the agricultural road is located, and: (i) the initial site plan, subdivision plat, or special use permit application was submitted within twenty-four (24) months after construction of the agricultural road began; and (ii) the administrator determines that the dimensions and alignment of the agricultural road substantially correspond to the dimensions and alignment of a road proposed on the plan, plat, or any document submitted as part of the special use permit application.

(§ 7-3, 6-18-75, § 5, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 19.3-8, 2-11-98; Code 1988, §§ 7-3, 19.3-8; §

17-200, Ord. 98-A(1), 8-5-98; Ord. 08-17(1), 2-6-08; § 17-300, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – 9VAC25-875-70.

**Sec. 17-301 Land disturbing activities exempt from the VESMP.**

- A. Notwithstanding any other provisions of the VESMA, the following activities are not required to comply with the requirements of the VESMA unless otherwise required by federal law:
1. *Minor land-disturbing activities.* Minor land disturbing-activities, including home gardens and individual home landscaping, repairs, and maintenance work;
  2. *Connections.* Installation, maintenance, or repair of any individual service connection;
  3. *Public utility lines.* Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided that the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
  4. *Conventional onsite sewage systems.* Installation, maintenance, or repair of any septic tank line or drainage field for a conventional onsite sewage system unless included in an overall plan for land-disturbing activity related to construction of the building to be served by the septic tank system;
  5. *Mining, oil and gas operations and projects.* Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2 of the Virginia Code;
  6. *Agricultural, horticultural, and forestal activities.* 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 State Water Control Board in regulations. However, this exemption does not apply to the harvesting of forest crops unless the area on which the harvesting occurs either (a) is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 *et seq.*) of Title 10.1 of the Virginia Code and harvesting is conducted in compliance with the water quality protection procedures established by the Virginia Department of Forestry in its “Virginia’s Forestry Best Management Practices for Water Quality,” including the implementation of Streamside Management Zones or (b) is converted to bona fide agricultural or improved pasture use as described in Virginia Code § 10.1- 1163(B);
  7. *Posts and poles.* Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
  8. *Railroad improvements.* Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;
  9. *Emergency work.* Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VESMP must be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of 9VAC25-875-530 is required within

30 days of commencing the land-disturbing activity; and

10. *Discharges not from land-disturbing activity.* Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity.

B. Notwithstanding any other provisions of the VESMA, 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. *Reclamation of abandoned property.* Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;
2. *Project maintenance.* Routine maintenance 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 re-establishment of existing associated ditches and shoulders is deemed routine maintenance if performed in accordance with this subsection;
3. *Discharges.* Discharges from a land disturbing activity to a sanitary sewer or a combined sewer system.
4. *Agricultural roads.* The construction of agricultural roads unless and until a plan of development is submitted and the road is no longer exempt as provided in section 17-300(D).

(§ 7-3, 6-18-75, § 5, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 19.3-8, 2-11-98; Code 1988, §§ 7-3, 19.3-8; § 17-200, Ord. 98-A(1), 8-5-98; Ord. 08-17(1), 2-6-08; § 17-301, Ord. 14-17(1), 5-7-14, effective 7-1-14; Ord. 21-17(1), 4-21-21, effective 9-1-21)

State law reference – 9VAC25-875-90.

**Sec. 17-302 [Repealed]**

**Sec. 17-303 [Repealed]**

**Sec. 17-304 Determining the status of a land disturbing activity or a site condition.**

The administrator has the authority to determine:

- A. *Whether an activity is subject to this chapter.* Whether an activity is a land disturbing activity and, if it is so, whether it is subject to or exempt from the VESMP.
- B. *Whether an erosion impact area exists.* Whether an erosion impact area exists on a site.
- C. *Whether an agricultural road is part of a plan of development.* Whether a road is an agricultural road and whether it is part of a plan of development under section 17-300(D).
- D. *Related offsite land disturbing activity.* When a land disturbing activity includes activity at a separate location, including but not limited to borrow and disposal areas, whether: (i) the offsite activity should be considered as being part of the proposed land disturbing activity; or (ii) to require the owner to provide proof of an approved erosion and sediment control plan if the owner asserts that the offsite activity is already covered by an approved erosion and sediment control plan, and to require that the owner certify that the plan will be implemented in accordance with applicable erosion and sediment control requirements in this chapter.
- E. *Adjacent offsite land disturbing activity.* When a land disturbing activity or plan requires land

disturbing activity on adjacent or abutting property, whether: (i) the owner of the adjacent or abutting property must be a signatory on the application; or (ii) to require a recorded easement and agreement for the offsite land disturbing activity before further land disturbing activity occurs, or in the case of a proposed plan, prior to further review or approval.

(§ 17-200: § 7-3, 6-18-75, § 5, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 19.3-8, 2-11-98; Code 1988, §§ 7-3, 19.3-8; § 17-200, Ord. 98-A(1), 8-5-98; Ord. 08-17(1), 2-6-08) (§ 17-201: 2-11-98; Code 1988, § 19.3-9; § 17-201, Ord. 98-A(1), 8-5-98) (§17-202: § 7-3, 6-18-75, § 5, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 19.3-10, 2-11-98; Code 1988, §§ 7-3, 19.3-10; § 17-202, Ord. 98-A(1), 8-5-98; § 17-304, Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code § 62.1-15.44:27.

#### **Sec. 17-305 Notice of determination regarding status of land disturbing activity or site condition.**

The administrator shall provide notice to the owner of any determination under section 17-304(A) that a proposed land disturbing activity is subject to this chapter where an owner asserts that the activity is exempt, any determination under section 17-304(B) that an erosion impact area exists, or any determination under section 17-304(C) that an agricultural road is now subject to the erosion and sediment control requirements, as follows:

- A. *Notice.* Upon making a determination, the administrator shall immediately inform the owner of the determination. The notice may either be informal, by the administrator speaking to the owner by telephone or in person, or a written notice. The written notice shall:
1. state the basis for the determination;
  2. instruct the owner to submit an erosion and sediment control plan for review and approval; and
  3. for determinations pertaining to erosion impact areas or agricultural roads, state the date by which the plan shall be submitted.
- B. *When written notice required.* If informal notice as provided in subsection (A) is first provided to the owner and the owner either requests written notice or fails to comply with the informal notice, the administrator shall then provide written notice to the owner as provided in subsection (A).

(§ 17-201: 2-11-98; Code 1988, § 19.3-9; § 17-201, Ord. 98-A(1), 8-5-98) (§17-202: § 7-3, 6-18-75, § 5, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 19.3-10, 2-11-98; Code 1988, §§ 7-3, 19.3-10; § 17-202, Ord. 98-A(1), 8-5-98; § 17-305, Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code § 62.1-15.44:27.

#### **Sec. 17-306 Owner's obligation upon receipt of notice of determination.**

Upon receipt of the notice provided by the administrator under section 17-305, the owner must act as follows:

- A. *Determination that land disturbing activity is subject to the VESMP.* If the administrator determines that a land disturbing activity is subject to the VESMP, under section 17-304(A) or (C), the owner must immediately comply with the applicable requirements of this chapter and the applicable requirements of this chapter will be immediately enforced.
- B. *Determination that an erosion impact area exists.* If the administrator determines that an erosion impact area exists under section 17-304(B), the owner must: (i) not permit any portion of that land to remain in a condition so that soil erosion and sedimentation causes reasonably avoidable damage or harm to adjacent or downstream property, roads, streams, lakes, or ponds; and (ii)

immediately comply with the applicable requirements of the notice and this chapter. If good cause is shown, the administrator may grant to an owner an extension of time to comply with the requirements of this subsection and this chapter.

(2-11-98; Code 1988, § 19.3-9; § 17-201, Ord. 98-A(1), 8-5-98; § 17-306, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-15.44:27.

#### **ARTICLE IV. PROCEDURE FOR SUBMITTING, REVIEWING AND ACTING ON APPLICATIONS; POST-APPROVAL RIGHTS AND OBLIGATIONS**

##### **DIVISION 1. APPLICATION REQUIREMENTS**

###### **Sec. 17-400 Responsibility to prepare, submit and obtain approval of applications; multi-jurisdictional developments.**

The procedures in this article, and all related requirements of this chapter, apply to any land disturbing activity subject to the VESMP. An application must be submitted as follows:

- A. *Responsibility of the owner.* Each owner is responsible for preparing, submitting, and obtaining approval of an application prior to engaging in land disturbing activity subject to this chapter. When the land disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and obtaining approval of the plan is the responsibility of the owner.
- B. *Submittal of application to the administrator.* Subject to subsection (C), each application must be submitted to the administrator as provided in this chapter.
- C. *Multi-jurisdictional projects.* The County may enter an agreement with an adjacent VESMP authority regarding the administration of multi-jurisdictional projects, specifying who will be responsible for all or part of the administrative procedures. If the County and the adjacent VESMP authority fail to reach such an agreement, each will be responsible for administering the area of the multi-jurisdictional project that lies within its jurisdiction.

(§ 17-203: § 19.3-11, 2-11-98; § 7-3, 6-18-75, § 5, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 7-4, 6-18-75, § 6, 10-22-75, 4-21-76, 11-10-76, 3-2-77, 4-17-85, 2-11-87, 12-11-87, 12-11-91, 3-18-92; Code 1988, §§ 7-3, 7-4, 19.3-11; § 17-203, Ord. 98-A(1), 8-5-98; Ord. 01-17(1), 7-11-01; Ord. 09-17(1), 8-5-09, effective 9-5-09) (§ 17-303: § 19.1-6, 9-29-77, art. II, § 1, 10-19-77, 9-13-78, 10-22-80, 7-11-90, 8-3-94; § 19.1-7, 9-29-77, art. II, § 2, 7-11-90; § 19.3-27, 2-11-98; Code 1988, §§ 19.1-6, 19.2-7, 19.3-27; § 17-303, Ord. 98-A(1), 6-17-98; § 17-400, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:34; 9VAC25-890-40, 9VAC25-875-110.

###### **Sec. 17-401 Land-disturbance permit application; form and content.**

Any owner whose proposed land disturbing activity is subject to this chapter must submit an application for a land-disturbance permit that includes all of the following, in the form required by the administrator:

- A. *Application form.* A completed application on a form or in a format provided by the administrator, signed by the owner.
- B. *Fees.* All applicable fees required by County Code Chapter 1, Article 5 and the applicable fee form.
- C. *Registration statement.* A complete and accurate registration statement, if such a statement is required, from the operator on the official form provided by the Virginia Department of



Environmental Quality in order to apply for general permit coverage. The registration statement must be signed by the owner in accordance with 9VAC25-875-940 and 9VAC25-880-70. A registration statement is not required for construction of a detached single-family dwelling within or outside of a common plan of development or sale, provided that the project complies with the requirements of the general permit.

- D. *Erosion and sediment control plan.* An erosion and sediment control plan satisfying the requirements of sections 17-402 and 17-500 or an executed agreement in lieu of an erosion and sediment control plan, if allowed by the administrator.
- E. *Stormwater management plan.* A stormwater management plan satisfying the requirements of sections 17-403 or an executed agreement in lieu of a plan, if allowed by the administrator.
- F. *Pollution prevention plan.* A pollution prevention plan satisfying the requirements of section 17-404.
- G. *Stormwater pollution prevention plan.* An SWPPP satisfying the requirements of section 17-405.
- H. *Mitigation plan.* A mitigation plan satisfying the requirements of section 17-406 if land disturbing activity is proposed within a stream buffer under section 17-604.
- I. *Requested variations or exceptions.* A request for any variation or exception as provided in sections 17-407 and 17-408.
- J. *Construction record drawings.* Construction record drawings if existing stormwater management facilities are used, satisfying the requirements of section 17-422.

(Ord. 14-17(1), 5-7-14, effective 7-1-14; Ord. 23-17(1), 12-6-23, effective 7-1-24)

**State law reference** – Va. Code § 62.1-44.15:34; 9VAC25-875-530, 9VAC25-875-920, 9VAC25-875-940, 9VAC25-880-70.

**Sec. 17-402 Erosion and sediment control plans, and agreements in lieu of a plan; form and content.**  
**[Effective 7/1/2024]**

Any owner whose proposed land-disturbing activity is subject to this chapter must submit a soil erosion and sediment control plan for review that includes the following, in the form required by the administrator:

- A. *Elements of erosion and sediment control plan.* Except as provided in subsection (B), an erosion and sediment control plan that contains all of the following elements:
  - 1. *Temporary and permanent controls.* The specifications for temporary and permanent controls of soil erosion and sedimentation in such detail as the administrator deems to be reasonably adequate, considering the nature and extent of the proposed land disturbing activity, implementing appropriate erosion and sediment control best management practices and satisfying the requirements of 9VAC25-880-70, Part II(A)(2). All control measures required by the plan must be designed and installed in accordance with good engineering practices.
  - 2. *Maintenance responsibilities.* A statement describing the maintenance responsibilities of the owner to ensure that the land disturbing activity will satisfy the purposes and requirements of this chapter.
  - 3. *Technical criteria.* The technical criteria required by section 17-500.
  - 4. *Identification of land disturber.* Identify the person holding the applicable certification required by Virginia Code § 62.1-44.15:30, who will be in charge of and responsible for carrying out the land disturbing activity.

5. *Additional information.* Additional information required by the administrator as determined to be necessary for a complete review of the plan.
  6. *Certification.* A certification on a form provided by the administrator and signed by the owner stating that all requirements of the approved plan will be complied with.
- B. *Agreement in lieu of a plan.* Notwithstanding subsection (A), if the land disturbing activity is for the purpose of establishing or modifying a single-family dwelling unit, the administrator may allow an agreement in lieu of a plan for the land disturbing activity, provided:
1. *Eligibility.* The single-family dwelling unit is on an individual lot of one acre or less which is not subject to an active erosion and sediment control plan or is not part of a common plan of development or sale. Additionally, the following requirements apply:
    - a. An agreement in lieu of a plan must be accompanied by a Critical Resources Plan.
    - b. Land disturbance associated with diverting, restoring or otherwise disturbing the channel of a stream or where there is a probability of sediment being deposited into state waters or on to adjacent properties is not eligible and requires an erosion and sediment control plan.
  2. *Other factors to be considered by administrator.* In determining whether to allow an agreement in lieu of a plan under this section, the administrator will consider the potential threat to water quality and to adjacent land resulting from the land disturbing activity, and whether the land disturbing activity is within the mountain overlay district identified in the Comprehensive Plan. The administrator, at its sole discretion, may require additional information or may not accept an agreement in lieu of a plan where necessary to protect downstream properties or the environment.
  3. *Contents and form of the agreement in lieu of a plan.* The contents of any agreement in lieu of a plan will be established by the administrator, and they must: (i) be sufficient to ensure that the purposes and requirements of the VESMP, including the requirements of 9VAC25-880-70 , Part II(A)(2) are satisfied; and (ii) identify the person in charge of and responsible for carrying out the land disturbing activity and holding a valid certificate of competence for that task. The form of the agreement is subject to review and approval by the County attorney.
  4. *Effect of agreement in administration of the VESMP.* Except as provided in subsection (A) and section 17-500 pertaining to the content and technical criteria applicable to erosion and sediment control plans, all other references in this chapter to an erosion and sediment control plan include an agreement in lieu of a plan, and the County and the owner will have all of the rights, responsibilities and remedies set forth in this chapter as though the agreement in lieu of a plan was an erosion and sediment control plan.

(§ 17-203: § 19.3-11, 2-11-98; § 7-3, 6-18-75, § 5, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 7-4, 6-18-75, § 6, 10-22-75, 4-21-76, 11-10-76, 3-2-77, 4-17-85, 2-11-87, 12-11-87, 12-11-91, 3-18-92; Code 1988, §§ 7-3, 7-4, 19.3-11; § 17-203, Ord. 98-A(1), 8-5-98; Ord. 01-17(1), 7-11-01; Ord. 09-17(1), 8-5-09, effective 9-5-09) (§ 17-205: § 7-4, 6-18-75, § 6, 10-22-75, 4-21-76, 11-10-76, 3-2-77, 4-17-85, 2-11-87, 12-11-91, 3-18-92; § 19.3-13, 2-11-98; Code 1988, §§ 7-4, 19.3-13; § 17-205, Ord. 98-A(1), 8-5-98; Ord. 01-17(1), 7-1-01; § 17-402, Ord. 14-17(1), 5-7-14, effective 7-1-14; Ord. 21-17(1), 4-21-21, effective 9-1-21; Ord. 23-17(1), 12-6-23, effective 7-1-24)

**State law reference –**, 9VAC25-875-970, 9VAC25-880-70, 9VAC25-890-40, 9VAC25-875-550.

**Sec. 17-403 Stormwater management plans; form and content.**

Any owner whose proposed land disturbing activity is subject to this chapter must develop and submit a stormwater management plan for review that includes the following, in the form required by the administrator:

- A. *Technical criteria.* A stormwater management plan for a land disturbing activity must apply the stormwater management technical criteria set forth in this section and 9VAC25-875-670 *et seq.* to the entire land disturbing activity. Individual lots in new residential, commercial, or industrial developments, including those developed under subsequent owners, are considered a single land disturbing activity.
- B. *Surface runoff.* A stormwater management plan must consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.
- C. *Elements of plan.* Except as provided in section 17-301(B) and subsection (D), a complete stormwater management plan must contain all of the following elements:
  - 1. *Stormwater discharges and features.* The plan must consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff, and must include information on the type of and location of stormwater discharges, information on the features to which stormwater is being discharged including surface waters, and pre-development and post-development drainage areas.
  - 2. *Contact information.* 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. *Details pertaining to, or narrative of, current and final site conditions.* Either sufficient plan information provided and documented during the review process that addresses the current and final site conditions, or a narrative that includes a description of current site conditions and final site conditions.
  - 4. *Description of proposed stormwater management facilities.* A detailed plan of the proposed stormwater management facilities, including all best management practices, that will satisfy the requirements of this chapter and a description of all facilities and best management practices that will prevent or minimize water quality impacts.
  - 5. *Description of long-term operation and maintenance.* A description of the mechanism through which the facilities, including all best management practices, will be operated and maintained after construction is complete, provided that this description is satisfied if the stormwater management facility will be subject to the agreement required by section 17-415.
  - 6. *Information about proposed stormwater management facilities.* The following information about the proposed stormwater management facilities, including:
    - a. a detailed narrative on the conversion to a long-term stormwater management facility if the facility was used as a temporary ESC measure;
    - b. the type of facilities;
    - c. the location, including geographic coordinates;
    - d. acres treated;

- e. the surface waters into which the facility will discharge; and
  - f. any other information required by the administrator in order to comply with any requirements of the County's MS4 permit.
7. *Documentation demonstrating compliance.* Documentation and calculations, including all hydrologic and hydraulic computations and runoff characteristics, verifying compliance with the water quality and quantity requirements of the technical criteria in section 17- 501.
8. *Maps.* One or more maps of the site depicting the topography of the site and:
- a. all contributing drainage areas;
  - b. existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
  - c. soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
  - d. current land use including existing structures, roads, and locations of known utilities and easements;
  - e. sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
  - f. the limits of clearing and grading, and the proposed drainage patterns on the site;
  - g. proposed buildings, roads, parking areas, utilities, and stormwater management facilities;
  - h. proposed land uses, with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements; and
  - i. other site information deemed necessary by the administrator.
9. *Offsite compliance options.* If an owner intends to meet the requirements established in section 17-502, which implements 9VAC25-875-580 and 9VAC25-875-600, through the use of off-site compliance options, where applicable, a letter of availability from the off-site provider.
10. *Additional information.* Additional information deemed necessary by the administrator for a complete review of the plan.
- D. *Agreement in lieu of a plan.* Notwithstanding subsection (C), if the land disturbing activity is for the purpose of establishing a single family detached dwelling unit, the administrator may allow an agreement in lieu of a plan for the land disturbing activity required for constructing the dwelling.
- E. *Seals and signatures.* Any elements of the stormwater management plan that include activities regulated under Virginia Code § 54.1-400 *et seq.* must be appropriately sealed and signed by a professional registered in the State pursuant to Virginia Code § 54.1-400 *et seq.* Any stormwater management plan requiring an appropriate seal and signature is incomplete under section 17-409 if it is not sealed and signed as required by this section.

(§ 19.1-6, 9-29-77, art. II, § 1, 10-19-77, 9-13-78, 10-22-80, 7-11-90, 8-3-94; § 19.1-7, 9-29-77, art. II, § 2, 7-11-90; § 19.3-27, 2-11-98; Code 1988, §§ 19.1-6, 19.2-7, 19.3-27; § 17-303, Ord. 98-A(1), 6-17-98; § 17-403, Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code § 62.1-44.15:34; 9VAC25-875-110, 9VAC25-875-970, 9VAC25-890-40, 9VAC25-875-510.

#### **Sec. 17-404 Pollution prevention plans; form and content.**

Any owner whose proposed land disturbing activity is subject to the VESMP must submit a pollution prevention plan for review that includes the following, in the form required by the administrator:

- A. *Elements of plan.* A pollution prevention plan containing all of the following elements:
1. *Sources of pollutants.* Identify potential pollutant generating activities and the pollutant that is expected to be exposed to stormwater.
  2. *Location of pollutant generating activities.* Describe the location where the potential pollutant generating activities will occur, or if identified on a site plan, refer to the site plan.
  3. *Non-stormwater discharges.* Identify all non-stormwater discharges as provided in 9VAC25-880-70, Part I(E), that are or will be commingled with stormwater discharges from the construction activity, including any support activity.
  4. *Person responsible.* Identify the person responsible for implementing the pollution prevention practices for each pollutant generating activity, if different from the person listed as the qualified personnel in the SWPPP.
  5. *Practices and procedures.* Describe the pollution prevention practices and procedures that will be implemented to respond to the categories of leaks, spills and discharges in 9VAC25-880-70, Part II(A)(4)(e).
  6. *Pollution prevention awareness.* Describe the procedures for providing pollution prevention awareness of all applicable wastes, including any wash water, disposal practices and applicable disposal locations of these wastes to personnel in order to comply with the State.
- B. *Details of measures to minimize the discharge of pollutants.* The pollution prevention plan must detail the design, installation, implementation, and maintenance of effective pollution prevention measures in accordance with 40 CFR 450.21(d) to minimize the discharge of pollutants. The following are the minimum requirements for minimizing the discharge of pollutants:
1. *Minimum control measures.* At a minimum, the control measures must be designed, installed, implemented, and maintained to address the following:
    - a. *Wash waters.* 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.
    - b. *Minimization of exposure to precipitation and stormwater.* 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.

- c. *Minimize discharges from spills and leaks.* Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.
2. *Best management practices.* The pollution prevention plan must provide effective best management practices to prohibit the following discharges in accordance with 40 CFR 450.21(e):
  - a. *Washout of concrete.* Wastewater from the washout of concrete, unless managed by an appropriate control.
  - b. *Washout of stucco and other materials.* Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials.
  - c. *Vehicle and equipment maintenance and operation.* Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance.
  - d. *Vehicle and equipment washing.* Soaps, solvents or detergents used in vehicle and equipment washing.
3. *Discharges from dewatering activities prohibited.* Discharges from dewatering activities, including discharges from dewatering trenches and excavations, are prohibited unless managed by appropriate controls in accordance with 40 CFR 450.21(c).
4. *Control of waste.* The pollution prevention plan must include measures for controlling waste such as discarded building materials, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference –9VAC25-875-500, 9VAC25-875-970, 9VAC25-880-70, 9VAC25-890-40, 9VAC25-875-520.

#### **Sec. 17-405 Stormwater pollution prevention plan (SWPPP); form and content.**

Any owner whose proposed land disturbing activity is subject to the VESMP must submit a SWPPP for review that includes the following, in the form required by the administrator:

- A. *Elements of plan.* A SWPPP containing all of the following elements:
  1. *Registration statement.* A signed copy of the registration statement, if such a statement is required, for coverage under the general permit. A registration statement is not required for construction of a detached single-family dwelling within or outside of a common plan of development or sale, provided that the project complies with the requirements of the general permit.
  2. *Notice of general permit coverage.* Upon receipt, a copy of the notice of coverage under the general permit.
  3. *General permit.* A copy of the general permit.
  4. *Nature of activity.* A narrative description of the nature of the construction activity, including the function of the project (*e.g.*, low density residential, shopping mall, highway).

5. *Plan of the site.* A plan of the site, satisfying the form and style for such a plan as provided in the Design Standards Manual, identifying:
  - a. *Direction of stormwater flow.* Directions of stormwater flow and approximate slopes anticipated after major grading activities.
  - b. *Limits of land disturbance.* Limits of land disturbance including steep slopes and natural buffers around surface waters that will not be disturbed.
  - c. *Major structural and nonstructural control measures.* Locations of major structural and nonstructural control measures including sediment basins and traps, perimeter dikes, sediment barriers, and other measures intended to filter, settle, or similarly treat sediment that will be installed between disturbed areas and the undisturbed vegetated areas, in order to increase sediment removal and maximize stormwater infiltration;
  - d. *Surface waters.* Locations of surface waters.
  - e. *Concentrated stormwater.* Locations where concentrated stormwater is discharged.
  - f. *Support activities.* Locations of support activities, when applicable and when required by the administrator, including but not limited to: (i) areas where equipment and vehicle washing, wheel wash water, and other wash water is to occur; (ii) storage areas for chemicals such as acids, fuels, fertilizers and other lawn care chemicals; (iii) concrete wash out areas; (iv) vehicle fueling and maintenance areas; (v) sanitary waste facilities, including those temporarily placed on the construction site; and (vi) construction waste storage.
6. *Requirements of 40 CFR 450.21.* The 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 permit:
  - a. *Runoff volume and velocity.* Control runoff volume and velocity within the site to minimize soil erosion.
  - b. *Stormwater discharges.* 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.
  - c. *Minimize soil exposure.* Minimize the amount of soil exposed during construction activity.
  - d. *Minimize disturbance of steep slopes.* Minimize the disturbance of slopes of twenty-five (25) percent or greater.
  - e. *Minimize sediment discharges.* Minimize sediment discharges from the site by designing, installing and maintaining erosion and sediment controls that address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site.
  - f. *Buffers.* Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible.

- g. *Soil compaction.* Minimize soil compaction and, unless infeasible, preserve topsoil.
    - h. *Stabilize disturbed areas.* 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 fourteen (14) calendar days. Stabilization must be completed within the period of time determined by the administrator. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measure immediately is infeasible, alternative stabilization measures must be employed as specified by the administrator.
    - i. *Outlet structures.* Use outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.
  - 7. *Discharges to impaired waters, surface waters within an applicable TMDL wasteload allocation, and exceptional waters.* 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.
- B. *Qualified personnel.* The name, telephone number, and qualifications of the qualified personnel conducting inspections.
- C. *Delegation of authority.* The persons or positions with authority to sign inspection reports or to modify the SWPPP.
- D. *Additional elements of an approved plan.* In addition to the elements in subsection (A), an approved SWPPP must include the approved erosion and sediment control plan, including the elements of that plan addressing the requirements of 9VAC25-875-500(F), the approved stormwater management plan, and the pollution prevention plan for the land disturbing activity to which the SWPPP applies, and a description of any additional control measures necessary to address a TMDL pursuant to subsection (A) of this section.
  - 1. *Erosion and sediment control plan.* Erosion and sediment control plan consistent with the requirements of 9VAC25-875-550 must be designed and implemented during construction activities.
  - 2. *Stormwater management plan.* Stormwater management plan consistent with the requirements of 9VAC25-875-510 must be designed and implemented during construction activities.
  - 3. *Pollution prevention plan.* Pollution prevention plan that identifies the 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 site must be developed prior to land disturbance activities commence.
- E. *Signature.* The plan must be signed by a person authorized under 9VAC25-880-70, Part III(K).
- F. *Revisions and location.* The SWPPP must 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



location must be posted near the main entrance at the construction site.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – 9VAC25-880-70, 9VAC25-890-40, 9VAC25-875-500.

[Section 17-406 to remain unchanged]

#### **Sec. 17-407 Variances.**

The administrator may waive or modify any applicable erosion and sediment control requirements that the administrator deems to be inappropriate or too restrictive for the site conditions, by granting a variance in conjunction with his review of the erosion and sediment control plan, subject to the following:

- A. *When variance may be requested.* An owner may request that a variance be granted at the time the plan is submitted or while it is under review by the administrator.
- B. *Reason for variance.* The owner must explain in writing the reasons for requesting any variance.
- C. *Factors to be considered.* The administrator will consider the reasons given by the owner for requesting the variance, the purposes of this chapter, and the competing need of the owner to maximize cost effectiveness and the need to protect offsite properties and resources from damage.
- D. *Variance incorporated into approved plan.* Any approved variance becomes part of, and must be documented in, the approved plan.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – 9VAC25-875-170.

#### **Sec. 17-408 Exceptions.**

The administrator may grant exceptions from the stormwater management requirements as follows:

- A. *When exception may be requested.* At the time the land-disturbance permit application is submitted and while it is under review, an owner may request an exception from any technical criteria in 9VAC25-875-570 through 9VAC25-875-660 or in 9VAC25-875-670 through 9VAC25-875-730.
- B. *Factors to be considered.* The administrator may grant an exception if: (i) the exception is the minimum necessary to afford relief; (ii) reasonable and appropriate conditions are imposed as necessary to ensure that the intent of the VESMA and this chapter are preserved; (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances; and (iv) the exception request is not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not a sufficient reason to grant an exception.
- C. *Certain exceptions expressly prohibited.* The following exceptions are expressly prohibited:
  - 1. *Requirement for general permit.* Any exception to the requirement that the land-disturbing activity obtain any required general permits.
  - 2. *Using unapproved BMP.* Any exception to allow using a best management practice that is not found either through the Virginia Stormwater BMP Clearinghouse (except where allowed under 9VAC25-875-670 *et seq.*) or in the Design Standards Manual.
  - 3. *Phosphorous reductions.* Any exception to requirements for phosphorous reductions, unless offsite options available through 9VAC25-875-610 have been considered and

found not available.

4. *Post-development nonpoint nutrient runoff compliance.* Any exception from post-development nonpoint nutrient runoff compliance requirements, unless offsite options have been considered and found not available.

(2-11-98; Code 1988, § 19.3-32; § 17-308, Ord. 98-A(1), 8-5-98; § 17-408, Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code § 62.1-44.15:35; 9VAC25-875-170.

## **DIVISION 2. SUBMITTAL, REVIEW AND ACTION**

[Section 17-409 to remain unchanged]

### **Sec. 17-410 Review and action on application.**

The administrator will review and act on an application as follows:

- A. *Review.* The administrator will ensure that the plan is reviewed by a certified plan reviewer (but referred to herein as the “administrator”) who will review the plan for compliance with the technical requirements for an application in sections 17-400 through 17-408 and other applicable laws. This review will be completed within forty-five (45) days after the application was deemed to be complete under section 17-409.
- B. *Identification of required changes.* Upon completion of review, the administrator will identify all applicable requirements of this chapter that must be addressed for the application to be approved.
- C. *Revisions required.* The owner must revise the application to address all required changes before the application may be approved.
- D. *Time for action.* The administrator will act on the application within 60 days after the application was deemed to be complete, provided that the administrator will act on a resubmitted application within 45 days after receipt including determination of completeness within the first 15 days, and:
  1. *Time for action if changes required; notice of required changes.* If the administrator requires or recommends changes to the application, the administrator must issue within forty-five (45) days after the application was deemed to be complete a written notice to the owner identifying the required changes that must be made and the recommended changes that may, in the owner’s discretion, be made.
  2. *Suspension of running of time for action.* The running of the time by which the administrator must act on an application will be suspended: (i) from the date the appeal of the disapproval of a variance or exception is submitted until the date the board of supervisors acts on the appeal under section 17-211; (ii) from the date of the written notice to the owner until the date the revised application addressing the required changes is submitted; (iii) from the date of the owner’s request for a deferral of review under section 17-411(A); (iv) during any extension granted under section 17-411(C); and (v) for any multi-jurisdictional land disturbing activity, from the date either Virginia Department of Environmental Quality review was requested or a multi-jurisdictional agreement was identified as necessary until the date the Virginia Department of Environmental Quality informs the administrator in writing that it will accept review or the date of the multi- jurisdictional agreement.
- E. *Action to approve and notice of approval.* If the administrator determines that the application complies with all applicable requirements, the administrator will approve the application and promptly either indicate by stamp or signature on every plan that it is approved or issue a written

notice informing the owner(s) of the approval.

- F. *Action to disapprove and notice of disapproval.* If the administrator determines that the application does not satisfy all applicable requirements, the administrator will disapprove the application and promptly issue a written notice to the owner stating the reasons for disapproval by identifying the application's deficiencies and citing the applicable sections of this chapter or other applicable laws, and the modifications, terms, and conditions will permit approval of the application.

(§ 17-204: § 7-5, 6-18-75, § 7, 2-11-76, 4-21-76, 6-2-76, 7-9-80, 7-8-81, 2-11-87, 3-18-92; § 19.3-12, 2-11-98; Code 1988, §§ 7-5, 19.3-12; § 17-204, Ord. 98-A(1), 8-5-98; Ord. 08-17(3), 8-6-08; Ord. 09-17(1), 8-5-09, effective 9-5-09) (§ 17-304: § 19.1-7, 9-29-77, art. II, § 2, 7-11-90; § 19.1-8, 9-29-77, art. II, § 3, 7-11-90; § 19.3-28, 2-11-98; Code 1988, §§ 19.1-7, 19.1-8, 19.3-28; § 17-304, Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09, effective 9-5-09; Ord. 11-17(1), 10-5-11; § 17-410, Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code § 62.1-44.15:34; 9VAC25-875-110.

#### **Sec. 17-411 Deferral of review of application; when application deemed withdrawn.**

The administrator's review and action on an application may be deferred, and the application may be deemed withdrawn, as follows:

- A. *Request to defer by owner.* An owner may request that review or action on the application be deferred for a specified period up to six (6) months. If during the deferral period the owner does not request the administrator to take action on the application as provided in section 17-410 within six (6) months after the date the deferral was requested, the application shall be deemed to have been voluntarily withdrawn.
- B. *Failure to submit revised application.* If an owner fails to submit a revised application to address all of the requirements within six (6) months after the date of the written notice as provided in section 17-410(D)(1), the application shall be deemed to have been voluntarily withdrawn by the owner.
- C. *Extension of deferral period or period to submit revised plan.* Before the deferral period in subsection (A) expires, the owner may request that the administrator extend the period before the application is deemed to have been voluntarily withdrawn. The request must be received by the administrator before the deferral period expires. The administrator may grant one extension for a period not to exceed three (3) months, taking into consideration the size or nature of the proposed development, the complexity of the review, and the laws in effect at the time the extension request is made.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code § 62.1-44.15:34.

[Section 17-412 to remain unchanged]

#### **Sec. 17-413 Appeal of decision of the administrator.**

Any decision of the administrator under section 17-410 may be appealed by the owner as provided in section 17-211.

(§ 17-210: § 7-7, 6-18-75, § 9, 2-11-87, 3-18-92; § 19.3-18, 2-11-98; Code 1988, §§ 7-7, 19.3-18; § 17-210, Ord. 98-A(1), 8-5-98) (§ 17-311: 2-11-98; Code 1988, § 19.3-35; § 17-311, Ord. 98-A(1), 8-5-98; § 17-

413, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:46; 9VAC25-875-160.

### **DIVISION 3. REQUIRED AGREEMENTS AS PREREQUISITES TO APPROVAL: SURETY AND MAINTENANCE**

[Section 17-414 to remain unchanged]

#### **Sec. 17-415 Stormwater management maintenance agreement.**

The long-term maintenance of permanent stormwater facilities and other techniques is subject to the following:

- A. *Responsibility.* The owner must enter into an agreement with the County providing for the owner's obligation to maintain, repair, replace, reconstruct any permanent stormwater facilities and other techniques required in conjunction with the approval of the stormwater management plan, including as it may be amended, or modified as provided in this chapter. The agreement is subject to acceptance by the administrator.
- B. *Form and substance of the agreement.* The agreement must be in a form and have the substance approved by the County Attorney, and is subject to review and approval by the County Attorney. At a minimum, the agreement must: (i) be submitted to the administrator for review and approval prior to approval of the stormwater management plan; (ii) be stated to run with the land; (iii) provide for all necessary access by the administrator to the property to inspect the facility or technique and to maintain the facility in the event the owner fails to do so; (iv) provide for periodic inspections and maintenance by the owner according to the schedule included in the agreement, and the owner's obligation to submit periodic inspection and maintenance reports to the administrator; provided that nothing herein precludes the administrator from conducting inspections in lieu of any owner-conducted inspection; and (v) be enforceable by the County and any other public entity having authority to enforce the requirements of the VESMA or this chapter.
- C. *Recordation.* The agreement must be recorded in the records of the clerk of the circuit court of the County.
- D. *When agreement not required.* The administrator may waive requiring an agreement for any stormwater management facility designed to treat runoff primarily from an individual residential lot on which it is located, provided that the owner demonstrates to the satisfaction of the administrator that future maintenance of the facility will be addressed through an agreement or other enforceable mechanism at the discretion of the administrator.

(§ 19.1-7, 9-29-77, art. II, § 2, 7-11-90; § 19.1-8, 9-29-77, Art. II, § 3, 7-11-90; § 19.3-28, 2-11-98; Code 1988, §§ 19.1-7, 19.1-8, 19.3-28; § 17-304, Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09, effective 9-5-09; Ord. 11-17(1), 10-5-11; § 17-415 Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – 9VAC25-875-100, 9VAC25-875-130, 9VAC25-880-70.

### **DIVISION 4. POST-APPROVAL RIGHTS AND OBLIGATIONS**

#### **Sec. 17-416 Effect of approvals.**

The effect of an approval of a land-disturbance permit, is as follows:

- A. *Land-disturbance permit.* An approved land-disturbance permit is a consolidated permit authorizing the owner to engage in land disturbing activity as provided by the approved erosion and sediment control plan, the approved stormwater management plan, the pollution prevention

plan, the SWPPP, and the mitigation plan, if applicable, and the general permit, if applicable, subject to any applicable requirements of this chapter including, but not limited to, sections 17-417 through 17-424, and sections 17-800 through 17-807, and State and Federal law. The consolidated permit must include a copy of, or a reference to, the general permit coverage to discharge stormwater. Any land-disturbing activity may be conducted only as approved under the land-disturbance permit. Any plan approved in conjunction with a land-disturbance permit must be implemented only as it was approved.

- B. *Soil erosion control and stormwater management plans for residential, commercial, or industrial subdivisions govern development.* The approved ESM plan governs the development of the individual parcels until development of the project is complete, including those parcels developed under subsequent owners.

(§ 17-207: § 7-5, 6-18-75, § 7, 2-11-76, 4-21-76, 6-2-76, 7-9-80, 7-8-81, 2-11-87, 3-18-92; § 19.3-15, 2-11-98; Code 1988, §§ 7-5, 19.3-15; § 17-207, Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09, effective 9-5-09) (§17-306: § 19.1-7, 9-29-77, art. II, § 2, 7-11-90; § 19.3-30, 2-11-98; Code 1988, §§ 19.1-7, 19.3-30; § 17-306, Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09, effective 9-5-09; § 17-416, Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code § 62.1-44.15:28(7); 9VAC25-890-40.

#### **Sec. 17-417 Prerequisites to land disturbing activity.**

Upon the approval of a land disturbance permit application, no land disturbing activity shown on the approved erosion and sediment control plan or stormwater management plan may occur until all of the following are satisfied:

- A. *Prerequisites to land disturbing activity and related permits.* No land disturbing activity may occur and no County department or office or any other public entity authorized under any other law to issue grading, building, or other permits for activities involving land disturbing activities regulated under this chapter may issue any such permit unless: (i) the owner submits with its application the land-disturbance permit, including the approved erosion and sediment control plan and the approved stormwater management plan, evidence of general permit coverage to discharge stormwater, if such evidence is required under sections 17-401(C) and 17-405(A)(1), and certification that the plans will be followed; (ii) the person responsible for carrying out the plan provides to the administrator the name of the person holding a certificate of competence who will be in charge of and responsible for carrying out the land disturbing activity; (iii) an agreement with surety is provided as required by section 17-414; and (iv) evidence of general permit coverage is provided, if required..
- B. *Revocation of approval.* The administrator is authorized to revoke the approval of the plan if the person responsible fails to provide the name of a person holding a certificate of competence prior to engaging in the land disturbing activity and the person responsible for carrying out the plan is subject to the penalties provided by State law.

(§ 17-207: § 7-5, 6-18-75, § 7, 2-11-76, 4-21-76, 6-2-76, 7-9-80, 7-8-81, 2-11-87, 3-18-92; § 19.3-15, 2-11-98; Code 1988, §§ 7-5, 19.3-15; § 17-207, Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09, effective 9-5-09) (§ 17-306: § 19.1-7, 9-29-77, art. II, § 2, 7-11-90; § 19.3-30, 2-11-98; Code 1988, §§ 19.1-7, 19.3-30; § 17-306, Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09, effective 9-5-09; Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code §§ 62.1-44.15:27, 62.1-44.15:34; 9VAC25-875-500, 9VAC25-890-40.

#### **Sec. 17-418 Modifications and variances to approved erosion and sediment control plans.**

Any approved erosion and sediment control plan may be changed only as follows:

- A. *Required modifications.* An approved plan may be modified only as follows:
1. *Plan inadequate to satisfy erosion and sediment control requirements.* An approved plan must be modified if, after an inspection of the site, the administrator determines that the approved plan: (i) is inadequate to effectively control soil erosion, sediment deposition, and runoff to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources; (ii) is unable to be physically implemented as approved; or (iii) fails to satisfy any other VESMP requirement. If an amendment is required, the administrator may also require the time by which the amendment to the plan must be submitted and approved.
  2. *Re-evaluation if land disturbing activity not begun within 180 days or ceases for more than 180 days.* If land disturbing activity is not begun within one hundred eighty (180) days after the plan was approved, or if land disturbing activity ceases for more than one hundred eighty (180) days, the administrator may evaluate the approved plan to determine whether it still satisfies the applicable erosion and sediment control requirements of this chapter and other applicable laws and to verify that all design factors are still valid. If the administrator determines that the approved plan is inadequate, no longer satisfies all applicable erosion and sediment control requirements, or that the design factors are no longer valid, the person responsible for carrying out the approved plan must submit and obtain approval of a modified plan before starting or resuming the land disturbing activity.
- B. *Modification by agreement.* The administrator may agree to allow an approved plan to be modified if the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons, the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with all erosion and sediment control requirements, are agreed to by the administrator and the person responsible for carrying out the plan. The agreement may be memorialized in a stand-alone agreement or by a note added to the approved plan and signed by the administrator.
- C. *Variances.* The administrator may waive or modify any applicable requirement of the erosion and sediment control plan otherwise applicable to an approved plan that the administrator deems to be inappropriate or too restrictive for the site conditions, by granting a variance, subject to the following:
1. *When variance may be requested.* During construction, the person responsible for implementing the approved plan may request a variance.
  2. *Reason for variance.* The owner must explain in writing the reasons for requesting any variance.
  3. *Factors to be considered.* The administrator will 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.
  4. *Action on request.* The administrator shall respond to the request in writing by either approving or disapproving the variance. If the administrator does not approve the variance within ten (10) days after receipt of the request, the variance will be considered disapproved. After disapproval, the applicant may resubmit a variance request with additional documentation.
  5. *Variance incorporated into approved plan.* Any approved variance shall become part of, and be documented in, the approved plan.

(§ 7-5, 6-18-75, § 7, 2-11-76, 4-21-76, 6-2-76, 7-9-80, 7-8-81, 2-11-87, 3-18-92; § 19.3-16, 2-11-98; Code 1988, §§ 7-5, 19.3-16; § 17-208, Ord. 98-A(1), 8-5-98; Ord. 08-17(3), 8-6-08; § 17-418, Ord. 14-17(1), 5-

7-14, effective 7-1-14)

State law reference – 9VAC25-890-40.

**Sec. 17-419 Amendments and modifications to approved stormwater management plans.**

Any approved stormwater management plan shall be amended or may be modified as follows:

- A. *Stormwater management plan; amendment.* The administrator shall require that an approved stormwater management plan be amended if, after an inspection of the site or submittal and review of the construction record drawing, the administrator determines that the plan fails to satisfy any VESMP requirement. If an amendment is required, the administrator also may require the time by which the amendment to the plan shall be submitted and approved.
- B. *Stormwater management plan; modification.* An owner may request that the administrator allow its approved stormwater management plan be modified. Any modification is subject to review and approval by the administrator. The administrator shall act on the request and either approve or disapprove the proposed modification in writing within sixty (60) days after the administrator receives the request.

(§ 19.3-31, 2-11-98; § 19.1-6, 9-29-77, art. II, § 1, 10-19-77, 9-13-78; 10-22-80, 7-11-90, 8-3-94; Code 1988, §§ 19.1-6, 19.3-31; § 17-307, Ord. 98-A(1), 8-5-98; § 17-419, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – 9VAC25-875-500, 9VAC25-875-110, 9VAC25-880-70, 9VAC25-890-40.

[Section 17-420 to remain unchanged]

**Sec. 17-421 Amendments to stormwater pollution prevention plans.**

An owner must obtain approval of an amendment to an SWPPP in the circumstances outlined in subsections (A) through (D). Any amendment to the plan must be updated within seven (7) days after amendment to its implementation and include the information required by 9VAC25-880-70, Part II(B)(4) and be signed in accordance with 9VAC25-880-70, Part III(K).

- A. *Change affects discharge of pollutants.* There is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that has not been previously addressed in the plan.
- B. *Correction of ineffective control measures.* During inspections or investigations by the owner's qualified personal, the administrator, or any State or Federal official, it is determined that the plan is inadequate to satisfy applicable regulations or ordinances. Any required amendment to the plan must include additional or modified control measures designed and implemented to correct the problems identified.
- C. *Discharge, release, or spill from high priority facility.* Whenever deemed necessary by the administrator to accurately reflect any discharge, release, or spill from any high priority facility reported in accordance with 9VAC25-890-40(III)(G). For each such discharge, release, or spill, the amended plan must include the following information: (i) the date of the incident; (ii) the material discharged, released, or spilled; and (iii) the quantity discharged, released or spilled.
- D. *Change in contractor.* Any change in the name and required contact information in the contractor that will implement and maintain any control measure.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – 9VAC25-875-500, 9VAC25-875-110, 9VAC25-880-70, 9VAC25-890-40.

**Sec. 17-422 Construction record drawing; submittal. [effective 7/1/2024]**

When construction of any permanent stormwater management facility is completed, a construction record drawing for the permanent stormwater management facility must be submitted for review and action as follows:

- A. *Submittal of drawing to the administrator.* Each construction record drawing must be submitted by the owner to the administrator in accordance with 9VAC25-875-535.
- B. *Fee.* The applicable fee for review and action on the construction record drawing required by County Code Chapter 1, Article 5, must be paid when the drawing is submitted.
- C. *Form and style.* The construction record drawing must satisfy the minimum requirements of the form and style of a construction record drawing as provided in the Design Standards Manual.
- D. *Signature and certification.* The construction record drawing must be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Chapter 4 of Title 54.1 of the Code of Virginia, certifying stating to the best of their professional knowledge that 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.
- E. *Required measurements and calculations.* If the construction record drawing shows any changes from the approved plan, including changes to any features of the facility, including, but not limited to, outlet structures, elevations, available volumes, plantings, spillways, and materials, the owner must also submit all as-built measurements and calculations necessary to demonstrate compliance with all applicable regulations. Any other technical requirements of the construction record drawing will be as provided in the Design Standards Manual.
- F. *Determination of completeness, review and action.* The procedure for the review and action on a construction record drawing will be as provided in sections 17-409 and 17-410, as applicable, provided that the failure of the administrator to act within any time provided in those sections may not be deemed to be approval of the construction record drawing.
- G. *Required amendments.* If the as-built stormwater management facility does not comply with all applicable regulations, the owner must make all required changes to the facility in order to comply with the regulations and the administrator may require that the approved stormwater management plan be amended as provided in section 17-419.

(Ord. 14-17(1), 5-7-14, effective 7-1-14; Ord. 23-17(1), 12-6-23, effective 7-1-24)

State law reference – 9VAC25-875-535.

**Sec. 17-423 Release of surety. [effective 7/1/2024]**

Any surety required by this chapter will be released as follows:

- A. *Partial release.* In order for any surety to be partially released:
  - 1. *Request by owner.* The owner must submit a statement to the administrator on a form provided by the administrator that adequate stabilization of the land disturbing activity has been achieved, and pay the fee for a partial release required by County Code Chapter 1, Article 5.
  - 2. *Response by administrator.* Within 30 days after receipt of the statement required by subsection (A)(1), the administrator will provide written notice to the owner that



responds to the request in one of the following ways: (i) grant the partial release, if an inspection of the project by a certified inspector confirms that the requirements for partial release are satisfied; or (ii) inform the owner that an inspection of the project by a certified inspector confirms that the requirements for partial release are not satisfied and identify any specified defects, deficiencies or further conservation action required.

3. *Release.* If the administrator grants the partial release as provided in subsection (A)(2), the surety will be partially released within 60 days after receipt of the request required by subsection (A)(1). The amount of the release will be based upon the percentage of stabilization accomplished determined by the inspection.

B. *Full release.* In order for any surety to be fully released:

1. *Request by owner.* The owner must submit a statement to the administrator on a form provided by the administrator and pay the fee for a full release required by County Code Chapter 1, Article 5. For any surety required in conjunction with an erosion and sediment control plan, the owner must certify that adequate permanent stabilization of the land disturbing activity has been achieved. For any surety required in conjunction with a land-disturbance permit, the owner must state that the requirements of the permit have been satisfied.
2. *Response by administrator.* Within 30 days after receipt of the statement required by subsection (B)(1), the administrator will provide written notice to the owner that responds to the request in one of the following ways: (i) grant the full release, if an inspection of the project by a certified inspector confirms that the requirements for full release are satisfied; or (ii) inform the owner that an inspection of the project by a certified inspector confirms that the requirements for full release are not satisfied and identify any specified defects, deficiencies or further conservation action required.
3. *Release.* If the administrator grants the full release as provided in subsection (B)(2), the surety will be fully released within 60 days after receipt of the request required by subsection (B)(1).

C. *Maintenance.* Prior to the release of the performance security or bond, the developer must either (i) transfer the maintenance responsibilities of the stormwater management facilities to a Property Owners Association or (ii) provide the County with a maintenance security.

1. Requirements for Transfer of Maintenance Responsibilities to the Property Owners Association (POA). To transfer the maintenance responsibilities of stormwater management facilities to a Property Owners Association, a developer must:
  - a. Submit acceptable record drawings.
  - b. Obtain an acceptable final inspection of the stormwater management facility by the County.
  - c. Transfer the necessary property to the POA.
  - d. Organize and hold a meeting attended by the developer, the County and members of the POA; and provide evidence to the County that each member of the POA was provided prior notice of the meeting. The meeting must be held at a place and time convenient for members of the POA.
  - e. Provide a copy of the recorded documents establishing the Property Owners Association to the County.

- f. Provide the County with evidence that the Property Owners Association is funded. Minimum funding will be based on the following schedule:

1 – 20 lots = \$1,000.00

21 – 50 lots = \$1,500.00

51 and over = \$1,500.00 + \$30.00 per lot over 50

2. Requirements for Posting Maintenance Security.

- a. The County will require a maintenance guaranty in the amount of 20 percent of the construction costs of the stormwater management facility.
- b. The maintenance security must contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain appropriate actions which may be required of the permittee in accordance with the approved stormwater management plan.
- c. If the County takes such action upon such failure by the permittee, the County may collect from the permittee the difference should the amount of the reasonable cost of such action exceed the amount of the security held.

- D. The maintenance agreement and security will be the responsibility of the permittee or owner until such time as the permittee or owner provides the County with the necessary requirements for Transfer of Maintenance Responsibilities to the Property Owners Association as outlined above in subsection (C)(1).

(§ 17-207: § 7-5, 6-18-75, § 7, 2-11-76, 4-21-76, 6-2-76, 7-9-80, 7-8-81, 2-11-87, 3-18-92; § 19.3-15, 2-11-98; Code 1988, §§ 7-5, 19.3-15; § 17-207, Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09, effective 9-5-09)(§ 17-306: § 19.1-7, 9-29-77, art. II, § 2, 7-11-90; § 19.3-30, 2-11-98; Code 1988, §§ 19.1-7, 19.3-30; § 17-306, Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09, effective 9-5-09; § 17-423, Ord. 14-17(1), 5-7-14, effective 7-1-14; Ord. 21-17(1), 4-21-21, effective 9-1-21; Ord. 23-17(1), 12-6-23, effective 7-1-24)

State law reference – Va. Code § 62.1-44.15:34.

**Sec. 17-424 Effect of failure to obtain land disturbance, building or other permit; void for inactivity.**

An approved land disturbance permit will be void if the owner fails to obtain a land disturbance, building, or other permit for activities involving land disturbing activities to implement the plan within one year after the date of its approval; provided that any plan or permit associated with a subdivision plat or site plan whose period of validity is extended by Virginia Code § 15.2-2209.1(A) will likewise be extended for the same time period.

(§ 17-204: § 7-5, 6-18-75, § 7, 2-11-76, 4-21-76, 6-2-76, 7-9-80, 7-8-81, 2-11-87, 3-18-92; § 19.3-12, 2-11-98; Code 1988, §§ 7-5, 19.3-12; § 17-204, Ord. 98-A(1), 8-5-98; Ord. 08-17(3), 8-6-08; Ord. 09-17(1), 8-5-09, effective 9-5-09) (§ 17-304: § 19.1-7, 9-29-77, art. II, § 2, 7-11-90; § 19.1-8, 9-29-77, art. II, § 3, 7-11-90; § 19.3-28, 2-11-98; Code 1988, §§ 19.1-7, 19.1-8, 19.3-28; § 17-304, Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09, effective 9-5-09; Ord. 11-17(1), 10-5-11; § 17-424, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:73; 9VAC25-890-40.

**ARTICLE V. TECHNICAL CRITERIA**

**Sec. 17-500 Erosion and sediment control plans; applicable technical criteria.**

Each erosion and sediment control plan must satisfy the following, as applicable:

- A. *Erosion and sediment control minimum standards.* The criteria, techniques and methods provided in 9VAC25-875-560.
- B. *Annual standards and specifications.* Any applicable annual standards and specifications approved by the Virginia Department of Environmental Quality.
- C. *Stormwater pollution prevention.* If the land disturbing activity also requires a land-disturbance permit, the requirements in 9VAC25-875-500(F) and as specified in 40 CFR 450.21.
- D. *Stream buffers.* The procedures and requirements for land disturbing activity and development in stream buffers, as provided in section 17-600 *et seq.*
- E. *County design standards.* The technical criteria, including County notes and details, as provided in the Design Standards Manual.

(§ 19.3-11, 2-11-98; § 7-3, 6-18-75, § 5, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 7-4, 6-18-75, § 6, 10-22-75, 4-21-76, 11-10-76, 3-2-77, 4-17-85, 2-11-87, 12-11-87, 12-11-91, 3-18-92; Code 1988, §§ 7-3, 7-4, 19.3-11; § 17-203, Ord. 98-A(1), 8-5-98; Ord. 01-17(1), 7-11-01; Ord. 09-17(1), 8-5-09, effective 9-5-09; § 14-500, Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code § 62.1-44.15:73; 9VAC25-875-560, 9VAC25-875-500, 9VAC25-890-40.

**Sec. 17-501 Applicability of other laws and regulations; time limits on applicability of approved design criteria.**

Each land disturbance permit application must satisfy the following criteria, techniques, and methods:

- A. *Land disturbing activity that obtained general permit coverage or commenced land disturbing activity prior to July 1, 2014.* Any land disturbing activity that obtained general permit coverage or commenced land disturbing activity prior to July 1, 2014 must be conducted in accordance with the technical criteria of 9VAC25-875-670 through 9VAC25-875-730. These projects remain subject to the technical criteria of 9VAC25-875-670 through 9VAC25-875-730 for an additional two general permit cycles. After that time, the portions of the project not under construction will become subject to any new technical criteria adopted by the State Water Control Board.
- B. *Land disturbing activity that obtains initial general permit coverage on or after July 1, 2014.* Any land disturbing activity that obtains initial general permit coverage on or after July 1, 2014 must be conducted in accordance with the technical criteria of 9VAC25-875-570 through 9VAC25-875-660, except as provided in subsection (C). These projects remain subject to the technical criteria of 9VAC25-875-570 through 9VAC25-875-660 for an additional two general permit cycles. After that time, the portions of the project not under construction will become subject to any new technical criteria adopted by the State Water Control Board.
- C. *Land disturbing activity related to certain development approvals prior to July 1, 2012.* Any land disturbing activity will be subject to the technical criteria of 9VAC25-875-670 through 9VAC25-875-730, provided all of the following apply:
  - 1. *Prior qualifying approval.* 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 the County to be equivalent thereto (i) was approved by the County prior to July 1, 2012; (ii) provided a layout as defined in 9VAC25-875-670, (iii) will comply with the technical criteria of 9VAC25-875-670 through 9VAC25-875-730; 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. *General permit not issued.* A general permit has not been issued prior to July 1, 2014.
  3. *Land disturbing activity not commenced.* Land disturbing activity did not commence prior to July 1, 2014.
  4. *Duration.* Land disturbing activities under this subsection (C) will remain subject to the technical criteria of 9VAC25-875-670 through 9VAC25-875-730 for one additional general permit cycle. After that time, the portions of the project not under construction will become subject to any new technical criteria adopted by the State Water Control Board.
- D. *Land disturbing activity related to County, State or Federal funded projects.* County, State and Federal projects are subject to the technical criteria of 9VAC25-875-670 through 9VAC25-875-730, provided all of the following apply:
1. *Prior qualifying obligation.* There has been an obligation of County, state or federal funding, in whole or in part, prior to July 1, 2012, or DEQ has approved a stormwater management plan prior to July 1, 2012.
  2. *General permit not issued.* A general permit has not been issued prior to July 1, 2014.
  3. *Land disturbing activity not commenced.* Land disturbance did not commence prior to July 1, 2014.
  4. *Duration.* Land disturbing activities under this subsection (D) will remain subject to the technical criteria in 9VAC25-875-670 through 9VAC25-875-730 for one additional general permit cycle. After that time, the portions of the project not under construction will become subject to any new technical criteria adopted by the State Water Control Board.
- E. *Land disturbing activity related where government bonds or other instruments of public debt financing issued.* In cases where government bonding or public debt financing has been issued for a project prior to July 1, 2012, the project will be subject to the technical criteria in 9VAC25-875-670 through 9VAC25-875-730.
- F. *TMDLs.* The Chesapeake Bay TMDL as provided in 9VAC25-890-40 and any other local TMDLs applicable to a regulated land disturbing activity apply to land disturbing activities under this section.
- G. *Stream buffers.* Any land disturbing activity under subsections (A) through (E) also must comply with the requirements for stream buffers in section 17-600 *et seq.*
- H. *Pre-existing County requirements.* Any criterion more stringent than the technical criteria set forth in subsections (A) through (F) existing prior to January 1, 2005 in either this chapter or the Design Standards Manual applies to land disturbing activities under this section.
- I. *More stringent standards.* Nothing in this section precludes an operator from constructing to a more stringent standard at the operator's discretion.

(§ 19.1-6, 9-29-77, art. II, § 1, 10-19-77, 9-13-78, 10-22-80, 7-11-90, 8-3-94; § 19.1-7, 9-29-77, art. II, § 2, 7-11-90; § 19.3-27, 2-11-98; Code 1988, §§ 19.1-6, 19.2-7, 19.3-27; § 17-303, Ord. 98-A(1), 6-17-98; § 17-500, Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code §§ 62.1-44.15:33, 62.1-44.15:49; 9VAC25-875-480, 9VAC25-875-490, 9VAC25-875-690, 9VAC25-875-100, 9VAC25-875-970, 9VAC25-890-40.

**Sec. 17-502 Offsite nutrient credits.**

An owner is allowed to use offsite nutrient credits, subject to the following:

- A. *Eligibility to use offsite nutrient credits.* An owner is eligible to use offsite nutrient credits if one or more of the following are satisfied:
  - 1. *Less than 5 acres disturbed.* Less than five acres of land will be disturbed.
  - 2. *Pollution control.* The postconstruction pollution control (measured in phosphorous) requirement is less than ten (10) pounds per year.
  - 3. *Most phosphorus nutrient reductions are achieved onsite.* At least seventy-five (75) percent of the required phosphorus nutrient reductions are achieved onsite. If at least seventy-five (75) percent of the required phosphorus nutrient reductions cannot be achieved onsite, and the owner can demonstrate to the satisfaction of the administrator that: (i) alternative site designs have been considered that may accommodate onsite best management practices; (ii) onsite best management practices have been considered in alternative site designs to the maximum extent practicable; (iii) appropriate onsite best management practices will be implemented; and (iv) full compliance with post-development nonpoint nutrient runoff compliance requirements cannot practicably be met onsite, then the required phosphorus nutrient reductions may be achieved, in whole or in part, through the use of offsite compliance options.
- B. *Eligibility to use offsite nutrient credits as a substitute for existing onsite nutrient controls.* An owner satisfying one or more of the criteria in subsection (A) may use offsite nutrient credits as full or partial substitutes of perpetual nutrient credits for existing onsite nutrient controls when: (i) the nutrient credits will compensate for ten (10) or fewer pounds of the annual phosphorous requirement associated with the original land disturbing activity; or (ii) existing onsite controls are not functioning as anticipated after reasonable attempts to comply with applicable maintenance agreements or requirements and the use of nutrient credits will account for the deficiency. Upon the use of the offsite credits, the party responsible for maintenance will be released from maintenance obligations related to the onsite controls for which the nutrient credits are substituted.
- C. *Documentation of credits.* The owner must provide documentation of its acquisition of nutrient credits to the administrator and the Virginia Department of Environmental Quality. The documentation must include a certification from the credit provider documenting the number of nutrient credits acquired and the associated ratio of nutrient credits at the credit- generating entity.
- D. *Minimum performance requirements.* The use of offsite nutrient credits will satisfy the following:
  - 1. *Ratio and perpetual credits.* For that portion of a site's compliance with stormwater nonpoint nutrient runoff water quality criteria being obtained through nutrient credits, the owner must: (i) comply with a 1:1 ratio of the nutrient credits to the site's remaining post-development nonpoint nutrient runoff compliance requirement being met by credit use; and (ii) use credits certified as perpetual credits pursuant to Virginia Code § 62.1-44.19:12 *et seq.*
  - 2. *Nutrient reductions prior to land disturbing activity.* Any offsite nutrient credit used will achieve the necessary nutrient reductions prior to the owner starting any land disturbing activity. If a project is phased, the owner may acquire or achieve the offsite nutrient reductions prior to starting each phase of the land disturbing activity in an amount sufficient for each phase.

- E. *Prohibited use of nutrient credits.* Offsite nutrient credits may not be used in the following cases:
1. *Water quantity control requirements.* Offsite nutrient credits may not be used to address water quantity control requirements.
  2. *Water quality-based limitations.* Offsite nutrient credits may not be used in contravention of County water quality-based limitations at the point of discharge that are: (i) consistent with the determinations made pursuant to Virginia Code § 62.1-44.19:7(B); (ii) contained in the County's MS4 program plan; or (iii) as otherwise may be established or approved by the State Water Control Board.
- F. *Crediting nutrient reductions.* Nutrient reductions obtained through offsite nutrient credits will be credited toward compliance with any nutrient allocation assigned to the County's MS4 permit or any applicable TMDL to the location where the activity for which the nutrient credits are used takes place. If the activity for which the nutrient credits are used does not discharge to an MS4, the nutrient reductions will be credited toward compliance with the applicable nutrient allocation.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:35; 9VAC25-875-610.

## ARTICLE VI. STREAM BUFFERS

### Sec. 17-600 Extent of stream buffers; retention and establishment.

Except as provided in section 17-602, each ESM plan and each land-disturbance permit must provide for stream buffers for the purposes of retarding runoff, preventing erosion, filtering nonpoint source pollution from runoff, moderating stream temperature, and providing for the ecological integrity of stream corridors and networks, as provided herein:

- A. *Development within a development area.* If the development is located within a development area, stream buffers must be retained if present and established where they do not exist on any lands subject to this chapter containing perennial streams, contiguous nontidal wetlands, or both. The stream buffer must be no less than one hundred (100) feet wide on each side of any perennial stream and contiguous nontidal wetlands, measured horizontally from the edge of the contiguous nontidal wetlands, or the top of the stream bank if no wetlands exist.
- B. *Development within a water supply protection area or other rural land.* If the development is located within a water supply protection area or other rural land, stream buffers must be retained if present and established where they do not exist on any lands subject to this chapter containing perennial or intermittent streams, contiguous nontidal wetlands, and floodplains. The stream buffer must extend to whichever of the following is wider: (i) one hundred (100) feet on each side of any perennial or intermittent stream and contiguous nontidal wetlands, measured horizontally from the edge of the contiguous nontidal wetlands, or the top of the stream bank if no wetlands exist; or (ii) the limits of the floodplain. The stream buffer must be no less than two hundred (200) horizontal feet wide from the floodplain of any public water supply impoundment.

(§ 17-301: § 19.2-6, 6-19-91, § 6; § 19.3-25, 2-11-98; Code 1988, §§ 19.2-6, 19.3-25; § 17-301, Ord. 98-A(1), 8-5-98; Ord. 07-17(1), 2-14-07) (§ 17-317: § 19.3-41, 2-11-98; § 19.2-8, 6-19-91; Code 1988, §§ 19.2-8, 19.3-41; § 17-317, Ord. 98-A(1), 8-5-98; Ord. 08-17(1), 2-6-08; § 17-600, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:73; 9VAC25-890-40.

[Section 17-601 to remain unchanged]

**Sec. 17-602 Types of improvements and activities exempt from duties to retain, establish, or manage a stream buffer.**

The following types of improvements and activities are not required to retain, establish, or manage a stream buffer, provided that the requirements of this section are satisfied:

- A. *Utility and transportation improvements.* The construction, installation, operation and maintenance of electric, gas and telephone transmission lines, railroads, and activities of the Virginia Department of Transportation, and their appurtenant structures, which are accomplished in compliance with the Stormwater Management Act (Virginia Code § 62.1-44.15:24 *et seq.*) or an ESM plan approved by the State Water Control Board.
- B. *Public water and sewer improvements.* The construction, installation, and maintenance by public agencies of water and sewer lines, including water and sewer lines constructed by private interests for dedication to public agencies, only if all of the following are satisfied:
  - 1. *Location.* To the extent practical, as determined by the Albemarle County Service Authority or the Rivanna Water and Sewer Authority, the location of the water or sewer lines must be outside of all stream buffer areas.
  - 2. *Disturbance minimized.* No more land may be disturbed than is necessary to construct, install and maintain the water or sewer lines.
  - 3. *Compliance with applicable requirements.* All construction, installation, and maintenance of the water or sewer lines must comply with all applicable Federal, State, and local requirements and permits and be conducted in a manner that protects water quality.
- C. *Silvicultural activities.* Silvicultural activities that are conducted in compliance with the water quality protection procedures established by the Virginia Department of Forestry in its “Virginia’s Forestry Best Management Practices for Water Quality.”
- D. *Public airport improvements.* The construction, installation and maintenance of runways, taxiways, and other similar or appurtenant improvements at public airports, including the expansion or extension of those improvements, provided that all applicable Federal, State, and local permits are obtained.

(§ 19.3-43, 2-11-98; § 19.2-12, 6-19-91, § 12; Code 1988, §§ 19.2-12, 19.3-43; § 17-319, Ord. 98-A(1), 8-5-98; Ord. 08-17(4), 9-3-08; § 17-602, Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference**—Va. Code § 62.1-44.15:73; 9VAC25-890-40.

[Sections 17-603 through 17-700 to remain unchanged]

**Sec. 17-701 Illicit discharges prohibited; exempt and authorized discharges.**

No person may throw, drain, or otherwise discharge, cause, or allow others under their control to throw, drain, or otherwise discharge into the County's MS4 or State waters any pollutants or waters containing any pollutants, other than stormwater. Commencing, conducting, or continuing any illicit discharge to the County's MS4 or State waters is prohibited, subject to the following:

A. *Conditionally exempt discharges.* The following discharges are not prohibited discharges provided that the administrator determines that the discharge is not adversely impacting State waters:

1. Discharges pursuant to a Virginia Pollutant Discharge Elimination System ("VPDES") or land-disturbance permit (other than a land-disturbance permit for discharges from the municipal separate storm sewer).
2. Discharges resulting from firefighting and other public safety activities.
3. Discharges associated with the maintenance or repair of public water, sanitary, and storm sewer lines, and public drinking water reservoirs and drinking water treatment or distributions systems conducted in accordance with applicable federal and state regulations and standards.
4. Discharges associated with any activity by the County, its employees and agents, in the maintenance of any component of a County-maintained stormwater management facility conducted in accordance with applicable State and Federal regulations and standards.
5. Discharges specified in writing by the administrator as being necessary to protect public health and safety.
6. Water line flushing.
7. Irrigation water, landscape irrigation, and lawn watering.
8. Diverted stream flows.
9. Rising groundwaters.
10. Uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20)).
11. Uncontaminated pumped groundwater.
12. Discharges from potable water sources.
13. Foundation drains.
14. Air conditioning condensation.
15. Springs.
16. Water from crawl space pumps.
17. Footing drains.
18. Individual residential car washing.



19. Flows from riparian habitats and wetlands.
20. Dechlorinated swimming pool discharges having less than one (1) part per million chlorine.
21. Street wash water.
22. Water from washed parking lots or sidewalks to remove algae or oil buildup;
23. Application of salts or other de-icing substances to streets, sidewalks and parking lots;
24. Discharges associated with dye testing, provided that the County is notified in writing before the test.

If the administrator determines that any of these conditionally exempted activities are causing adverse impacts to state waters in a specific case, the administrator may revoke the exemption for that specific case. The revocation will be effective from the date the administrator provides written notice to the person responsible for the discharge of the determination that the exemption is revoked.

- B. *Discharges authorized by VPDES permit, waiver, or waste discharge order.* This prohibition does not apply to any non-stormwater discharge permitted under a VPDES permit, including the general permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the EPA, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations and further provided that written approval has been granted by the EPA for any discharge to the County's MS4.

(§ 17-501; Ord. 07-17(1), 2-14-07; § 17-701, Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code §§ 62.1-44.15:27, 62.1-44.15:33; 9VAC25-875-970, 9VAC25-890-40.

[Sections 17-702 and 17-703 to remain unchanged]

## ARTICLE VIII. COMPLIANCE

### Sec. 17-800 Duty to comply.

Each owner has the following duties to comply:

- A. *Upon a determination that land disturbing activity is subject to this chapter.* Upon the administrator's determination that a land disturbing activity is subject to the VESMP, the owner must immediately comply with the applicable requirements of this chapter and the applicable requirements of this chapter will be immediately enforced.
- B. *Upon approval of a land-disturbance permit.* Upon the administrator's approval of any land-disturbance permit, the owner must comply with all of the terms and conditions of the approved permit at all times the permit is in effect, including when any activities allowed under the permit are being performed. In addition, the owner must comply with the requirements of the general permit even though a registration statement was not required under sections 17-401(C) and 17-405(A)(1).
- C. *All other applicable requirements of this chapter.* The owner must comply with all other applicable requirements of this chapter not addressed in subsections (A) and (B), including (but not limited to) the express duties in this Article.

(§ 17-211: 2-11-98; Code 1988, § 19.3-19; § 17-211, Ord. 98-A(1), 8-5-98; Ord. 10-17(1), 7-11-01) (§ 17-323: § 19.3-47, 2-11-98; § 19.1-6, 9-29-77, art. II, § 1, 10-19-77, 9-13-78, 10-22-80, 7-11-90, 8-3-94; Code 1988, §§ 19.1-6, 19.3-47; § 17-323, Ord. 98-A(1), 8-5-98; § 17-800, Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code §§ 62.1-44.15:27, 62.1-44.15:28, 62.1-44.15:73.

#### **Sec. 17-801 Duty to maintain structures, systems, facilities, and techniques.**

Each owner must maintain and repair all structures, systems, facilities, and techniques required under the VESMP as follows:

- A. *Erosion and sediment control structures and systems.* Any erosion and sediment control structures and systems must be maintained and repaired as needed to ensure continued performance of their intended function at their intended level. The owner also must perform all maintenance responsibilities outlined in the approved erosion and sediment control plan. All control measures required by the plan must be maintained in accordance with good engineering practices.
- B. *Stormwater management facilities and techniques.* Any permanent stormwater management facility or technique specified in the approved stormwater management plan to manage the quality and quantity of runoff must be maintained for so long as the stormwater management facility or technique exists, in a manner that meets or exceeds the maintenance standards in the agreement entered into under section 17-415. The owner's obligation to maintain any such permanent stormwater management facility or technique will continue until all such obligations are the responsibility of the County or another public entity empowered to own and maintain stormwater management facilities and to implement the techniques described in the stormwater management plan.
- C. *Stormwater pollution prevention plan control measures; duty to maintain.* Any control measure in the approved SWPPP, including any control measure otherwise subject to subsections (A) or (B), must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications.

(§ 17-211: 2-11-98; Code 1988, § 19.3-19; § 17-211, Ord. 98-A(1), 8-5-98; Ord. 10-17(1), 7-11-01) (§ 17-323: § 19.3-47, 2-11-98; § 19.1-6, 9-29-77, art. II, § 1, 10-19-77, 9-13-78, 10-22-80, 7-11-90, 8-3-94; Code 1988, §§ 19.1-6, 19.3-47; § 17-323, Ord. 98-A(1), 8-5-98; § 17-801, Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – 9VAC25-875-130, 9VAC25-880-70.

#### **Sec. 17-802 Duty to maintain the functional performance of storm drainage systems and streams.**

Each owner of property through which a privately-maintained storm drainage system or natural stream passes must maintain the functional performance of the system or stream, regardless of whether it is subject to a land-disturbance permit or an erosion and sediment control plan, as follows:

- A. *Keeping the storm drainage system and natural streams free of refuse and other obstacles.* The owner must maintain the part of storm drainage system or natural stream on the property free of refuse, as that term is defined in section 13-100, and other obstacles that would pollute, contaminate, or adversely impact the system's or the stream's functional performance.
- B. *Maintaining structures within the flood hazard overlay district.* The owner must maintain all existing privately owned structures on the property that are within the flood hazard overlay district established under section 18-30.3 so that the structures do not become a hazard to the use, function, or physical or ecological integrity of the stream.

(§ 17-504, Ord. 07-17(1), 2-14-07; § 17-802, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code §§ 62.1-44.15:27, 62.1-44.15:33; 9VAC25-890-40.

**Sec. 17-803 Duty to maintain general permit, stormwater pollution prevention plan, and other documents onsite.**

If the land disturbing activity is subject to a land-disturbance permit, each owner must maintain the general permit, the general permit coverage letter, the registration statement (if such a statement was required under sections 17-401(C) and 17-405(A)(1)), and the SWPPP, at a central location at the construction site. If an onsite location is unavailable to store the documents when no personnel are present, notice of the documents' location must be posted near the main entrance at the construction site.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – 9VAC25-875-500, 9VAC25-880-70.

**Sec. 17-804 Duty to inspect and take corrective action.**

Each owner is responsible for ensuring that any inspections required by the general permit are conducted by the qualified personnel identified in the SWPPP. Any inspection must be conducted according to the schedule and satisfy the requirements of 9VAC25-880-70, Part II(G). Any corrective action identified in an inspection must be completed as follows:

- A. *Control measure not operating effectively.* If an inspection identifies a control measure that is not operating effectively or needs routine maintenance, corrective actions or routine maintenance must be completed as soon as practicable, but no later than five business days after discovery or a longer period allowed in writing by the administrator, to maintain the continued effectiveness of the control measures.
- B. *Repeat repairs.* If the operator must make the same repairs more than two times to the same control at the same location, even if the fix can be completed by the close of the next business day, the operator must either: (a) complete work to fix any subsequent repeat occurrences of this same problem under the corrective action procedures in 9VAC25-880-70, Part II(H), including keeping any records of the condition and how it was corrected under 9VAC25-880-70, Part II(C); or (b) document in the inspection report under 9VAC25-880-70, Part II(G) why the specific reoccurrence of this same problem should still be addressed as a routine maintenance fix.
- C. *Control measure inadequate.* If an inspection identifies an existing control measure that needs to be modified or if an additional control measure is necessary for any reason, implementation must be completed prior to the next anticipated measurable storm event. If implementation prior to the next anticipated measurable storm event is impracticable, then additional or alternative control measures must be implemented as soon as practicable, but no later than five business days after discovery or a longer period allowed in writing by the administrator.

(§ 17-206: 2-11-98; Code 1988, § 19.3-14; § 17-206, Ord. 98-A(1), 8-5-98) (§ 17-305: 2-11-98; Code 1988, § 19.3-29; § 17-305, Ord. 98-A(1), 8-5-98; § 17-804, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – 9VAC25-880-70, Parts II(F)&(G).

**Sec. 17-805 Duty to provide information pertaining to discharges and compliance.**

Each owner must provide within a reasonable time the following information pertaining to discharges upon the request of the administrator:

- A. *Effect of discharges and wastes.* Any application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of: (i) the discharge on the quality of State waters, or such other information as may be necessary to accomplish the purposes

of the VESMA and 9VAC25-875; and (ii) the wastes from the discharge on the quality of State waters, or such other information as may be necessary to accomplish the purposes of the Clean Water Act and the VESMA.

- B. *Determine compliance or other cause to change general permit.* Any information request to determine whether cause exists for modifying, revoking and reissuing, or terminating the general permit or to determine compliance with the general permit.

(§ 17-206: 2-11-98; Code 1988, § 19.3-14; § 17-206, Ord. 98-A(1), 8-5-98) (§ 17-305: 2-11-98; Code 1988, § 19.3-29; § 17-305, Ord. 98-A(1), 8-5-98; § 17-805, Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code § 62.1-44.15:40; 9VAC25-875-900, 9VAC25-880-70.

#### **Sec. 17-806 Duty to report discharges or noncompliance.**

Each owner must report discharges or noncompliance as follows:

- A. *Discharge of stormwater not authorized by general permit.* Except in compliance with a general permit, any person who discharges, causes, or allows a discharge of stormwater into or upon State waters from the County's MS4 or from a land disturbing activity, or who discharges, causes, or allows a discharge that may reasonably be expected to enter State waters, must notify the Virginia Department of Environmental Quality and the administrator of the discharge immediately upon discovery of the discharge but in no case later than twenty-four (24) hours after discovery of the discharge. In addition, the owner(s) must submit a written report of the unauthorized discharge to the Virginia Department of Environmental Quality and to the administrator within five (5) days after discovery of the discharge. The written report must include the contents required by 9VAC25-875-870.
- B. *Discharge of sewage, wastes, noxious, deleterious, or hazardous substances, or oil.* Any owner who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance or a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, 40 CFR Part 302, or Virginia Code § 62.1-44.15:19 that occurs during a twenty-four (24) hour period into or upon State waters or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters, must notify the Virginia Department of Environmental Quality of the discharge immediately upon discovery of the discharge, but in no case later than within twenty-four (24) hours after the discovery. A written report of the unauthorized discharge must be submitted to the Virginia Department of Environmental Quality and the administrator within five (5) days after discovery of the discharge. The written report must satisfy the requirements of 9VAC25-880-70, Part III(G).
- C. *Unusual or extraordinary discharges.* The owner must promptly notify, in no case later than within twenty-four (24) hours, the Virginia Department of Environmental Quality and the administrator by telephone after the discovery of any unusual or extraordinary discharge, including a "bypass" or "upset," from a facility and the discharge enters or could be expected to enter State waters. The notification must include the information required by 9VAC25-880-70, Part III(H).
- D. *Reports of noncompliance.* The owner must report any noncompliance that may adversely affect State waters or may endanger public health. An oral report must be provided to the Virginia Department of Environmental Quality within twenty-four (24) hours after discovery of the noncompliance. A written report of the noncompliance must be submitted to the Virginia Department of Environmental Quality and the administrator within five (5) days after discovery of the noncompliance. The oral and written reports must include the information required by 9VAC25-880-70, Part III(I).

(§ 17-506, Ord. 07-17(1), 2-14-07; § 17-806, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – 9VAC25-875-870, 9VAC25-880-70.

[Section 17-807 to remain unchanged]

**Sec. 17-808 Duty to stabilize denuded areas with permanent vegetation within nine months after commencing land disturbing activity.**

In addition to the authority of the administrator to require that any disturbed area be stabilized under an approved SWPPP, any owner must install permanent vegetation on all denuded areas on the site, subject to the following:

- A. *When permanent vegetation required.* The owner must install on all denuded areas on the site within nine (9) months after the date the land disturbing activity commenced, except for areas that the administrator determines are necessary parts of the construction that are subject to an active building permit and areas where erosion is prevented by a non-erosive surface, including (but not limited to) the following surfaces: (i) roadways and sidewalks covered by gravel, asphalt pavement, or concrete; (ii) trails or paths covered by gravel, stone dust, or mulch; (iii) buildings and other permanent structures; and (iv) such other surfaces that the administrator determines would adequately provide a permanent barrier to erosion.
- B. *Extension.* The time limit for installing permanent vegetation may be extended by either the administrator or the board of supervisors, or both, as follows:
  - 1. *By the administrator.* The administrator may extend the time limit for installing permanent vegetation up to an additional six (6) months, provided that the owner submits a written request to the administrator no less than one (1) month prior to the deadline for installing the permanent vegetation. The administrator may grant the extension if the administrator finds that: (i) the additional time is necessary due to factors beyond the control of the owner; (ii) the owner had made good faith efforts to comply with the time limit; and (iii) the owner has effectively controlled erosion and sedimentation on the site during the land disturbing activity. In granting an extension, the administrator may impose reasonable conditions.
  - 2. *By the board of supervisors.* The board of supervisors may extend the time limit for installing permanent vegetation for any duration it determines to be appropriate, provided that the owner submits a written request to the clerk of the board of supervisors no less than two (2) months prior to the deadline for installing the permanent vegetation. The administrator will provide an opinion to the board as to the condition of the site with respect to complying with this chapter and an estimate of the minimum time needed to complete grading and install permanent vegetation for the land disturbing activity covered by the approved erosion and sediment control plan or the land-disturbance permit. The board may grant the extension if it finds that: (i) the additional time is necessary due to factors beyond the control of the owner; (ii) the owner had made good faith efforts to comply with the time limit; and (iii) the owner has plans to effectively control or has effectively controlled erosion and sedimentation on the site during the land disturbing activity. In granting an extension, the board will set a time limit and may impose other reasonable conditions.
- C. *Changes to approved plans or permits do not extend time.* An application to modify, vary, or otherwise amend an approved erosion and sediment control plan, or to amend or modify a stormwater management plan or any other plan approved under the approved land-disturbance permit, for the site, may not extend the time limit for installing permanent vegetation required by this section.
- D. *Land disturbing activity subject to this section.* The installation of permanent vegetation required

by this section is required for those land disturbing activities subject to an erosion and sediment control plan approved on or after September 5, 2009, or an erosion and sediment control plan that was approved prior to that date but was renewed on or after September 5, 2009.

(§ 7-5, 6-18-75, § 7, 2-11-76, 4-21-76, 6-2-76, 7-9-80, 7-8-81, 2-11-87, 3-18-92; § 19.3-15, 2-11-98; Code 1988, §§ 7-5, 19.3-15; § 17-207, Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09, effective 9-5-09; § 17-808, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:65.

**Sec. 17-809 Right of administrator to enter to obtain information, conduct surveys, or in accordance with a performance bond.**

In the administration and enforcement of the VESMP, the administrator or any duly authorized agent of the County may:

- A. *To obtain information or conduct surveys.* 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. If the purpose to enter the site is to conduct an inspection to either administer or enforce this chapter, the administrator or any duly authorized agent of the County will comply with section 17-811.
- B. *In accordance with an agreement with surety.* In accordance with an agreement with surety provided by the owner under section 17-414, enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate conservation actions that are required by the approved plan or any condition of the land-disturbance permit associated with a land disturbing activity when the owner, after proper notice, has failed to take acceptable conservation actions within the time specified.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:39.

**Sec. 17-810 [Repealed]**

**Sec. 17-811 Inspections by the administrator under the VESMP.**

In conjunction with the administration of the VESMP, the administrator will inspect all land-disturbing activity as follows:

- A. *During construction.* The administrator will inspect all land-disturbing activity during construction as follows:
  - 1. *Notice of inspection.* The administrator will provide either prior written or verbal notice of the inspection to the owner or other person responsible for carrying out the land-disturbance permit; provided that notice is not required if the owner has consented to the inspection in writing or granted a written right of entry. The administrator may request that an owner consent to inspections on the application form or make owner consent a condition of land-disturbance permit approval.
  - 2. *Who may conduct inspection.* Any inspection must be conducted by a person holding a certificate of competence as an inspector.
  - 3. *Scope of inspection.* The inspection will be conducted for the purpose of determining the land disturbing activity's: (i) compliance with the approved erosion and sediment control plan; (ii) compliance with the approved stormwater management plan; (iii) development,

updating, and implementation of a pollution prevention plan; and (iv) development and implementation of any additional control measures necessary to address a TMDL.

4. *When inspections conducted.* Unless an alternative inspection program is approved by the State Water Control Board, inspections must be conducted as follows:
  - a. *Initial installation.* During or immediately following initial installation of erosion and sediment controls.
  - b. *Monthly.* At least once per month until the adequate stabilization of the land disturbing activity has been achieved,
  - c. *Rain events.* Within 48 hours following any runoff producing storm event, and
  - d. *Project completion.* at the completion of the project prior to the release of any performance bonds.
- B. *Post-construction.* The administrator must inspect all stormwater management facilities at least once every five (5) years, including facilities for which there is no long-term maintenance agreement or those serving an individual residential lot, after the land disturbing activity has ended. If the owner and the County have entered into an agreement as provided in section 17-415, any inspection must be conducted as provided in that agreement. If the owner and the County have not entered into an agreement under section 17-415, any inspection must be completed as follows:
  1. *Notice of inspection.* The administrator must provide either prior written or verbal notice of the inspection to the owner; provided that notice will not be required if the owner has consented to the inspection in writing or granted a written right of entry.
  2. *Who may conduct inspection.* Any inspection must be conducted by a person holding a certificate of competence as an inspector, other than the owner, provided that the administrator may, in the administrator's sole discretion, use the inspection report of the owner of the stormwater management facility as part of the facility's inspection program if the inspection is conducted by a person who: (i) is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Virginia Code § 54.1-400 *et seq.*; (ii) works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or (iii) holds an appropriate certificate of competence.
  3. *Scope of inspection.* The inspection will be conducted for the purpose of determining the condition of the stormwater management facility and must be documented by records.
  4. *When inspections conducted.* Inspections must be conducted for each stormwater management facility at least once every five (5) years or more frequently as provided in the County's MS4 permit. For any other stormwater management facility, the timing of the inspection will be in the discretion of the administrator.

(§ 19.3-48, 2-11-98; § 19.1-9, 9-29-77, art. III, § 4, 10-19-77, 7-11-90; Code 1988, §§ 19.1-9, 19.3-48; §17-324, Ord. 98-A(1), 6-17-98; § 17-811, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:37; 9VAC25-875-140.

[Section 17-812 to remain unchanged]

**Sec. 17-813 Monitoring and sampling equipment by the administrator on VPDES permitted**

**facilities.**

Either under a condition of the land-disturbance permit, with the owner's consent, or by court order, the administrator may: (i) establish on any permitted facility any device deemed to be necessary by the administrator to conduct monitoring, sampling, or both, of the facility's stormwater discharge; and (ii) require the owner to install monitoring equipment deemed to be necessary by the administrator. The facility's sampling and monitoring equipment must be maintained at all times in a safe and proper operating condition by the owner at its own expense. All devices used to measure stormwater flow and quality must be calibrated to ensure their accuracy.

(§ 17-505, Ord. 07-17(1), 2-14-07; § 17-813, Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code §§ 62.1-44.15:48, 62.1-44.15:49; 9VAC25-875-150, 9VAC25-875-1030.

**Sec. 17-814 Third party complaints regarding impacts from land disturbing activities.**

An aggrieved landowner sustaining pecuniary damage resulting from a violation of an ESM plan or a required permit, or from the conduct of land disturbing activities commenced without an approved ESM plan or a required permit under the VESMP, may provide written notice of the alleged violation to the administrator and to the director of the Virginia Department of Environmental Quality. If an investigation determines that a violation exists, but the administrator has not responded to the alleged violation in a manner that causes the violation to cease and abates the damage to the aggrieved owner's lands within thirty (30) days following receipt of the notice from the aggrieved owner, the aggrieved owner may pursue the remedies available under Virginia Code § 62.1-44.15:37.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code § 62.1-44.15:37.

**ARTICLE IX. ENFORCEMENT**

**Sec. 17-900 Notice to comply.**

If, after an inspection, the administrator determines that the owner has failed to comply with any requirement of this chapter:

- A. *Notice to owner or other person responsible.* The administrator shall provide written notice to the owner and any other person responsible for carrying out the terms of the permit, plan, or any other applicable requirement of this chapter.
- B. *Contents of notice.* The notice shall specify the measures needed to comply with the permit, plan, or other applicable requirement of this chapter, and shall specify the time within which such measures shall be completed.
- C. *How notice delivered.* The notice shall be mailed by certified mail, with confirmation of delivery, to the address specified in the permit application, the plan certification, or, if the owner and the County have entered into an agreement as provided in section 17-415, to the address specified therein, or to another address provided by the owner to administrator in writing, or by personal delivery at the site of the land disturbing or development activities to the agent or employee supervising such activity.

(§ 17-213: § 7-6, 6-18-75, § 8, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 19.3-21, 2-11-98; Code 1988, §§ 7-6, 19.3-21; § 17-213, Ord. 98-A(1), 8-5-98); § 17-325: § 19.3-49, 2-11-98; § 19.1-9, 9-29-77, art. III, § 4, 10-19-77, 7-11-90; Code 1988, §§ 19.1-9, 19.3-49; § 17-325, Ord. 98-A(1), 8-5-98; § 17-900, Ord. 14-7(1), 5-7-14, effective 7-1-14)



State law reference – Va. Code § 62.1-44.15:37; 9VAC25-875-150.

**Sec. 17-901 Failure to comply with notice; revocation, order to stop work, enforcement.**

Upon any failure to comply with the permit, plan, or other applicable requirement within the time specified in the notice provided under section 17-900, one or more of the following actions may be taken:

- A. *Revocation.* The County or the administrator may revoke any permit issued in conjunction with the land disturbing activity.
- B. *Order to stop work.* The administrator may issue a stop work order as provided in section 17-902.
- C. *Enforcement.* The administrator may pursue enforcement as provided in section 17-904 as applicable.

(§ 17-213: § 7-6, 6-18-75, § 8, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 19.3-21, 2-11-98; Code 1988, §§ 7-6, 19.3-21; § 17-213, Ord. 98-A(1), 8-5-98); § 17-325: § 19.3-49, 2-11-98; § 19.1-9, 9-29-77, art. III, § 4, 10-19-77, 7-11-90; Code 1988, §§ 19.1-9, 19.3-49; § 17-325, Ord. 98-A(1), 8-5-98; § 17-901, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:37.

**Sec. 17-902 Stop work orders; procedure.**

The administrator may issue stop work orders as follows:

- A. *When stop work order may be issued.* A stop work order may be issued after a notice to comply under section 17-901 has been issued when the owner has not timely satisfactorily addressed the noncompliance identified in the notice to comply, provided that a notice to comply is not required before an emergency stop work order may be issued where the alleged noncompliance is causing 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.
- B. *Contents of the stop work order.* The stop work order shall order the owner to stop all land disturbing activity on the site until all of the specified corrective measures have been taken to the satisfaction of the administrator, until any violation of the permit, plan or other applicable requirement of this chapter is determined by the administrator to have abated, or that any required plan or permit be obtained from the administrator, or any combination thereof; provided that any emergency stop work order to be issued under subsection (A) also shall direct the owner to cease immediately all land disturbing activity on the site.
- C. *How stop work order delivered.* The stop work order shall be delivered as follows:
  - 1. *Noncompliance with land-disturbance permit.* If the alleged violation is the owner's noncompliance with the land-disturbance permit, the stop work order shall be mailed by certified mail, with confirmation of delivery, to the address specified in the permit application or the plan certification, or by personal delivery at the site of the land disturbing activity or development activity to the agent or employee.
  - 2. *Land disturbing activity without a land-disturbance permit.* If the alleged violation is the owner engaging in land-disturbing activity without a land-disturbance permit, the stop work order shall be mailed by certified mail, with confirmation of delivery, to the address specified in the land records of the County, and shall be posted on the site where the land disturbing activity is occurring.

- D. *Duration of order.* A stop work order will remain in effect for the following periods:
1. *Noncompliance with land-disturbance permit.* If the alleged violation is the owner's noncompliance with the land-disturbance permit, the stop work order will remain in effect for seven (7) days after the date of service pending application by the County or the alleged violator to the circuit court for appropriate relief.
  2. *Land disturbing activity without a land-disturbance permit.* If the alleged violation is the owner engaging in land-disturbing activity without a land-disturbance permit, the stop work order will remain in effect until all required permits and plans are obtained from the administrator, subject to the additional procedures and requirements in subsection (E).
- E. *Subsequent order and service; land disturbing activity without a land-disturbance permit; failure to obtain approval within 7 days.* If the alleged violation is the owner engaging in land-disturbing activity without a land-disturbance permit, and the owner has submitted a permit application but has not obtained approval within seven (7) days after the date of service of the stop work order, the administrator may issue a subsequent order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until approval of the required permit(s) is obtained. The subsequent order shall be either (i) served upon the owner by certified mail, with confirmation of delivery, to the address specified in the permit application or the land records of the County or (ii) hand-delivered to the owner.
- F. *Administrative hearing on emergency stop work order.* Within a reasonable time after the issuance of an emergency stop work order under subsection (A), the administrator shall conduct a hearing at which time the owner may respond to the order, explain the corrective measures taken, if any, raise any defenses, if any, and present any other relevant and material information. Upon conclusion of the hearing, the administrator may affirm, modify, amend, or cancel the emergency stop work order. A hearing is not required if the owner does not appear and does not submit any information in writing. Nothing in this subsection compels the owner to participate in a hearing.
- G. *Right to appeal.* The owner may appeal the issuance of any order under subsection (A) or (E) to the circuit court; provided that the owner has no right to appeal an order issued under subsection (A) unless the owner participated in the administrative hearing provided under subsection (F).
- H. *Authority to enforce order.* The County may enforce any order issued by the administrator under subsections (A) and (E) in an action seeking injunctive relief, mandamus, or any other appropriate remedy.
- I. *Compliance; lifting order.* Any order issued by the administrator under subsections (A) and (E) will be immediately lifted when (i) the corrective measures have been completed by the owner and approved by the administrator, (ii) all required permits or plans are obtained from the administrator, or (iii) the administrator determines that the requirements of this Chapter have been satisfied; provided in any event that nothing in this section prevents the County or the administrator from pursuing any other action or seeking any other remedy in the enforcement of this chapter.

(§ 17-214; § 7-6, 6-18-75, § 8, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 19.3-22, 2-11-98; Code 1988, §§ 7-6, 19.3-22; § 17-214, Ord. 98-A(1), 8-5-98); § 17-325; § 19.3-49, 2-11-98; § 19.1-9, 9-29-77, art. III, § 4, 10-19-77, 7-11-90; Code 1988, §§ 19.1-9, 19.3-49; § 17-325, Ord. 98-A(1), 8-5-98; § 17-902, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:37; 9VAC25-875-150.

**Sec. 17-903 [Repealed]**

**Sec. 17-904 Remedies.**

The following provisions apply to the enforcement of the VESMP:

- A. *Violations subject to this section.* Violations for which a penalty may be imposed under this section include (but are not limited to) the following:
  - 1. *Registration.* No state permit registration, when required.
  - 2. *SWPPP.* No SWPPP, an incomplete SWPPP, or the SWPPP is not available for review.
  - 3. *Approved plan.* An erosion and sediment control plan has not been approved.
  - 4. *BMPs or controls.* Stormwater BMPs or erosion and sediment controls have not been installed or have not been installed or maintained properly.
  - 5. *Operation deficiencies.* Operation deficiencies.
  - 6. *Inspections.* Required inspections are being conducted or are incomplete or improper.
  - 7. *Discharges.* Discharges not in compliance with the requirements of this Chapter.
- B. *Civil penalties.* Pursuant to Virginia Code § 62.1-44.15:48(A)(2), the County may seek civil penalties as follows:
  - 1. *Procedure.* Proceedings seeking civil penalties for any violation outlined in subsection (A) commence by filing a civil summons in the appropriate court.
  - 2. *Amount of civil penalty.* Any violation is subject to a civil penalty of up to thirty- two thousand five hundred dollars (\$32,500.00) for each violation, in the discretion of the court. The amount of the penalty should reflect the degree of harm caused by the violation and take into account the economic benefit to the violator from noncompliance.
  - 3. *Each day a separate offense.* Each day of violation of each requirement constitutes a separate offense.
  - 4. *Civil penalties; use.* Civil penalties must be paid into the treasury of the County and are to be used solely for stormwater management capital projects, including (i) new stormwater best management practices; (ii) stormwater best management practice maintenance, inspection, or retrofitting; (iii) stream restoration; (iv) low-impact development projects; (v) buffer restoration; (vi) pond retrofitting; and (vii) wetlands restoration.
- C. *Civil charges.* Pursuant to Virginia Code § 62.1-44.15:25.1, in lieu of the civil penalties sought under subsection (B) and with the consent of any person who has committed a violation described in subsection (A), the administrator may provide, in an order issued against the person, for the payment of civil charges for violations in a specific sum, not to exceed the limits specified in subsection (B)(2), to be paid into the treasury of the County.
- D. *Criminal penalties.* The County may seek criminal penalties pursuant to Virginia Code § 62.1-44.32 for the violations specified therein.
- E. *Injunctive relief.* Pursuant to Virginia Code § 62.1-44.15:48(C), the County may apply to the appropriate court to enjoin a violation or a threatened violation of this chapter or the conditions of

a land-disturbance permit. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this chapter will be subject, in the discretion of the court, to a civil penalty to be assessed and used in accordance with subsection B.

- F. *Use of offsite nutrient credits.* To the extent available and with the consent of the applicant, the administrator may include the use of nutrient credits or other offsite measures in resolving enforcement actions to compensate for: (i) nutrient control deficiencies occurring during the period of noncompliance; and (ii) permanent nutrient control deficiencies.

(§ 17-326: § 19.3-50, 2-11-98; § 19.1-10, 9-29-77, art. III, 4-13-88, 7-11-90, § 19.2-15, 6-19-91, § 15; Code 1988, §§ 19.1-10, 19.2-15, 19.3-50; § 17-326, Ord. 98-A(1), 8-5-98) (§ 17-507: Ord. 07-17(1), 2-14-07; § 17-904, Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code §§ 62.1-44.15:25.1, 62.1-44.15:35, 62.1-44.15:48, 62.1-44.15:49; § 62.1-44.32, 9VAC25-875-150, 9VAC15-875-870.

[Sections 17-905 through 17-1004 to remain unchanged]

**Sec. 17-1005 Fees. [Previously amended 12/6/2023, effective 7/1/2024]**

Each owner seeking approval of a tier assessment required by this article must pay a fee as provided by Albemarle County Code Chapter 1, Article 5.

(§17-405, Ord. 04-17(1), 12-8-04, effective 2-8-05; § 17-1005, Ord. 14-17(1), 5-7-14, effective 7-1-14; Ord. 23-17(1), 12-6-23, effective 7-1-24)

**State law reference**--Va. Code §§ 15.2-2241(9), 36-98.

**Enactment Clause:**

This Ordinance is effective on and after July 1, 2024. All provisions amended, superseded, or repealed by this Ordinance will remain effective continuously, without interruption, through and including June 30, 2024.