

Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program

Virginia Erosion and Stormwater Management Regulation

Note: This packet is created for the ESC courses and is prepared for use from the VESCP perspective. VESMPs should use the SWM Law and Regulation packet prepared for use with the SWM courses.

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Erosion and Sediment Control Law for Localities Not Administering a VESMP

Code of Virginia Title 62.1 Chapter 3.1 Article 2.4

NOTE: This copy of the law is up-to-date as of August 7, 2025. The most recent version of the law can be found on the Virginia General Assembly's Legislative Information System website:

<https://law.lis.virginia.gov/vacodefull/title62.1/chapter3.1/article2.4/>

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§ 62.1-44.15:51. Definitions

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

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

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

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

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

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

"Department" means the Department of Environmental Quality.

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

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

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

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

"Farm building or structure" means the same as that term is defined in § [36-97](#) and also includes any building or structure used for agritourism activity, as defined in § [3.2-6400](#), and any related impervious surfaces including roads, driveways, and parking areas.

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

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

"Owner" means the same as provided in § [62.1-44.3](#). For a land-disturbing activity that is regulated under this article, "owner" also includes the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

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

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

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

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

"Town" means an incorporated town.

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

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means a locality approved by the Board to operate a Virginia Erosion and Sediment Control Program. A locality that has chosen not to establish a Virginia Erosion and Stormwater Management Program pursuant to subdivision B 3 of § [62.1-44.15:27](#) is required to become a VESCP authority in accordance with this article.

"Virginia Stormwater Management Program" or "VSMP" means a program established by the Board pursuant to § [62.1-44.15:27.1](#) on behalf of a locality on or after July 1, 2014, to manage the quality and quantity of runoff resulting from any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or greater of land disturbance.

§ 62.1-44.15:51.1. Applicability

The requirements of this article shall apply in any locality that has chosen not to establish a Virginia Erosion and Stormwater Management Program (VESMP) pursuant to subdivision B 3 of § [62.1-44.15:27](#). Each such locality shall be required to adopt and administer a Board-approved VESCP.

§ 62.1-44.15:52. Virginia Erosion and Sediment Control Program

A. The Board shall develop a program and adopt regulations in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.) for the effective control of soil erosion, sediment deposition, and nonagricultural runoff that shall be met in any control program to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. Stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or § [62.1-44.15:54](#) or [62.1-44.15:65](#). Any plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one-year, 24-

hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirement for natural or man-made channels as defined in regulations promulgated pursuant to § [62.1-44.15:54](#) or [62.1-44.15:65](#). For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of this subsection shall be satisfied by compliance with water quantity requirements in the Virginia Erosion and Stormwater Management Act (§ [62.1-44.15:24](#) et seq.) and attendant regulations unless such land-disturbing activities (a) are in accordance with the grandfathering or time limits on applicability of approved design criteria provisions of the Virginia Erosion and Stormwater Management Program (VESMP) Regulations, in which case the flow rate capacity and velocity requirements of this subsection shall apply, or (b) are exempt pursuant to subdivision G 2 of § [62.1-44.15:34](#).

The regulations shall:

1. Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the Commonwealth, including, but not limited to, data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;
2. Include such survey of lands and waters as may be deemed appropriate by the Board or required by any applicable law to identify areas, including multijurisdictional and watershed areas, with critical erosion and sediment problems; and
3. Contain conservation standards for various types of soils and land uses, which shall include criteria, techniques, and methods for the control of erosion and sediment resulting from land-disturbing activities.

B. The Board shall provide technical assistance and advice to, and conduct and supervise educational programs for VESCP authorities.

C. The Board shall adopt regulations establishing minimum standards of effectiveness of erosion and sediment control programs, and criteria and procedures for reviewing and evaluating the effectiveness of VESCPs. In developing minimum standards for program effectiveness, the Board shall consider information and standards on which the regulations promulgated pursuant to subsection A are based.

D. The Board shall approve VESCP authorities and shall periodically conduct a comprehensive program compliance review and evaluation pursuant to subdivision (19) of § [62.1-44.15](#).

E. The Board shall issue certifications concerning the content, application, and intent of specified subject areas of this article and accompanying regulations, including program administration, plan review, and project inspection, to personnel of program authorities and to any other persons who have completed training programs or in other ways demonstrated adequate knowledge. The Department shall administer education and training programs for specified subject areas of this article and accompanying regulations, and is authorized to charge persons attending such programs reasonable fees to cover the costs of administering the programs. Such education and training programs shall also contain expanded components to address plan review and project inspection elements of the Virginia Erosion and Stormwater Management Act (§ [62.1-44.15:24](#) et seq.) in accordance with § [62.1-44.15:30](#).

F. Department personnel conducting inspections pursuant to this article shall hold a certification as provided in subsection E.

§ 62.1-44.15:53. Certification of program personnel

A. The minimum standards of VESCP effectiveness established by the Board pursuant to subsection C of § [62.1-44.15:52](#) shall provide that (i) an erosion and sediment control plan shall not be approved until it is reviewed by a certified plan reviewer; (ii) inspections of land-disturbing activities shall be conducted by a certified inspector; and (iii) a VESCP shall contain a certified program administrator, a certified plan reviewer, and a certified project inspector, who may be the same person.

B. Any person who holds a certificate of competence from the Board in the area of plan review, project inspection, or program administration that was attained prior to the adoption of the mandatory certification provisions of subsection A shall be deemed to satisfy the requirements of that area of certification.

C. Professionals registered in the Commonwealth pursuant to Article 1 (§ [54.1-400](#) et seq.) of Chapter 4 of Title 54.1 or a professional soil scientist as defined in § [54.12200](#) shall be deemed to have met the provisions of this section for the purposes of renewals of certifications.

§ 62.1-44.15:54. Virginia Erosion and Sediment Control Program

A. Any locality that has chosen not to establish a Virginia Erosion and Stormwater Management Program (VESMP) pursuant to subdivision B 3 of § [62.1-44.15:27](#) shall administer a VESCP in accordance with this article; however, a town may enter into an agreement with a county to administer the town's VESCP pursuant to subsection C of § [62.1-44.15:27](#).

B. A VESCP authority may enter into agreements or contracts with soil and water conservation districts, adjacent localities, or other public or private entities to assist with carrying out the provisions of this article, including the review and determination of adequacy of erosion and sediment control plans submitted for land-disturbing activities on a unit or units of land as well as for monitoring, reports, inspections, and enforcement of such land-disturbing activities.

C. Any VESCP adopted by a county, city, or town shall be approved by the Board if it establishes by ordinance requirements that are consistent with this article and associated regulations.

D. Each approved VESCP operated by a county, city, or town shall include provisions for the coordination of the VESCP with flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

E. The Board shall conduct compliance reviews of VESCPs in accordance with subdivision (19) of § [62.1-44.15](#). The Board or Department also may require any locality that is a VESCP authority to furnish when requested any information as may be required to accomplish the purposes of this article.

F. Any VESCP authority that administers an erosion and sediment control program may charge applicants a reasonable fee to defray the cost of program administration. A VESCP authority shall hold a public hearing prior to establishing a schedule of fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VESCP authority's expense involved.

G. Any locality that is authorized to administer a VESCP may adopt an ordinance or regulation where applicable providing that violations of any regulation or order of the Board, any provision of its program, any condition of a land-disturbance approval, or any provision of this article shall be subject to a civil penalty. The civil penalty for any one violation shall be not less than \$100 nor more than \$1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties that exceed a total of \$10,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties that exceed a total of \$10,000. The penalties set out in this subsection are also available to the Board in its enforcement actions.

§ 62.1-44.15:55. Regulated land-disturbing activities; submission and approval of erosion and sediment control plan

A. Except as provided in § [62.1-44.15:31](#) for a land-disturbing activity conducted by a state agency, federal entity, or other specified entity, no person shall engage in any land-disturbing activity until (i) he has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved and (ii) where Virginia Pollutant Discharge Elimination System permit coverage is required, the VESCP authority has obtained evidence of such permit coverage from the Department's online reporting system prior to issuing its land-disturbance approval. A VESCP authority may enter into an

agreement with an adjacent VESCP or VESMP authority regarding the administration of multijurisdictional projects specifying who shall be responsible for all or part of the administrative procedures. Should adjacent authorities fail to come to such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction. Where the land-disturbing activity results from the construction of a (a) single-family residence or (b) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP authority.

B. The VESCP authority shall review erosion and sediment control plans submitted to it and grant written approval within 60 days of the receipt of the plan if it determines that the plan meets the requirements of this article and the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and shall comply with the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate to the VESCP authority, as provided by § [62.1-44.15:52](#), who will be in charge of and responsible for carrying out the land-disturbing activity. However, any VESCP authority may waive the certificate requirement for an agreement in lieu of a plan. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate, as provided by § [62.1-44.15:52](#). Failure to provide the name of an individual holding a certificate prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this article.

When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify the modifications, terms, and conditions that will permit approval of the plan. If no action is taken by the VESCP authority within the time specified in this subsection, the plan shall be deemed approved and the person authorized to proceed with the proposed activity. The VESCP authority shall act on any erosion and sediment control plan that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.

C. The VESCP authority may require changes to an approved plan in the following cases:

1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or
2. Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article and associated regulations, are agreed to by the VESCP authority and the person responsible for carrying out the plan.

D. In order to prevent further erosion, a VESCP authority may require approval of an erosion and sediment control plan for any land identified by the VESCP authority as an erosion impact area.

E. For the purposes of subsections A and B, when land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.

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

1. Disturbance of a land area of less than 10,000 square feet in size or less than 2,500 square feet in an area designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.). However, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;
2. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;

3. Installation, maintenance, or repair of any individual service connection;
4. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
5. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
6. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2;
7. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally set forth by the Board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ [10.1-1100](#) et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of § [10.1-1163](#);
8. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
9. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto;
10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VESMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsection A is required within 30 days of commencing the land-disturbing activity;
11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity; and
12. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

§ 62.1-44.15:55.1. Department review of erosion and sediment control plans for solar projects

A. Any locality that does not operate a regulated MS4 and for which the Department did not administer a VSMP as of July 1, 2020, shall notify the Department if it decides to have the Department provide the locality with (i) review of the erosion and sediment control plan required by subsection A of § [62.1-44.15:55](#) and (ii) a recommendation on the plan's compliance with the requirements of this article and the Board's regulations, for any solar project and its associated infrastructure with a rated electrical generation capacity exceeding five megawatts.

B. The VESCP authority for a locality that notifies the Department pursuant to subsection A shall, within five days of receiving an erosion and sediment control plan, forward such plan to the Department for review. If a plan forwarded to the Department is incomplete, the Department shall return the plan to the VESCP authority immediately and the application process shall start over. If a plan forwarded to the Department is complete, the Department shall review it for compliance with the requirements of this article and the Board's regulations and provide a recommendation to the VESCP authority. The VESCP authority shall then (i) grant written approval of the plan or (ii) provide written notice of disapproval of the plan in accordance with subsection B of § [62.1-44.15:55](#).

C. The VESCP authority for a locality that notifies the Department pursuant to subsection A shall, within five days of receiving any resubmittal of a previously disapproved erosion and sediment control plan, forward such resubmitted plan to the Department. The Department shall review a resubmittal of a previously disapproved

erosion and sediment control plan for compliance with the requirements of this article and the Board's regulations and provide a recommendation to the VESCP authority. The VESCP authority shall then (i) grant written approval of the plan or (ii) provide written notice of disapproval of the plan in accordance with subsection B of § [62.1-44.15:55](#).

D. The Department shall adopt a fee schedule and charge fees for conducting reviews pursuant to this section. The fees shall be charged to applicants and not to any VESCP authority. Such fees shall be remitted to the State Treasurer for deposit in the Fund established by subsection E. The amount of the fees shall be set at an amount representing no less than 60 percent, but not to exceed 62 percent, of the administrative and other costs to the Department of conducting such reviews.

E. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Erosion and Sediment Control Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys collected by the Department pursuant to this section and all other funds appropriated for such purpose and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of carrying out the Department's responsibilities pursuant to this section. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

An accounting of moneys received by and distributed from the Fund shall be kept by the State Comptroller.

§ 62.1-44.15:56.1. Department acceptance of plans in lieu of plan review

A. Notwithstanding any other provision of this article, the Department, when administering a VESCP pursuant to Article 2.4 (§ [62.1-44.15:51](#) et seq.), may choose to accept a set of plans and supporting calculations for any land-disturbing activity determined to be de minimis using a risk-based approach established by the Board.

B. The Department is authorized to accept such plans and supporting calculations in satisfaction of the requirement of this article that it retain a certified plan reviewer or conduct a plan review. This section shall not excuse any applicable performance bond requirement pursuant to § [62.1-44.15:57](#).

§ 62.1-44.15:57. Approved plan required for issuance of grading, building, or other permits; security for performance

Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities regulated under this article shall not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan, certification that the plan will be followed, and evidence of Virginia Pollutant Discharge Elimination System permit coverage where it is required. Prior to issuance of any permit, the agency may also require an applicant to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the agency, to ensure that measures could be taken by the agency at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action that may be required of him by the approved plan as a result of his land-disturbing activity. The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation, which shall not exceed 25 percent of the estimated cost of the conservation action. If the agency takes such conservation action upon such failure by the permittee, the agency may collect from the permittee the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the achievement of adequate stabilization of the land-disturbing activity in any project or section thereof, the bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated based upon

the percentage of stabilization accomplished in the project or section thereof. These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

§ 62.1-44.15:58. Monitoring, reports, and inspections

A. The VESCP authority (i) shall provide for periodic inspections of the land-disturbing activity and require that an individual holding a certificate, as provided by § [62.1-44.15:52](#), will be in charge of and responsible for carrying out the land-disturbing activity and (ii) may require monitoring and reports from the person responsible for carrying out the erosion and sediment control plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. However, any VESCP authority may waive the certificate requirement for an agreement in lieu of a plan. The owner shall be given notice of the inspection. When the VESCP authority or the Board determines that there is a failure to comply with the conditions of land-disturbance approval or to obtain an approved plan or a land-disturbance approval prior to commencing land-disturbing activity, the VESCP authority or the Board may serve a notice to comply upon the owner or person responsible for carrying out the land-disturbing activity. Such notice to comply shall be served by delivery by facsimile, e-mail, or other technology; by mailing with confirmation of delivery to the address specified in the plan or land-disturbance application, if available, or in the land records of the locality; or by delivery at the site to a person previously identified to the VESCP authority by the owner. The notice to comply shall specify the measures needed to comply with the land-disturbance approval conditions or shall identify the plan approval or land-disturbance approval needed to comply with this article and shall specify a reasonable time within which such measures shall be completed. In any instance in which a required land-disturbance approval has not been obtained, the VESCP authority or the Board may require immediate compliance. In any other case, the VESCP authority or the Board may establish the time for compliance by taking into account the risk of damage to natural resources and other relevant factors. Notwithstanding any other provision in this subsection, a VESCP authority or the Board may count any days of noncompliance as days of violation should the VESCP authority or the Board take an enforcement action. The issuance of a notice to comply by the Board shall not be considered a case decision as defined in § [2.2-4001](#). Upon failure to comply within the time specified, any plan approval or land-disturbance approval may be revoked and the VESCP authority or the Board may pursue enforcement as provided by § [62.1-44.15:63](#).

B. Notwithstanding the provisions of subsection A, a VESCP authority is authorized to enter into agreements or contracts with districts, adjacent localities, or other public or private entities to assist with the responsibilities of this article, including but not limited to the review and determination of adequacy of erosion and sediment control plans submitted for land-disturbing activities as well as monitoring, reports, inspections, and enforcement.

C. Upon issuance of an inspection report denoting a violation of this section or § [62.1-44.15:55](#), in conjunction with or subsequent to a notice to comply as specified in subsection A, a VESCP authority or the Board may issue a stop work order requiring that all or part of the land-disturbing activities on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved plan as provided in § [62.1-44.15:55](#), requiring that all of the land-disturbing activities be stopped until an approved plan is obtained. When such an order is issued by the Board, it shall be issued in accordance with the procedures of the Administrative Process Act (§ [2.2-4000](#) et seq.). Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved erosion and sediment control plan, such a stop work order may be issued whether or not the alleged violator has been issued a notice to comply as specified in subsection A. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply. The order for noncompliance with a plan shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the VESCP authority, the Board, or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. The stop work order for disturbance without an approved plan shall be served upon the owner by mailing with confirmation of delivery to the address

specified in the land records of the locality, shall be posted on the site where the disturbance is occurring, and shall remain in effect until such time as plan approvals are secured, except in such situations where an agricultural exemption applies. If the alleged violator has not obtained an approved erosion and sediment control plan within seven days from the date of service of the stop work order, the Board or the chief administrative officer or his designee on behalf of the VESCP authority 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 an approved erosion and sediment control plan has been obtained. The subsequent order shall be served upon the owner by mailing with confirmation of delivery to the address specified in the plan or the land records of the locality in which the site is located. The owner may appeal the issuance of any order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. Any person violating or failing, neglecting, or refusing to obey an order issued by the Board or the chief administrative officer or his designee on behalf of the VESCP authority may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan, the order shall immediately be lifted. Nothing in this section shall prevent the Board or the chief administrative officer or his designee on behalf of the VESCP authority from taking any other action specified in § [62.1-44.15:63](#).

§ 62.1-44.15:58.1. Inspections; land-disturbing activities of natural gas pipelines; stop work instructions

A. The Department is authorized to conduct inspections of the land-disturbing activities of interstate and intrastate natural gas pipeline companies that have approved annual standards and specifications pursuant to § [62.1-44.15:55](#) as such land-disturbing activities relate to construction of any natural gas transmission pipeline equal to or greater than 24 inches inside diameter to determine (i) compliance with such annual standards and specifications, (ii) compliance with any site-specific plans, and (iii) if there have been or are likely to be adverse impacts to water quality as a result of such land-disturbing activities, including instances where (a) there has been a violation of any water quality standard adopted pursuant to the State Water Control Law (§ [62.1-44.2](#) et seq.), (b) sediment has been deposited in significant amounts in areas where those deposits are not contained by best management practices, (c) there are repeated instances of adverse impacts or likely adverse impacts within a 30-day period, or (d) there have been widespread and repeated instances of adverse impacts or likely impacts. When the Department determines that there has been a substantial adverse impact to water quality or that an imminent and substantial adverse impact to water quality is likely to occur as a result of such land-disturbing activities, the Department may issue a stop work instruction, without advance notice or hearing, requiring that all or part of such land-disturbing activities on the part of the site that caused the substantial adverse impacts to water quality or are likely to cause imminent and substantial adverse impacts to water quality be stopped until corrective measures specified in the stop work instruction have been completed and approved by the Department. Where substantial adverse impacts or likely adverse impacts are found on a repeated, frequent, and widespread basis, the Department may issue a stop work instruction for every work area in Virginia until the Department determines that any systemic cause that contributed to such occurrences has been corrected.

Such stop work instruction shall become effective upon service on the company by email or other technology agreed to in writing by the Department and the company, by mailing with confirmation of delivery to the address specified in the annual standards and specifications, if available, or by delivery at the site to a person previously identified to the Department by the company. Upon request by the company, the Director or his designee shall review such stop work instruction within 48 hours of issuance.

B. Within 10 business days of issuance of a stop work instruction, the Department shall promptly provide to such company an opportunity for an informal fact-finding proceeding concerning the stop work instruction and any review by the Director or his designee. Reasonable notice as to the time and place of the informal fact-finding proceeding shall be provided to such company. Within 10 business days of the informal fact-finding proceeding, the Department shall affirm, modify, amend, or cancel such stop work instruction. Upon written

documentation from the company of the completion and approval by the Department in writing of the corrective measures specified in the stop work instruction, the instruction shall be immediately lifted.

C. The company may appeal such stop work instruction or preliminary decision rendered by the Director or his designee to the circuit court of the jurisdiction wherein the land-disturbing activities subject to the stop work instruction occurred, or to another appropriate court, in accordance with the requirements of the Administrative Process Act (§ [2.2-4000](#) et seq.). Any person violating or failing, neglecting, or refusing to obey a stop work instruction issued by the Department may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy. Nothing in this section shall prevent the Board or the Department from taking any other action authorized by this chapter.

§ 62.1-44.15:59. Reporting

Each VESCP authority shall report to the Department, in a method such as an online reporting system and on a time schedule established by the Department, a listing of each land-disturbing activity for which a plan has been approved by the VESCP under this article.

§ 62.1-44.15:60. Right of entry

In addition to the Board's authority set forth in § [62.1-44.20](#), a locality serving as a VESCP authority or any duly authorized agent thereof may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this article.

In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, a VESCP authority may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions that are required by the conditions imposed by the VESCP authority on a land-disturbing activity when an owner, after proper notice, has failed to take acceptable action within the time specified.

§ 62.1-44.15:62. Judicial appeals

A. A final decision by a county, city, or town, when serving as a VESCP authority under this article, shall be subject to judicial review, provided that an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.

B. Final decisions of the Board shall be subject to judicial review in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

§ 62.1-44.15:63. Penalties, injunctions and other legal actions

A. Any person who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any order, notice, or requirement of the VESCP authority, any condition of a land-disturbance approval, or any provision of this article or associated regulation shall, upon a finding of an appropriate court, be assessed a civil penalty. If a locality serving as a VESCP authority has adopted a uniform schedule of civil penalties as permitted by subsection G of § [62.1-44.15:54](#), such assessment shall be in accordance with the schedule. The VESCP authority or the Board may issue a summons for collection of the civil penalty. In any trial for a scheduled violation, it shall be the burden of the Board or the VESCP authority to show the liability of the violator by a preponderance of the evidence. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies 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. Where the violator is the locality itself, or its agent, or where the Board is issuing the summons, the court shall direct the penalty to be paid into the state

treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to § [62.1-44.15:29.1](#).

B. The VESCP authority, the Board, or the owner of property that has sustained damage or which is in imminent danger of being damaged may apply to the circuit court in any jurisdiction wherein the land lies or other appropriate court to enjoin a violation or a threatened violation under § [62.1-44.15:55](#) or [62.1-44.15:58](#) without the necessity of showing that an adequate remedy at law does not exist; however, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the VESCP, the Board, and the VESCP authority that a violation of the VESCP has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the VESCP, the Board, nor the VESCP authority has taken corrective action within 15 days to eliminate the conditions that have caused, or create the probability of causing, damage to his property.

C. In addition to any civil penalties provided under this article, any person who violates any provision of this article may be liable to the VESCP authority or the Board, as appropriate, in a civil action for damages.

D. Without limiting the remedies that may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the VESCP authority wherein the land lies or the Board. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies and used pursuant to requirements of subsection A. Where the violator is the locality itself, or its agent, or where the penalties are assessed as the result of an enforcement action brought by the Board, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund (§ [62.1-44.15:29.1](#)).

E. With the consent of any person who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any order, notice, or requirement of the VESCP authority, any condition of a land-disturbance approval, or any provision of this article or associated regulations, the Board, the Director, or VESCP authority may provide, in an order issued by the Board or VESCP authority against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection D. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under subsection A or D.

F. Upon request of a VESCP authority, the attorney for the Commonwealth shall take legal action to enforce the provisions of this article. Upon request of the Board, the Attorney General shall take appropriate legal action on behalf of the Board to enforce the provisions of this article.

§ 62.1-44.15:64. Stop work orders by Board; civil penalties

A. An aggrieved owner of property sustaining pecuniary damage resulting from a violation of an approved erosion and sediment control plan or required land-disturbance approval, or from the conduct of land-disturbing activities commenced without an approved plan or required land-disturbance approval, may give written notice of the alleged violation to the VESCP authority and to the Board.

B. If the VESCP authority 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 property within 30 days following receipt of the notice from the aggrieved owner, the aggrieved owner may request that the Board conduct an investigation and, if necessary, require the violator to stop the alleged violation and abate the damage to his property.

C. If the Board's investigation of the complaint indicates that (i) the VESCP authority has not responded to the alleged violation as required by the VESCP, (ii) the VESCP authority has not responded to the alleged violation within 30 days from the date of the notice given pursuant to subsection A, and (iii) there is a violation and it is necessary to require the violator to cease the violation as requested by the aggrieved owner, then the Board shall give written notice to the VESCP authority that the Board intends to issue an order pursuant to subsection D.

D. If the VESCP authority has not instituted action to stop the violation and abate the damage to the aggrieved owner's property within 10 days following receipt of the notice from the Board, the Board is authorized to issue an order requiring the owner, person responsible for carrying out an approved erosion and sediment control plan, or person conducting the land-disturbing activities without an approved plan or required land-disturbance approval to cease all land-disturbing activities until the violation of the plan has ceased or an approved plan and required land-disturbance approval are obtained, as appropriate, and specified corrective measures have been completed. The Board also may immediately initiate a program review of the VESCP.

E. Such orders are to be issued in accordance with the procedures of the Administrative Process Act (§ [2.2-4000](#) et seq.), and they shall become effective upon service on the person by mailing with confirmation of delivery, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the Board. Any subsequent identical mail or notice that is sent by the Board may be sent by regular mail. However, if the Board finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, it may issue, without advance notice or hearing, an emergency order directing such person to cease all land-disturbing activities on the site immediately and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.

F. If a person who has been issued an order or emergency order is not complying with the terms thereof, the Board may institute a proceeding in the appropriate circuit court for an injunction, mandamus, or other appropriate remedy compelling the person to comply with such order.

G. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to subsection G shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. Any civil penalties assessed by a court shall be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund (§ [62.1-44.15:29.1](#)).

§ 62.1-44.15:65. Authorization for more stringent ordinances

A. As part of a VESCP, a locality is authorized to adopt more stringent soil erosion and sediment control ordinances than those necessary to ensure compliance with the Board's regulations, provided that the more stringent ordinances are based upon factual findings of local or regional comprehensive watershed management studies or findings developed through the implementation of a locally adopted watershed management study and are determined by the locality to be necessary to prevent any further degradation to water resources, to address total maximum daily load requirements, to protect exceptional state waters, or to address specific existing water pollution including nutrient and sediment loadings, stream channel erosion, depleted groundwater resources, or excessive localized flooding within the watershed and that prior to adopting more stringent ordinances, a public hearing is held. Notice of such hearing shall be given by publication once a week for two consecutive weeks in a newspaper of general circulation in the locality seeking to adopt the ordinance, with the first publication appearing no more than 14 days before the hearing. The VESCP authority shall report to the Board when more stringent erosion and sediment control ordinances are determined to be necessary pursuant to this section. This process shall not be required when a VESCP authority chooses to reduce the threshold for regulating land-disturbing activities to a smaller area of disturbed land pursuant to § [62.1-44.15:55](#). This section shall not be construed to authorize any VESCP authority to impose any more stringent ordinances for land-disturbance review and approval than those specified in § [62.1-44.15:55](#).

B. Any provisions of an erosion and sediment control program in existence before July 1, 2012, that contains more stringent provisions than this article shall be exempt from the analysis requirements of subsection A.

§ 62.1-44.15:66. No limitation on authority of Department of Energy

The provisions of this article shall not limit the powers or duties of the Department of Energy as they relate to mine reclamation under Chapters 10 (§ [45.2-1000](#) et seq.) and 12 (§ [45.2-1200](#) et seq.) of Title 45.2 or oil or gas exploration under the Virginia Gas and Oil Act (§ [45.2-1600](#) et seq.).

Virginia Erosion and Stormwater Management Regulation

Chapter 875

NOTE: This copy is up-to-date as of August 15, 2025. The most recent version can be found on the Virginia General Assembly's Legislative Information System website:

<https://law.lis.virginia.gov/admincodefull/title9/agency25/chapter875/>

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The above sections of the Virginia Erosion and Stormwater Management Regulation pertain to the content that is covered in the Erosion Certification Trainings. However, this is not a complete version of the regulation. For a complete version, please go to: <https://law.lis.virginia.gov/admincodefull/title9/agency25/chapter875/>

Part I Definitions and Applicability for Virginia Erosion and Stormwater Management Programs and Virginia Erosion and Sediment Control Programs

9VAC25-875-10. General.

For the purpose of applying this chapter, the words and terms shall have the meanings given to them in [9VAC25-875-20](#). The words and terms defined in Part II ([9VAC25-875-40](#) et seq.), Part III ([9VAC25-875-210](#) et seq.), Article 4 ([9VAC25-875-670](#) et seq.) of Part V ([9VAC25-875-470](#) et seq.), and Part VII ([9VAC25-875-850](#) et seq.) of this chapter are applicable only to the part in which they are defined.

9VAC25-875-20. Definitions.

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

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

"Adequate channel" means a channel that will convey the designated frequency storm event, neither overtopping the channel bank nor causing erosive damage to the channel bed or banks.

"Agreement in lieu of a plan" means a contract between the VESMP authority or the department acting as a VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of VESMA for the construction of a (i) single-family detached residential structure or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than 5.0%; such contract may be executed by the VESMP authority in lieu of a soil erosion control and stormwater management plan or by the department acting as a VSMP authority in lieu of a stormwater management plan.

"Applicant" means a person submitting a soil erosion control and stormwater management plan to a VESMP authority, or a stormwater management plan to the department when it is serving as a VSMP authority, for approval in order to obtain authorization to commence a land-disturbing activity.

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

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

2. "Proprietary best management practice" means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are privately owned and controlled and may be protected by trademark or patent or copyright.

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

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

"Certification" means the designation issued by the department, on behalf of the Commonwealth, to individuals who have completed department-approved training programs and met any additional eligibility requirements or in other ways demonstrated adequate knowledge and experience in accordance with the eligibility requirements of [9VAC25-875-410](#) related to the specified classifications ([9VAC25-875-400](#)) within the separate subject areas of ESC or SWM or both.

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

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

"Certified program administrator" means an employee or agent of a VESCP, VESMP, or VSMP authority who holds a certification from the department in the classification of program administrator.

"Channel" means a natural stream or manmade waterway.

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

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

"Classification" means the four specific certification designations assigned to the roles of program administrator, plan reviewer, inspector, and combined administrator within the areas of ESC, SWM, or both ESC and SWM for a dual classification.

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

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

"Combined administrator for ESC" means anyone who is responsible for performing the combined duties of a program administrator, plan reviewer, and inspector of a VESCP authority or the ESC component of a VESMP authority.

"Combined administrator for SWM" means anyone who is responsible for performing the combined duties of a program administrator, plan reviewer, and inspector of a VSMP authority or the SWM component of a VESMP authority.

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

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

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

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

"Controversial permit" means a water permitting action for which a public hearing has been granted pursuant to [9VAC25-875-1120](#) and [9VAC25-875-1130](#).

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

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

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

"Department" means the Department of Environmental Quality.

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

"Director" means the Director of the Department of Environmental Quality or the director's designee.

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

"Discharge of a pollutant" means:

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

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

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

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

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

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

"Dual combined administrator for ESC and SWM" means anyone who is responsible for performing the combined duties of a program administrator, plan reviewer, and inspector of a VESMP authority.

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

"Environmental Protection Agency" or "EPA" means the U.S. Environmental Protection Agency.

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

"Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program" or "ESCL" means Article 2.4 (§ [62.1-44.15:51](#) et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

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

"ESC" means erosion and sediment control.

"Farm building or structure" means the same as that term is defined in § [36-97](#) of the Code of Virginia and also includes any building or structure used for agritourism activity, as defined in § [3.2-6400](#) of the Code of Virginia, and any related impervious services, including roads, driveways, and parking areas.

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

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

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

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

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

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

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

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

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

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

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

"Inspector" means the individual who, as a representative of a VESCP authority, a VESMP authority, or a VSMP authority, is responsible for periodically examining the ESC, SWM, or both ESC and SWM activities and premises of a land-disturbing activity for compliance with the ESCL VESMA, and associated regulations as may be applicable.

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

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

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

"Land-disturbance approval" means an approval allowing a land-disturbing activity to commence issued by (i) a VESMP or VSMP authority after the requirements of § [62.1-44.15:34](#) of the Code of Virginia have been met or (ii) a VESCP authority after the requirements of § [62.1-44.15:55](#) of the Code of Virginia have been met.

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

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

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

"Locality" means a county, city, or town.

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

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

"Major modification" means the modification or amendment of an existing MS4 individual permit before its expiration that is not a minor modification as defined in this chapter.

"Manmade" means constructed by man.

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

"Minor modification" means, for the purposes of this chapter, minor modification or amendment of an existing permit before its expiration for the reasons listed at 40 CFR 122.63 and as specified in [9VAC25-875-1240](#).

"Minor modification" for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation, including changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Municipal separate storm sewer system" or "MS4" means the same as the term "municipal separate storm sewer" is defined in § [62.1-44.3](#) of the Code of Virginia.

"Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a management program covering the duration of a permit for a MS4 that includes a comprehensive planning process that involves public participation and intergovernmental coordination to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations and the VESMA and its attendant regulations, using management practices,

control techniques, and system, design, and engineering methods, and such other provisions that are appropriate.

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

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

"Nonerodible" means a material, for example, riprap, concrete, or plastic, that will not experience surface wear due to natural forces.

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

"Operator" means the owner or operator of any facility or activity subject to the VESMA and this chapter. In the context of stormwater associated with a large or small construction activity, "operator" means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other permit or VESMP authority permit conditions (i.e., the person is authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from an MS4, "operator" means the operator of the regulated MS4 system.

"Owner" means the same as that term is defined in § [62.1-44.3](#) of the Code of Virginia. For a regulated land-disturbing activity that does not require a permit, "owner" also means the owner of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

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

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

"Permit" means a VPDES permit issued by the department pursuant to § [62.1-44.15](#) of the Code of Virginia for stormwater discharges from a land-disturbing activity or MS4.

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

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

"Plan reviewer" means anyone who is responsible for reviewing and evaluating ESC, SWM, or ESM plans and supporting documents for approval by a VESCP authority in the area of ESC, a VSMP authority in the area of SWM, or a VESMP authority in the areas of both ESC and SWM.

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

"Point source" means any discernible, confined, and discrete conveyance including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill

leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

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

"Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (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 terms and purposes of this chapter.

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

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

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

"Program administrator" means the individual responsible for administering and enforcing the program of a VESCP authority in the area of ESC, the program of a VSMP authority in the area of SWM, or the program of a VESMP authority in the areas of both ESC and SWM.

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

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

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

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

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

"Rural Tidewater locality" means any locality that is (i) subject to the provisions of the Chesapeake Bay Preservation Act and (ii) eligible to join the Rural Coastal Virginia Community Enhancement Authority established by Chapter 76 (§ [15.2-7600](#) et seq.) of Title 15.2 of the Code of Virginia.

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

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

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

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

"Site" means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be considered part of a site.

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

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

"Small construction activity" means:

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

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

"Soil erosion control and stormwater management plan," "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.

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

"State" means the Commonwealth of Virginia.

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

"State project" means any land development project that is undertaken by any state agency, board, commission, authority, or any branch of state government, including state-supported institutions of higher learning.

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

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

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

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

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

1. "Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or other stormwater conveyance system constructed by man except for restored stormwater conveyance systems;
2. "Natural stormwater conveyance system" means the main channel of a natural stream and the flood-prone area adjacent to the main channel; or
3. "Restored stormwater conveyance system" means a stormwater conveyance system that has been designed and constructed using natural channel design concepts. "Restored stormwater conveyance system" includes the main channel and the flood-prone area adjacent to the main channel.

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

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

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

"Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VESMP or VSMP for construction activities shall identify and require the implementation of control measures and shall include or incorporate by reference an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

"Subdivision" means the same as defined in § [15.2-2201](#) of the Code of Virginia.

"Surface waters" means:

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

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the CWA, the final authority regarding the CWA jurisdiction remains with EPA.

"SWM" means stormwater management.

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

"Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading, and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

"TMDL Action Plan" means the scheduled steps of activities that the MS4 operator will take to address the assumptions and requirements of the TMDL wasteload allocation. TMDL action plans may be implemented in multiple phases over more than one permit cycle.

"Town" means an incorporated town.

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

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

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means a locality that is approved by the department to operate a Virginia Erosion and Sediment Control Program in accordance with Article 2.4 (§ [62.1-44.15:51](#) et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia. Only a locality for which the department administered a Virginia Stormwater Management Program as of July 1, 2017, is authorized to choose to operate a VESCP pursuant to Article 2.4 (§ [62.1-44.15:51](#) et seq. of the Code of

Virginia). A locality that has chosen not to establish a VESMP pursuant to subdivision B 3 of § [62.1-44.15:27](#) of the Code of Virginia is required to become a VESCP authority in accordance with the ESCL.

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

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

"Virginia Erosion and Stormwater Management Program authority" or "VESMP authority" means the department or a locality approved by the department to operate a VESMP. For state agency or federal entity land-disturbing activities and land-disturbing activities subject to approved standards and specifications, the department shall serve as the VESMP authority.

"Virginia Pollutant Discharge Elimination System permit" or "VPDES permit" means a document issued by the department pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

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

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

"Virginia Stormwater Management Program" or "VSMP" means a program established by the department pursuant to § [62.1-44.15:27.1](#) of the Code of Virginia on behalf of a locality on or after July 1, 2014, to manage the quality and quantity of runoff resulting from any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or more of land disturbance.

"Virginia Stormwater Management Program authority" or "VSMP authority" means the department when administering a VSMP on behalf of a locality that, pursuant to subdivision B 3 of § [62.1-44.15:27](#) of the Code of Virginia, has chosen not to adopt and administer a VESMP.

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

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

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

"Watershed" means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which water drains may be considered the single outlet for the watershed.

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

9VAC25-875-30. Applicability of incorporated by references based on the dates that they became effective.

Except as noted, when a regulation of the United States set forth in the Code of Federal Regulations (CFR) is referenced and incorporated in this chapter, that regulation shall be as it exists and has been published in the July 1, 2022, update; however, references to 40 CFR Part 136 are incorporated as published in the July 1, 2024, update.

Part III Virginia Erosion and Sediment Control Program

Article 1 Definitions, Purpose, and Applicability

9VAC25-875-210. Definitions.

For the purposes of this part only, the following words and terms have the following meanings unless the context clearly indicates otherwise:

"Act" means the Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program (ESCL), Article 2.4 (§ [62.1-44.15:51](#) et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Agreement in lieu of a plan" means a contract between the VESCP authority and the owner that specifies conservation measures that must be implemented in the construction of a (i) single-family detached residential structure or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than 5.0%; this contract may be executed by the VESCP authority in lieu of a formal site plan.

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

"Development" means a tract or parcel of land developed or to be developed as a single unit under single ownership or unified control that is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

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

"Owner" means the same as provided in § [62.1-44.3](#) of the Code of Virginia. For a land-disturbing activity that is regulated under the ESCL, "owner" also includes the owner 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.

9VAC25-875-220. Purpose.

The purpose of this part is to provide the framework for the administration, implementation, and enforcement of the Virginia Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program (ESCL). This part delineates the roles associated with a VESCP. This part also establishes the department's procedures for approving the administration of a VESCP authority and includes the department's oversight authority over a VESCP.

9VAC25-875-230. Applicability.

This part is applicable to:

1. Any local government that administers a VESCP;
2. The department that administers a VESCP; and
3. The department in its administrative oversight of VESCPs.

Article 2 Land-Disturbing Activities

9VAC25-875-240. Criteria for determining status of land-disturbing activity.

A. The program administrator shall determine the validity of a claim of exempt status by a property owner who disturbs 10,000 square feet or more or 2,500 square feet or more in all areas of jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations ([9VAC25-830](#)). As soon as a nonexempt status is determined, the requirements of the ESCL shall be immediately enforced.

B. Should a land-disturbing activity not begin during the 180-day period following approval of the erosion and sediment control plan or cease for more than 180 days, the VESCP authority may evaluate the existing approved erosion and sediment control plan to determine whether the plan still satisfies local and state erosion and sediment control criteria and to verify that all design factors are still valid. If the VESCP authority finds the previously filed plan to be inadequate, a modified plan shall be submitted and approved prior to the resumption of land-disturbing activity.

C. Shoreline erosion control projects are not subject to Part V ([9VAC25-875-470](#) et seq.) of this chapter. However, land-disturbing activity immediately outside the limits of the shoreline erosion project is subject to the ESCL and Part V of this chapter.

D. Whenever land-disturbing activity involves activity at a separate location, including borrow and disposal areas, the VESCP authority may either:

1. Consider the offsite activity as being part of the proposed land-disturbing activity; or
2. If the offsite activity is already covered by an approved erosion and sediment control plan, the VESCP authority may require the applicant to provide proof of the approval and to certify that the plan will be implemented in accordance with the ESCL and Part V of this chapter.

9VAC25-875-250. Regulated land-disturbing activities.

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

1. Land-disturbing activity that disturbs 10,000 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, and is not in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 ([9VAC25-875-540](#) et seq.) of Part V ([9VAC25-875-470](#) et seq.) of this chapter.
2. Land-disturbing activity that disturbs 2,500 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, and is in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 and Article 5 ([9VAC25-875-740](#) et seq.) of Part V of this chapter.

B. A locality may, by local ordinance adopted pursuant to § 62.1-44.15:65 of the Code of Virginia, adopt more stringent local requirements.

9VAC25-875-260. Land-disturbing activities in Chesapeake Bay Preservation Areas.

A. Localities subject to the Chesapeake Bay Preservation Act shall regulate runoff associated with land-disturbing activities in a Chesapeake Bay Preservation Area equal to or greater than 2,500 square feet but less than one acre in accordance with the following:

1. The technical criteria and program and administrative requirements set out in [9VAC25-875-740](#);
2. A local land disturbance approval, as applicable, shall be provided for the land-disturbing activity;
3. The locality shall regulate such land-disturbing activities in compliance with the:
 - a. Program requirements in [9VAC25-875-100](#);
 - b. Plan review requirements in [9VAC25-875-110](#) with the exception of subsection D of [9VAC25-875-110](#) or as allowed in subsection A of [9VAC25-875-750](#);
 - c. Long-term stormwater management facility requirements of [9VAC25-875-130](#);

- d. Inspection requirements of [9VAC25-875-140](#) with the exception of subdivisions A 3 and A 4 of [9VAC25-875-140](#);
- e. Enforcement components of [9VAC25-875-150](#);
- f. Hearing procedures in effect in the locality;
- g. Exception conditions of [9VAC25-875-170](#), excluding subsection A of [9VAC25-875-170](#), which is not applicable; and
- h. Reporting and recordkeeping requirements of [9VAC25-875-180](#) with the exception of subdivision B 3 of [9VAC25-875-180](#).

B. A locality subject to the Chesapeake Bay Preservation Act shall adopt an ordinance that incorporates the components of this section.

C. As authorized by § [62.1-44.15:28](#) of the Code of Virginia, a locality may collect a fee as specified in [9VAC25-875-1400](#).

9VAC25-875-270. State agency land-disturbing activities.

A. All state agency land-disturbing activities that are not exempt and that have commenced without an approved erosion and sediment control plan shall immediately cease until the state agency has either (i) submitted standards and specifications for its conduct of land-disturbing activities that has been reviewed and approved by the department as being consistent with the ESCL and attendant regulations, or (ii) an erosion and sediment control plan has been submitted to and approved by the department. A formal "Notice of Plan Requirement" will be sent to the state agency under whose purview the project lies since that agency is responsible for compliance with the ESCL and this chapter.

B. Where inspections by department personnel reveal deficiencies in carrying out an approved plan, the person responsible for carrying out the plan, as well as the state agency responsible, will be issued a notice to comply with specific actions and the deadlines that shall be met. Failure to meet the prescribed deadlines can result in the issuance of a stop work order for all land-disturbing activities on the project at the discretion of the department. The stop work order will be lifted once the required erosion and sediment control measures are in place and inspected by department staff.

C. Whenever the Commonwealth or any of its agencies fails to comply within the time provided in an appropriate final order, the director of the department may petition for compliance as follows: For violations in the Natural and Historic Resources Secretariat, to the Secretary of Natural and Historic Resources; for violations in other secretariats, to the appropriate secretary; for violations in other state agencies, to the head of such agency. Where the petition does not achieve timely compliance, the director shall bring the matter to the Governor for resolution. The department may also pursue enforcement as provided by § [62.1-44.15:63](#) of the Code of Virginia.

D. Where compliance will require the appropriation of funds, the director shall cooperate with the appropriate agency head in seeking such an appropriation; where the director determines that an emergency exists, the director shall petition the Governor for funds from the Civil Contingency Fund or other appropriate source.

9VAC25-875-280. Activities not required to comply with the ESCL.

Notwithstanding any other provisions of the Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program (ESCL), the following activities are not required to comply with the ESCL unless otherwise required by federal law:

1. Disturbance of a land area of less than 10,000 square feet in size or less than 2,500 square feet in an area designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq. of the Code of Virginia). However, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;
2. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;

3. Installation, maintenance, or repair of any individual service connection;
4. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
5. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
6. Permitted surface or deep mining operations and projects or oil and gas operations and projects conducted pursuant to Title 45.2 of the Code of Virginia;
7. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally set forth by the board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ [10.1-1100](#) et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in subsection B of § [10.1-1163](#) of the Code of Virginia;
8. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
9. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Virginia Marine Resources Commission, or the U.S. Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to the ESCL and this chapter;
10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VESCP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of Article 2 ([9VAC25-875-540](#) et seq.) of Part V ([9VAC25-875-470](#) et seq.) of this chapter is required within 30 days of commencing the land-disturbing activity;
11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity; and
12. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

Article 3 Programs Operated by a VESCP Authority

9VAC25-875-290. Criteria for programs operated by a VESCP authority.

A. At a minimum, a VESCP shall provide that (i) an erosion and sediment control plan shall be reviewed and approved by a certified plan reviewer; (ii) inspections of land-disturbing activities shall be conducted by a certified inspector; and (iii) a VESCP shall contain a certified program administrator, a certified plan reviewer, and a certified project inspector, who may be the same person pursuant to § [62.1-44.15:53](#) of the Code of Virginia. The requirements for each position identified in this subsection are specified in Part IV ([9VAC25-875-380](#) et seq.) of this chapter.

B. A VESCP authority may enter into agreements or contracts with soil and water conservation districts, adjacent localities, or other public or private entities to assist with carrying out the provisions of this chapter, including the review and determination of adequacy of erosion and sediment control plans submitted for land-disturbing activities on units of land as well as for monitoring, reports, inspections, and enforcement of such land-disturbing activities.

C. The VESCP operated by a county, city, or town shall include provisions for the coordination of the VESCP with flood insurance, flood plain management, and other programs requiring compliance prior to authorizing

a land-disturbing activity in order to make the submission and approval of plans, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs pursuant to § [62.1-44-15:54](#) of the Code of Virginia.

D. A VESCP authority may enter into an agreement with an adjacent VESCP or VESMP authority regarding the administration of multijurisdictional projects specifying who shall be responsible for all or part of the administrative procedures. Should adjacent authorities fail to come to such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction.

E. Where the land-disturbing activity results from the construction of a (i) single-family detached residential structure or (ii) a farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than 5.0%, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP authority pursuant to § [62.1-44-15:55](#) A of the Code of Virginia. For a single-family detached residential structure with less than one acre of land disturbance, an agreement in lieu of a plan may be used when either (a) it is located within a common plan of development or sale with an approved stormwater pollution prevention plan consistent with [9VAC25-875-500](#) and a permit, if required; or (b) the single-family detached residential is located outside of a common plan of development or sale.

F. A VESCP authority may adopt more stringent soil erosion and sediment control ordinances pursuant to § [62.1-44.15:65](#) of the Code of Virginia.

G. Any VESCP authority that administers a VESCP may charge applicants a reasonable fee to defray the costs of program administration. A VESCP authority shall hold a public hearing prior to establishing a schedule of fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VESCP authority's expense involved.

9VAC25-875-300. Plan review requirements.

A. The VESCP authority shall review erosion and sediment control plans prepared in accordance with [9VAC25-875-550](#) that detail the criteria, techniques, and methods as defined in [9VAC25-875-560](#). Activities not required to comply with VESCL are defined in [9VAC25-875-280](#).

B. When the VESCP authority determines that the plan meets the minimum criteria, techniques, and methods as defined in [9VAC25-875-560](#), the VESCP authority shall review erosion and sediment control plans submitted and grant written approval within 60 days of the receipt of the plan.

C. When the VESCP authority determines a plan is inadequate, written notice stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify the modifications, terms, and conditions that are necessary for approval of the plan. If no action is taken by the VESCP authority within 45 days, the plan shall be deemed approved and the proposed activity authorized. The VESCP authority shall act on any erosion and sediment control plan that has been previously deemed inadequate within 45 days after receipt of a revised plan if deemed adequate.

D. For sites requiring coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities, the VESCP authority shall obtain evidence of such permit coverage from the department's online reporting system prior to issuing a land-disturbance approval.

E. The person responsible for carrying out the plan shall provide to the VESCP authority the name of an individual holding a certificate who will be in charge of and responsible for carrying out the land-disturbing activity. However, the VESCP authority may waive the Responsible Land Disturber Certificate requirement for an agreement in lieu of a plan in accordance with § [62.1-44.15:55](#) of the Code of Virginia.

F. The VESCP authority may require approval of an erosion and sediment control plan for any land identified as an erosion impact area in accordance with § [62.1-44.15.55](#) of the Code of Virginia.

9VAC25-875-310. Plan review coordination with the department for solar projects.

A. Any VESCP authority that does not operate a regulated municipal separate storm sewer system and for which the department did not administer a Virginia Stormwater Management Program as of July 1, 2020, shall notify the department if it decides to have the department provide the VESCP authority with (i) review of the erosion and sediment control plan required by § [62.1-44.15:55](#) A of the Code of Virginia and (ii) a recommendation on the plan's compliance with the requirements of Part V ([9VAC25-875-470](#) et seq.) of this chapter for any solar project and its associated infrastructure with a rated electrical generation capacity exceeding five megawatts.

B. Any VESCP authority that notifies the department pursuant to this section shall within five days of receiving the erosion and sediment control plan forward the plan to the department for review. If the plan forwarded to the department is incomplete, the department shall return the plan to the VESCP authority immediately, and the application process shall start over. If the plan forwarded to the department is complete, the department shall review the plan for compliance with the requirements of Part V of this chapter and provide a recommendation to the VESCP authority. The VESCP authority shall then (i) grant written approval of the plan or (ii) provide written notice of disapproval of the plan in accordance with § [62.1-44.15:55](#) B of the Code of Virginia.

C. Any VESCP authority that notifies the department pursuant to this section shall within five days of receiving the resubmittal of a previously disapproved erosion and sediment control plan forward the resubmitted plan to the department for review. The department shall review the resubmitted plan for compliance with the requirements of Part V of this chapter and provide a recommendation to the VESCP authority. The VESCP authority shall then (i) grant written approval of the plan or (ii) provide written notice of disapproval of the plan in accordance with § [62.1-44.15:55](#) B of the Code of Virginia.

9VAC25-875-320. Long-term maintenance of stormwater management facilities.

A. A recorded instrument shall be submitted to the VESCP authority in accordance with [9VAC25-875-535](#).

B. The department shall enforce permits and require compliance with its applicable regulations, including when serving as a VSMP authority in a locality that chose not to adopt a VESMP in accordance with § [62.1-44.15:27](#) of the Code of Virginia.

9VAC25-875-330. Inspections.

A. The VESCP authority (i) shall provide for periodic inspections of the land-disturbing activity and require that an individual holding a certificate, as provided by § [62.1-44.15:52](#) of the Code of Virginia, will be in charge of and responsible for carrying out the land-disturbing activity and (ii) may require monitoring and reporting from the person responsible for carrying out the erosion and sediment control plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. However, any VESCP authority may waive the certificate requirement for an agreement in lieu of a plan.

B. Periodic inspections by the VESCP authority are required on all projects. The VESCP authority shall either:

1. Provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds; or
2. Establish an alternative inspection program that ensures compliance with the approved erosion and sediment control plan. Any alternative inspection program shall be:
 - a. Approved by the department prior to implementation;
 - b. Established in writing;
 - c. Based on a system of priorities that, at a minimum, address the amount of disturbed project area, site conditions, and stage of construction; and
 - d. Documented by inspection records.

9VAC25-875-340. Enforcement.

A. Each VESCP authority shall incorporate components from subdivisions 1 and 2 of this subsection.

1. Informal and formal administrative enforcement procedures may include:
 - a. Right of entry in accordance § [62.1-44.15:60](#) of the Code of Virginia.
 - b. Verbal warnings and inspection reports;
 - c. Notices of corrective action;
 - d. Notices to comply in accordance with § [62.1-44.15:58](#) of the Code of Virginia;
 - e. Consent special orders and civil charges in accordance § [62.1-44.15:63](#) of the Code of Virginia;
 - f. Stop work orders in accordance with of § [62.1-44.15:58](#) of the Code of Virginia; and
 - g. Public notice and comment periods for proposed settlements and consent special orders.
2. Civil and judicial enforcement procedures may include:
 - a. Schedule of civil penalties in accordance with §§ [62.1-44.15:54](#) and [62.1-44.15:63](#) of the Code of Virginia; and
 - b. Injunctions in accordance §§ [62.1-44.15:58](#) and [62.1-44.15:63](#) of the Code of Virginia.

B. Each VESCP authority shall develop policies and procedures that outline the steps to be taken regarding enforcement actions under the ESCL and attendant regulations and local ordinances.

C. Penalties imposed in accordance with §§ [62.1-44.15:54](#) and [62.1-44.15:63](#) of the Code of Virginia may reflect the degree of harm caused by the violation and take into account the economic benefit to the violator from noncompliance.

D. Pursuant to § [62.1-44.15:25](#) of the Code of Virginia, authorization to administer a VESCP program shall not remove from the department the authority to enforce the provisions of the ESCL and attendant regulations.

E. The department may terminate permit coverage during the permit's term and require application for an individual permit or deny a permit renewal application for failure to comply with permit conditions or on the department's own initiative in accordance with the ESCL and this chapter.

F. Pursuant to § [62.1-44.15:63](#) A of the Code of Virginia, civil penalties recovered by a VESCP authority shall be paid into the treasury of the locality in which the violation occurred and are to be used solely for stormwater management capital projects.

9VAC25-875-350. Variances.

A variance to waive or modify any of the erosion and sediment control requirements of Article 2 ([9VAC25-874-540](#) et seq.) of Part V ([9VAC25-875-470](#) et seq.) of this chapter that are deemed inappropriate or too restrictive for site conditions may be requested from the VESCP authority under these conditions:

1. At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the authority shall be documented in the plan; or
2. During construction, the person responsible for implementing the approved plan may request a variance in writing from the authority. The authority shall respond in writing either approving or disapproving such a request. If the authority does not approve a variance within 10 days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.

9VAC25-875-360. VESCP reporting and record keeping requirements.

Each VESCP authority shall report to the department, at least monthly, in a method such as an online reporting system and on a time schedule established by the department, a listing of each land-disturbing activity for which a plan has been approved by the VESCP authority under the ESCL and this part.

Article 4 Review Procedures for VESCPs

9VAC25-875-370. Review and evaluation of VESCPs.

A. This section sets forth the criteria that will be used by the department to determine whether a locality operating a VESCP under authority of the ESCL, a "VESCP authority," satisfies minimum standards of effectiveness, as follows.

Each VESCP must contain an ordinance or other appropriate document adopted by the VESCP authority. Such document must be consistent with the ESCL and Part III ([9VAC25-875-210](#) et seq.) of this chapter, including the following criteria:

1. The document shall include or reference the definition of land-disturbing activity, including exemptions as well as any other significant terms, as necessary to produce an effective VESCP;
2. The document shall identify the VESCP authority and any soil and water conservation district, adjacent locality, or other public or private entities that the VESCP authority entered into agreements or contracts with to assist with carrying out the provisions of the ESCL and Part III of this chapter and must include the requirements and design standards to be used in the program;
3. The document shall include procedures for submission and approval of plans, issuance of permits, monitoring and inspections of land-disturbing activities. The position, agency, department, or other party responsible for conducting inspections shall be identified. The VESCP authority shall maintain, either onsite or in VESCP files, a copy of the approved plan and a record of inspections for each active land-disturbing activity;
4. Each VESCP operated by a county, city, or town shall include provisions for the integration of the VESCP with flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs; and
5. The VESCP authority must take appropriate enforcement actions, where authorized to do so, to achieve compliance with the program and maintain a record of enforcement actions for all active land-disturbing activities.

B. The department shall periodically conduct a comprehensive review and evaluation of each VESCP authority pursuant to subdivision (19) of § [62.1-44.15](#) of the Code of Virginia. The department will coordinate the review with its other program reviews for the same entity to avoid redundancy. The review and evaluation of a VESCP authority shall consist of the following: (i) consultation with the local program administrator or designee; (ii) review of the local ordinance and other applicable documents; (iii) review of plans approved by the VESCP authority; (iv) inspection of regulated activities; and (v) review of enforcement actions where authorized to do so. The department is also authorized to conduct a partial VESCP compliance review.

C. Each VESCP authority shall be reviewed and evaluated by the department for effectiveness in carrying out the ESCL and Part III of this chapter using the criteria in this section.

D. If deficiencies noted in the review will cause the VESCP to be inconsistent with the ESCL or this chapter, the department shall provide the VESCP authority with a copy of the department's decision that specifies the deficiencies, action needed to be taken, and an approved corrective action plan and schedule required to attain the minimum standard of effectiveness. If the VESCP authority fails to bring its program into compliance in accordance with the compliance schedule, then the department is authorized to (i) issue a special order to any locality imposing a civil penalty, not to exceed \$5,000 per violation with the maximum amount not to exceed \$50,000 per order for noncompliance with the state program, to be paid into the state treasury and deposited in the Stormwater Local Assistance Fund established in § [62.1-44.15:29.1](#) of the Code of Virginia or (ii) with the consent of the locality, provide in an order issued against the locality for the payment of civil charges for violations in lieu of civil penalties, in specific sums not to exceed the limit stated in this subsection. The Administrative Process Act (§ [2.2-4000](#) et seq. of the Code of Virginia) and Article 5 (§ [62.1-44.20](#) et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia shall govern the review activities and proceedings of

the department and the judicial review thereof. In lieu of issuing a special order or revoking the program, the department is authorized to take legal action against a VESCP authority to ensure compliance.

E. Review and evaluation of VESCPs shall be conducted according to a schedule adopted by the department in accordance with subdivision (19) of § [62.1-44.15](#) of the Code of Virginia.

Part IV Certification of VESCP, VSMP, and VESMP Personnel

9VAC25-875-380. Purpose.

The purpose of this part is to guide the issuance of certifications required by §§ [62.1-44.15:52](#) E and [62.1-44.15:53](#) of the Code of Virginia (ESCL) and § [62.1-44.15:30](#) of the Code of Virginia (VESMA).

9VAC25-875-390. Applicability.

This part is applicable to:

1. Every VESCP authority, VESMP authority, or VSMP authority that administers a VESCP, VESMP, or VSMP as may be applicable. Staff of a VESCP authority must be certified in accordance with §§ [62.1-44.15:52](#) E and [62.1-44.15:53](#) of the ESCL. Staff of a VESMP authority or VSMP authority must be certified in accordance with § [62.1-44.15:30](#) of the VESMA.
2. Anyone who is contracted by a VESCP authority, a VESMP authority, or a VSMP authority to perform any or all of the functions of that authority as may be applicable. This person will be subject to the same certification requirements as the authority.
3. Any state agency, federal entity, or public or private entity authorized under § [62.1-44.15:31](#) of the Code of Virginia to implement approved standards and specifications. Personnel implementing approved standards and specifications pursuant to subsection D.5 of § [62.1-44.15:31](#) of the Code of Virginia must obtain certifications or qualifications comparable to those required for VESMP personnel pursuant to subsection C of § [62.1-44.15:30](#) of the Code of Virginia.
4. Anyone voluntarily seeking certifications or certificates from the department for classifications described in [9VAC25-875-400](#).

9VAC25-875-400. Certificates and certifications.

A. Certifications shall be issued by the department to individuals who successfully complete the department-approved training program, which includes obtaining a passing score on the applicable certification examination or otherwise fulfilling the requirements of [9VAC25-875-410](#) for the following classifications:

1. Program administrator for ESC. This classification applies to individuals who administer the program in the area of ESC pursuant to this chapter. This certification is a requirement for any individual employed to perform the duties of a program administrator for ESC by a VESCP or VESMP authority, or an agent of a VESCP or VESMP authority. This certification also serves as the ESC component required for the dual program administrator certification.
2. Inspector for ESC. This classification applies to individuals who perform inspections of land-disturbing activities in the area of ESC pursuant to this chapter. This certification is a requirement for any individual employed as an inspector for ESC by a VESCP or VESMP authority, or an agent of a VESCP or VESMP authority. This certification also serves as the ESC component required for the dual inspector certification.
3. Plan reviewer for ESC. This classification applies to individuals who review plans in the area of ESC for approval by a VESCP or VESMP authority pursuant to this chapter. This certification is a requirement for any individual employed as a plan reviewer for ESC by a VESCP or VESMP authority, or an agent of a VESCP or VESMP authority. This certification also serves as the ESC component required for the dual plan reviewer certification.
4. Combined administrator for ESC. This classification applies to individuals who perform the combined duties of Program Administrator, Inspector, and Plan Reviewer in the area of ESC pursuant to this chapter. This certification is a requirement for any individual employed as a combined administrator for ESC by a

VESCP or VESMP authority, or an agent of a VESCP or VESMP authority. This certification also serves as the ESC component required for the dual combined administrator certification.

5. Program administrator for SWM. This classification applies to individuals who administer the program in the area of SWM pursuant to this chapter. This certification is a requirement for any individual employed to perform the duties of a program administrator for SWM by a VSMP or VESMP authority, or an agent of a VSMP or VESMP authority. This certification also serves as the SWM component required for the dual program certification.

6. Inspector for SWM. This classification applies to individuals who conduct inspections in the area of SWM pursuant to this chapter. This certification is a requirement for any individual employed to perform the duties of an inspector for SWM by a VSMP or VESMP authority, or an agent of a VSMP or VESMP authority. This certification also serves as the SWM component required for the dual inspector certification.

7. Plan reviewer for SWM. This classification applies to individuals who review plans in the area of SWM pursuant to this chapter. This certification is a requirement for any individual employed to perform the duties of a plan reviewer for SWM by a VSMP or VESMP authority, or an agent of a VSMP or VESMP authority. This certification also serves as the SWM component required for the dual plan reviewer certification.

8. Combined administrator for SWM. This classification applies to individuals who perform the combined duties of program administrator, inspector, and plan reviewer in the area of SWM pursuant to this chapter. This certification is a requirement for any individual employed to perform the duties of a combined administrator for SWM by a VSMP or VESMP authority, or an agent of a VSMP or VESMP authority. This certification also serves as the SWM component required for the dual combined administrator certification.

9. Dual program administrator. This classification applies to individuals who administer the program in the areas of ESC and SWM pursuant to this chapter. This certification satisfies the requirement for any individual employed as a dual program administrator for ESC and SWM by a VESMP authority, an agent of a VESMP authority, or for personnel implementing department-approved standards and specifications pursuant to § [62.1-44.15:31](#) of the Code of Virginia and attendant regulations.

10. Dual inspector. This classification applies to individuals who conduct inspections in the areas of ESC and SWM pursuant to this chapter. This certification satisfies the requirement for any individual employed as a dual inspector for ESC and SWM by a VESMP authority, an agent of a VESMP authority, or for personnel implementing department-approved standards and specifications pursuant to § [62.1-44.15:31](#) of the Code of Virginia and attendant regulations.

11. Dual plan reviewer. This classification applies to individuals who review plans in the areas of ESC and SWM for approval by a VESMP authority pursuant to this chapter. This certification satisfies the requirement for any individual employed as a dual plan reviewer for ESC and SWM by a VESMP authority, an agent of a VESMP authority, or for personnel implementing department-approved standards and specifications pursuant to § [62.1-44.15:31](#) of the Code of Virginia and attendant regulations.

12. Dual combined administrator. This classification applies to individuals who perform the combined duties of program administrator, inspector, and plan reviewer in the areas of ESC and SWM pursuant to this chapter. This certification satisfies the requirement for any individual employed as a dual combined administrator for ESC and SWM by a VESMP authority, an agent of a VESMP authority, or for personnel implementing department-approved standards and specifications pursuant to § [62.1-44.15:31](#) of the Code of Virginia and attendant regulations.

B. The classifications in subdivisions A 1 through A 8 of this section may be used to serve as the ESC or SWM components required for personnel implementing department-approved standards and specifications pursuant to § [62.1-44.15:31](#) of the Code of Virginia and attendant regulations.

C. A certificate shall be issued by the department for the responsible land disturber.

D. Any individual employed as a plan reviewer who is licensed as a professional engineer, architect, landscape architect, land surveyor pursuant to Article 1 (§ [54.1-400](#) et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia, or professional soil scientist as defined in Chapter 22 (§ [54.1-2200](#) et seq.) of Title 54.1 of the Code of Virginia shall qualify as a certified plan reviewer for ESC and will not require a certification from

the department. In lieu of an individual holding this department certification, such individual shall produce a current professional license or certification upon request of the department.

E. Any individual who holds a valid and unexpired certification issued by the department in the classification of ESC or SWM, or who obtains such certification, and who later successfully obtains an additional certification from the department in the parallel ESC or SWM classification may surrender both certifications to the department for issuance of a dual certification in both ESC and SWM. Such a request must be made while both of the ESC and SWM certifications obtained are valid and unexpired. The expiration date of the dual certification shall be three years from the date of expiration of the additional certification acquired.

9VAC25-875-410. Eligibility requirements.

A. Certification may be achieved by:

1. Obtaining a total of 800 hours of experience as an ESC, SWM, or a dual program administrator, plan reviewer, inspector, or combined administrator and obtaining a passing score on the certification examination administered by the department in the applicable ESC or SWM area; or both ESC and SWM for the dual certification; or
2. Completing a department-approved training program in the classifications of program administrator, plan reviewer, inspector, or combined administrator and, within one year of completing the training program, obtain a passing score on the certification examination administered by the department in the applicable ESC or SWM area, or both ESC and SWM for the dual certification.
 - a. Combined administrators must complete the training program for program administrator, inspector, and plan reviewer within the applicable area of ESC or SWM.
 - b. Dual combined administrators must complete the training program for program administrator, inspector, and plan reviewer within both areas of ESC and SWM.

B. Certification and recertification shall be valid for three years except as otherwise set out in [9VAC25-875-400](#) D or [9VAC25-875-460](#).

C. Recertification may be obtained for classifications outlined in [9VAC25-875-400](#) of this part prior to the expiration date of a certification by:

1. Completing continuing education contact hours in accordance with department guidance and paying the required fee for recertification;
2. Being a professional registered in the Commonwealth pursuant to Article 1 (§ [54.1-400](#) et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia or a professional soil scientist as defined in Chapter 22 (§ [54.1-2200](#) et seq.) of Title 54.1 of the Code of Virginia, and paying the required fee for recertification. Such professionals shall be deemed to satisfy the provisions of this subsection for ESC classifications in subdivisions A 1 through A 4 of [9VAC25-875-400](#). However, such professionals when in the classification of plan reviewer for ESC shall be exempt from the recertification requirements and fees of this part provided they maintain their professional license;
3. Being a professional registered in the Commonwealth pursuant to Article 1 (§ [54.1-400](#) et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia and paying the required fee for recertification. Such professionals shall be deemed to satisfy the provisions of this subsection for SWM and dual classifications in subdivisions A 5 through A 12 of [9VAC25-875-400](#);
4. Successfully completing a department-approved training program and paying the required fee for recertification; or
5. Obtaining a passing score on the recertification examination.

D. Responsible Land Disturber (RLD) Certificate may be obtained by completing a department-approved training program for RLDs for ESC.

1. The RLD Certificate and any renewal thereof shall be valid for three years.
2. Renewal of the RLD Certificate may be obtained by completing a department-approved training program for RLDs.

3. Being a professional registered in the Commonwealth pursuant to Article 1 (§ [54.1-400](#) et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia or a professional soil scientist as defined in Chapter 22 (§ [54.1-2200](#) et seq.) of Title 54.1 of the Code of Virginia shall be deemed to satisfy the provisions of this subsection for an RLD Certificate in subsection C of [9VAC25-875-400](#) or any renewal thereof.

9VAC25-875-420. Classification acknowledgment for the purposes of program compliance reviews.

For the purposes of VESCP or VESMP compliance reviews and evaluations, the certification requirements of §§ [62.1-44.15:53](#) and [62.1-44.15:30](#) of the Code of Virginia shall be deemed to have been met if the VESCP or VESMP authority has an individual enrolled in the department's ESC or SWM training programs set forth in [9VAC25-875-410](#) A 2 a and A 2 b for the necessary classifications and such individual obtains certification within one year of completing the necessary training programs.

9VAC25-875-430. Certification program fees.

- A. Certification, recertification, dual certification, and RLD Certificate issuance and reissuance fees shall be collected to cover the administrative cost for the certification program.
- B. A fee will also be charged to present education and training programs that support the certification program.
- C. Fees are nonrefundable, except as authorized by the department and shall not be prorated.

9VAC25-875-440. Examination.

- A. A department-approved examination shall be administered by the department.
- B. An applicant may take the certification examination for the desired certification after fulfilling the prerequisite experience requirement or completing a department-approved training program.
- C. An applicant who is unsuccessful in passing an examination will be allowed to pay the appropriate fee and retake the appropriate examination.
- D. A minimum passing score of 70% will be required on the appropriate certification examination.
- E. All applicants will be notified of the results within 60 days of the examination.

9VAC25-875-450. Reserved.

9VAC25-875-460. Discipline for certified personnel.

The department may suspend, revoke, or refuse to grant or renew the certification or certificate of any individual if the department, in an informal fact finding under § [2.2-4019](#) of the Code of Virginia, finds that:

- 1. The certification or certificate was obtained or renewed through fraud or misrepresentation;
- 2. The individual who holds a certification or certificate has violated or cooperated with others in violating any provision of this part;
- 3. The individual who holds a certification or certificate has not demonstrated reasonable care, judgment, or application of knowledge and ability in the performance of duties; or
- 4. The individual who holds a certification or certificate has made any material misrepresentation in the course of performing duties.

Part V Criteria and Requirements for Regulated Land-Disturbing Activities

Article 1 Administrative Criteria

9VAC25-875-470. Applicability.

- A. Land-disturbing activities that meet one of the criteria in this subsection are regulated as follows:
 - 1. Land-disturbing activity that disturbs 10,000 square feet or more, although a locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, not in an area of a locality

designated as a Chesapeake Bay Preservation Area, and not part of a common plan of development or sale, is subject to criteria defined in Article 2 ([9VAC25-875-540](#) et seq.) of this part.

2. Land-disturbing activity that disturbs 2,500 square feet or more, although a locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 and Article 5 ([9VAC25-875-740](#) et seq.) of this part, unless Article 4 ([9VAC25-875-670](#) et seq.) of this part is applicable, as determined in accordance with [9VAC25-875-480](#) and [9VAC25-875-490](#). For land-disturbing activities for single-family detached residential structures, Article 2 of this part and water quantity technical criteria, [9VAC25-875-600](#), shall apply to any land-disturbing activity that disturbs 2,500 square feet or more of land, and the locality also may require compliance with the water quality technical criteria, [9VAC25-875-580](#) and [9VAC25-875-590](#).

3. Land-disturbing activity that disturbs less than one acre, but is part of a larger common plan of development or sale that disturbs one acre or more, is subject to criteria defined in Article 2 and Article 3 of this part unless Article 4 of this part is applicable, as determined in accordance with [9VAC25-875-480](#) and [9VAC25-875-490](#).

4. Land-disturbing activity that disturbs one acre or more is subject to criteria defined in Article 2 and Article 3 of this part unless Article 4 of this part is applicable, as determined in accordance with [9VAC25-875-480](#) and [9VAC25-875-490](#).

B. A locality may, by local ordinance adopted pursuant to § [62.1-44.15:33](#) or [62.1-44.15:65](#) of the Code of Virginia, adopt more stringent local requirements.

9VAC25-875-480. Applicability of other laws and regulations; time limits on applicability of approved design criteria.

A. Nothing in this chapter shall be construed as limiting the applicability of other laws and regulations, including, the Clean Water Act, VESMA, ESCL, and the Chesapeake Bay Preservation Act, and all applicable regulations adopted in accordance with those laws, or the rights of other federal agencies, state agencies, or local governments to impose more stringent technical criteria or other requirements as allowed by law.

B. Land-disturbing activities that obtain an initial permit or commence land disturbance prior to July 1, 2014, shall be conducted in accordance with the technical criteria of Article 4 ([9VAC25-875-670](#) et seq.) of this part. Such projects shall remain subject to the technical criteria of Article 4 of this part for two additional permit cycles. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.

C. Land-disturbing activities that obtain an initial permit on or after July 1, 2014, shall be conducted in accordance with the technical criteria of Article 3 ([9VAC25-875-570](#) et seq.) of this part, except as provided for in [9VAC25-875-490](#). Land-disturbing activities conducted in accordance with the technical criteria of Article 3 of this part shall remain subject to the technical criteria of Article 3 of this part for two additional permit cycles. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.

D. Nothing in this section shall preclude an operator from constructing to a more stringent standard at the operator's discretion.

9VAC25-875-490. Grandfathering.

A. Any land-disturbing activity shall be considered grandfathered by the VESMP authority and shall be subject to the technical criteria of Article 4 ([9VAC25-875-670](#) et seq.) of this part provided:

1. A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012; (ii) provided a layout as defined in [9VAC25-875-670](#); (iii) will comply with the technical criteria of Article 4 of this part; and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge and such that there is no increase in the volume or rate of runoff;

2. A permit has not been issued prior to July 1, 2014;
3. Land disturbance did not commence prior to July 1, 2014; and
4. Land disturbance commenced prior to July 1, 2019.

B. Locality, state, and federal projects shall be considered grandfathered by the VESMP authority and shall be subject to the technical criteria of Article 4 of this part, provided:

1. There has been an obligation of locality, state, or federal funding, in whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 1, 2012;
2. A permit has not been issued prior to July 1, 2014;
3. Land disturbance did not commence prior to July 1, 2014; and
4. Land disturbance commenced prior to July 1, 2019.

C. Land disturbing activities that are grandfathered under subsection A or B of this section shall remain subject to the technical criteria of Article 4 of this part until construction is completed. To remain subject to the technical criteria of Article 4 of this part, subsequent modifications or amendments to a previously approved stormwater management plan may not result in an increase in the amount of phosphorus leaving each point of discharge or an increase in the volume or rate of runoff. Any modifications or amendments to a previously approved stormwater management plan that result in an increase in the amount of phosphorus leaving any point of discharge or an increase in the volume or rate of runoff, or additional land-disturbing activities not previously authorized, shall comply with the technical criteria in Article 2 ([9VAC25-875-540](#) et seq.), 3 ([9VAC25-875-570](#) et seq.), or 5 ([9VAC25-875-740](#) et seq.) of this part, as applicable.

D. In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of Article 4 of this part.

E. Nothing in this section shall preclude an operator from constructing to a more stringent standard at the operator's discretion.

9VAC25-875-500. Stormwater pollution prevention plan requirements.

A. A stormwater pollution prevention plan shall include an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to subsection E of this section.

B. An erosion and sediment control plan consistent with the requirements of [9VAC25-875-550](#) and [9VAC25-875-560](#) must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VESCP authority, VESMP authority, or the department.

C. A stormwater management plan consistent with the requirements of [9VAC25-875-510](#) must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VESMP authority or the department.

D. A pollution prevention plan that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describes control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences.

E. In addition to the requirements of subsections A through D of this section, if a specific wasteload allocation for a pollutant has been established in an approved TMDL and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the wasteload allocation.

F. The stormwater pollution prevention plan (SWPPP) 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:

1. Control stormwater volume and velocity within the site to minimize soil erosion;

2. Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;
3. Minimize the amount of soil exposed during construction activity;
4. Minimize the disturbance of steep slopes;
5. Minimize sediment discharges from the site. The design, installation, and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity, and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;
6. Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal, and maximize stormwater infiltration, unless infeasible;
7. Minimize soil compaction and, unless infeasible, preserve topsoil;
8. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the VESMP authority or the department as the VSMP authority. In arid, semi-arid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the VESMP authority or department; and
9. Utilize outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.

G. The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP. The SWPPP must be maintained at a central location on site. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site.

9VAC25-875-510. Stormwater management plan requirements.

A. A stormwater management plan shall be developed and submitted to the VESMP authority or the department as the VSMP authority. The stormwater management plan shall be implemented as approved or modified by the VESMP authority or department and shall be developed in accordance with the following:

1. A stormwater management plan for a land-disturbing activity shall apply the stormwater management technical criteria set forth in this part to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments, including those developed under subsequent owners, shall not be considered separate land-disturbing activities.
2. A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.

B. A complete stormwater management plan shall include the following elements:

1. Information on the type of and location of stormwater discharges, information on the features to which stormwater is being discharged including surface waters or karst features if present, and predevelopment and post-development drainage areas;
2. Contact information including the name, address, telephone number, and email address of the owner and the tax reference number and parcel number of the property or properties affected;
3. A narrative that includes a description of current site conditions and final site conditions or if allowed by the VESMP authority or department, the information provided and documented during the review process that addresses the current and final site conditions;
4. A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
5. Information on the proposed stormwater management facilities, including (i) detailed narrative on the conversion to a long-term stormwater management facility if the facility was used as a temporary ESC

measure; (ii) the type of facilities; (iii) location, including geographic coordinates; (iv) acres treated; and (v) the surface waters or karst features into which the facility will discharge;

6. Hydrologic and hydraulic computations, including runoff characteristics;

7. Documentation and calculations verifying compliance with the water quality and quantity requirements of this chapter;

8. A map of the site that depicts the topography of the site and includes:

- 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; and
- h. Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including planned locations of utilities, roads, and easements;

9. If an operator intends to meet the requirements established in [9VAC25-875-580](#) or [9VAC25-875-600](#) through the use of offsite compliance options, where applicable, then a letter of availability from the offsite provider must be included; and

10. If payment of a fee is required with the stormwater management plan submission to the VESMP authority or the department, the fee in accordance with Part VIII ([9VAC25-875-1290](#) et seq.) of this chapter must have been submitted.

C. All final plan elements, specifications, or calculations of the stormwater management plans whose preparation requires a license under Chapter 4 (§ [54.1-400](#) et seq.) or 22 (§ [54.1-2200](#) et seq.) of Title 54.1 of the Code of Virginia shall be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth of Virginia. Nothing in this subsection shall authorize any person to engage in practice outside that person's area of professional competence.

9VAC25-875-520. Pollution prevention plans.

A. A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary. The pollution prevention plan shall detail the design, installation, implementation, and maintenance of effective pollution prevention measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
2. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and
3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

B. The pollution prevention plan shall include effective best management practices to prohibit the following discharges in accordance with 40 CFR 450.21(e):

1. Wastewater from washout of concrete, unless managed by an appropriate control;

2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
4. Soaps or solvents used in vehicle and equipment washing.

C. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls in accordance with 40 CFR 450.21(c).

9VAC25-875-530. Applying for permit coverage.

A. The operator must submit a complete and accurate registration statement in accordance with the General VPDES Permit for Discharges of Stormwater from Construction Activities ([9VAC25-880](#)) if such statement is required, on the official department form to the VESMP or department as the VSMP authority in order to apply for permit coverage. The registration statement must be signed by the operator in accordance with [9VAC25-875-940](#). In accordance with § [62.1-44.15:28](#) of the Code of Virginia, no registration statement is required for coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities (Construction General Permit) for a small construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale.

B. A person shall not conduct any land-disturbing activity until (i) the person has submitted to the appropriate VESMP authority or the department as the VSMP authority an application that includes a permit registration statement, if required, an ESM plan or an executed agreement in lieu of a plan, if required, and (ii) the VESMP authority or department has issued its land-disturbance approval. For a single family detached residential structure with less than one acre of land disturbance, an agreement in lieu of a plan may be used when either (a) it is located within a common plan of development or sale with an approved stormwater pollution prevention plan consistent with [9VAC25-875-500](#) and a permit, if required; or (b) the single-family detached residential is located outside of a common plan of development or sale.

C. In addition, as a prerequisite to engaging in an approved land-disturbing activity, the name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber Certificate pursuant to § [62.1-44.15:30](#) of the Code of Virginia shall be submitted to the VESMP authority or department.

D. Any VESMP authority or the department as the VSMP authority may waive the Responsible Land Disturber Certificate requirement for an agreement in lieu of a plan; however, if a violation occurs during the land-disturbing activity, then the owner shall correct the violation and provide the name of the individual holding a Responsible Land Disturber Certificate as provided by § 62.1-14:30 of the Code of Virginia. Failure to provide the name of an individual holding a Responsible Land Disturber Certificate prior to engaging in land-disturbing activities may result in revocation of the land-disturbance approval and shall subject the owner to the penalties provided in the VESMA.

9VAC25-875-535. Long-term maintenance of stormwater management facilities.

A. The operator shall submit a construction record drawing for permanent stormwater management facilities to the VESMP or VSMP authority based on the locality where the land-disturbing activity will occur. The record drawing shall contain a statement signed by a professional registered in the Commonwealth of Virginia pursuant to Chapter 4 (§ [54.1-400](#) et seq.) of Title 54.1 of the Code of Virginia, stating that to the best of the professional's knowledge, the construction record drawing shows all adjustments and revisions to the stormwater management plan made during construction and serve as a permanent record of the actual location of all constructed elements.

B. The provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality or quantity of runoff is required. Such requirements shall be set forth in an instrument recorded in the local land records prior to permit termination or earlier as required by the authority and shall at a minimum:

1. Be submitted to the authority for review and approval prior to the approval of the stormwater management plan;
2. Be stated to run with the land;

3. Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
4. Provide for inspections and maintenance and the submission of inspection and maintenance reports to the VESCP, VSMP, or VESMP authority; and
5. Be enforceable by all appropriate governmental parties.

C. At the discretion of the VESMP authority, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the authority that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the authority.

Article 2 Soil Erosion Requirements

9VAC25-875-540. Applicability.

A. This article sets forth minimum standards for the effective control of soil erosion, sediment deposition, and nonagricultural runoff.

B. In accordance with Item 360 I1 of Chapter 3 of the 2012 Acts of Assembly, Special Session I, public institutions of higher education, including community colleges, colleges, and universities, shall be subject to project review and compliance for state erosion and sediment control requirements by the VESCP or VESMP authority of the locality within which the land-disturbing activity is located, unless such institution submits standards and specifications to the department in accordance with § [62.1-44.15:31](#) of the Code of Virginia.

9VAC25-875-550. Erosion and sediment control plan requirements.

A. An erosion and sediment control plan shall be filed for a development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit of land will be so treated to achieve the conservation objectives and minimum standards in [9VAC25-875-560](#). The erosion and sediment control plan may include:

1. Appropriate maps;
2. An appropriate soil and water plan inventory and management information with needed interpretations; and
3. A record of decisions contributing to conservation treatment.

B. The person responsible for carrying out the plan shall provide the name of an individual holding a certificate who will be in charge of and responsible for carrying out the land-disturbing activity to the VESCP or VESMP authority. However, the VESCP or VESMP authority may waive the Responsible Land Disturber Certificate requirement for an agreement in lieu of a plan in accordance with § [62.1-44.15:34](#) or [62.1-44.15:55](#) of the Code of Virginia.

C. If individual lots or sections in a residential development are being developed by different property owners, all land-disturbing activities related to the building construction shall be covered by an erosion and sediment control plan or an agreement in lieu of a plan signed by the property owner.

D. Land-disturbing activity of less than 10,000 square feet on individual lots in a residential development shall not be considered exempt from the provisions of the VESMA, ESCL, or this chapter if the total land-disturbing activity in the development is equal to or greater than 10,000 square feet.

E. All erosion and sediment control structures and systems shall be maintained, inspected, and repaired as needed to ensure continued performance of intended function. A statement describing the maintenance responsibilities of the individual responsible for carrying out the land-disturbing activity shall be included in the approved erosion and sediment control plan.

9VAC25-875-560. Erosion and sediment control criteria, techniques, and methods: minimum standards.

A. An erosion and sediment control plan consistent with the following criteria, techniques, and methods shall be submitted to the VESMP authority or VESCP authority for review and approval:

1. Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.
2. During construction of the project, soil stockpiles and borrow areas shall be stabilized or protected with sediment trapping measures. The applicant is responsible for the temporary protection and permanent stabilization of all soil stockpiles on site as well as borrow areas and soil intentionally transported from the project site.
3. A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform, is mature enough to survive, and will inhibit erosion.
4. Sediment basins and traps, perimeter dikes, sediment barriers, and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place.
5. Stabilization measures shall be applied to earthen structures such as dams, dikes, and diversions immediately after installation.
6. Sediment traps and sediment basins shall be designed and constructed based upon the total drainage area to be served by the trap or basin.
 - a. The minimum storage capacity of a sediment trap shall be 134 cubic yards per acre of drainage area and the trap shall only control drainage areas less than three acres.
 - b. Surface runoff from disturbed areas that is comprised of flow from drainage areas greater than or equal to three acres shall be controlled by a sediment basin. The minimum storage capacity of a sediment basin shall be 134 cubic yards per acre of drainage area. The outfall system shall, at a minimum, maintain the structural integrity of the basin during a 25-year storm of 24-hour duration. Runoff coefficients used in runoff calculations shall correspond to a bare earth condition or those conditions expected to exist while the sediment basin is utilized.
7. Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Slopes that are found to be eroding excessively within one year of permanent stabilization shall be provided with additional slope stabilizing measures until the problem is corrected.
8. Concentrated runoff shall not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume, or slope drain structure.
9. Whenever water seeps from a slope face, adequate drainage or other protection shall be provided.
10. All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.
11. Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.
12. When work in a live watercourse is performed, precautions shall be taken to minimize encroachment, control sediment transport, and stabilize the work area to the greatest extent possible during construction. Nonerodible material shall be used for the construction of causeways and cofferdams. Earthen fill may be used for these structures if armored by nonerodible cover materials.
13. When a live watercourse must be crossed by construction vehicles more than twice in any six-month period, a temporary vehicular stream crossing constructed of nonerodible material shall be provided.

14. All applicable federal, state, and local requirements pertaining to working in or crossing live watercourses shall be met.
15. The bed and banks of a watercourse shall be stabilized immediately after work in the watercourse is completed.
16. Underground utility lines shall be installed in accordance with the following standards in addition to other applicable criteria:
- a. No more than 500 linear feet of trench may be opened at one time.
 - b. Excavated material shall be placed on the uphill side of trenches.
 - c. Effluent from dewatering operations shall be filtered or passed through an approved sediment trapping device, or both and discharged in a manner that does not adversely affect flowing streams or off-site property.
 - d. Material used for backfilling trenches shall be properly compacted in order to minimize erosion and promote stabilization.
 - e. Restabilization shall be accomplished in accordance with this chapter.
 - f. Applicable safety requirements shall be complied with.
17. Where construction vehicle access routes intersect paved or public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a paved or public road surface, the road surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual development lots as well as to larger land-disturbing activities.
18. All temporary erosion and sediment control measures shall be removed within 30 days after final site stabilization or after the temporary measures are no longer needed, unless otherwise authorized by the VESCP or VESMP authority. Trapped sediment and the disturbed soil areas resulting from the disposition of temporary measures shall be permanently stabilized to prevent further erosion and sedimentation.
19. Properties and waterways downstream from development sites shall be protected from sediment deposition, erosion, and damage due to increases in volume, velocity, and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour duration in accordance with the following standards and criteria. Stream restoration and relocation projects that incorporate natural channel design concepts are not manmade channels and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels:
- a. Concentrated stormwater runoff leaving a development site shall be discharged directly into an adequate natural or manmade receiving channel, pipe, or storm sewer system. For those sites where runoff is discharged into a pipe or pipe system, downstream stability analyses at the outfall of the pipe or pipe system shall be performed.
 - b. Adequacy of all channels and pipes shall be verified in the following manner:
 - (1) The applicant shall demonstrate that the total drainage area to the point of analysis within the channel is 100 times greater than the contributing drainage area of the project in question; or
 - (2) (a) Natural channels shall be analyzed by the use of a two-year storm to verify that stormwater will not overtop channel banks nor cause erosion of channel bed or banks;
 - (b) All previously constructed manmade channels shall be analyzed by the use of a 10-year storm to verify that stormwater will not overtop the stormwater's banks and by the use of a two-year storm to demonstrate that stormwater will not cause erosion of channel bed or banks; and
 - (c) Pipes and storm sewer systems shall be analyzed by the use of a 10-year storm to verify that stormwater will be contained within the pipe or system.
 - c. If existing natural receiving channels or previously constructed manmade channels or pipes are not adequate, the applicant shall:

- (1) Improve the channels to a condition where a 10-year storm will not overtop the banks and a two-year storm will not cause erosion to the channel, the bed, or the banks;
 - (2) Improve the pipe or pipe system to a condition where the 10-year storm is contained within the appurtenances;
 - (3) Develop a site design that will not cause the predevelopment peak runoff rate from a two-year storm to increase when runoff outfalls into a natural channel or will not cause the predevelopment peak runoff rate from a 10-year storm to increase when runoff outfalls into a manmade channel; or
 - (4) Provide a combination of channel improvement, stormwater detention, or other measures that is satisfactory to the VESCP or VESMP authority to prevent downstream erosion.
- d. The applicant shall provide evidence of permission to make the improvements.
- e. All hydrologic analyses shall be based on the existing watershed characteristics and the ultimate development condition of the subject project.
- f. If the applicant chooses an option that includes stormwater detention, the applicant shall obtain approval from the VESCP or VESMP authority for a plan for maintenance of the detention facilities. The plan shall set forth the maintenance requirements of the facility and the person responsible for performing the maintenance.
- g. Outfall from a detention facility shall be discharged to a receiving channel, and energy dissipators shall be placed at the outfall of all detention facilities as necessary to provide a stabilized transition from the facility to the receiving channel.
- h. All onsite channels must be verified to be adequate.
- i. Increased volumes of sheet flows that may cause erosion or sedimentation on adjacent property shall be diverted to a stable outlet, adequate channel, pipe, or pipe system or to a detention facility.
- j. In applying these stormwater management criteria, individual lots or parcels in a residential, commercial, or industrial development shall not be considered to be separate development projects. Instead, the development as a whole shall be considered to be a single development project. Hydrologic parameters that reflect the ultimate development condition shall be used in all engineering calculations.
- k. All measures used to protect properties and waterways shall be employed in a manner that minimizes impacts on the physical, chemical, and biological integrity of rivers, streams, and other waters of the state.
- l. Any plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or manmade channels shall satisfy the flow rate capacity and velocity requirements for natural or manmade channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming the site was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when the site was in a good forested condition divided by the runoff volume from the site in the site's proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels as defined in any regulations promulgated pursuant to § [62.1-44.15:28](#) of the Code of Virginia (VESMA) or § [62.1-44.15:54](#) or [62.1-44.15:65](#) of the Code of Virginia (ESCL).
- m. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of § [62.1-44.15:52](#) A of the Code of Virginia (ESCL) and this subdivision 19 shall be satisfied by compliance with water quantity requirements in the VESMA and attendant regulations, unless such land-disturbing activities (i) are in accordance with provisions for time limits on applicability of approved design criteria in [9VAC25-875-480](#) or grandfathering in [9VAC25-875-490](#), in which case the flow rate capacity and velocity requirements of § [62.1-44.15:52](#) A of the Code of Virginia (ESCL) shall apply; or (ii) are exempt pursuant to § [62.1-44.15:34](#) G 2 of the Code of Virginia (VESMA).

n. Compliance with the water quantity minimum standards set out in [9VAC25-875-600](#) shall be deemed to satisfy the requirements of this subdivision 19.

B. All land-disturbing activities shall be conducted in a manner that is consistent with the applicable requirements of subsection A of this section.

Article 3 Water Quantity and Water Quality Technical Criteria

9VAC25-875-570. Applicability.

In accordance with the board's authority and except as provided in [9VAC25-875-490](#), this article establishes the minimum technical criteria that shall be employed to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities.

9VAC25-875-580. Water quality design criteria requirements.

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

1. New development. For plans submitted on or after July 1, 2025, the total phosphorus load of new development projects shall not exceed 0.26 pounds per acre per year, as calculated pursuant to [9VAC25-875-590](#).
2. Development on prior developed lands.
 - a. For land-disturbing activities disturbing greater than or equal to one acre that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load shall be reduced at least 20% below the predevelopment total phosphorus load.
 - b. For regulated land-disturbing activities disturbing less than one acre that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load shall be reduced at least 10% below the predevelopment total phosphorus load.
 - c. For land-disturbing activities that result in a net increase in impervious cover over the predevelopment condition, the design criteria for new development shall be applied to the increased impervious area. Depending on the area of disturbance, the criteria of subdivision 2 a or 2 b of this subsection shall be applied to the remainder of the site.
 - d. In lieu of subdivision 2 c of this subsection, the total phosphorus load of a linear development project occurring on prior developed lands shall be reduced 20% below the predevelopment total phosphorus load.
 - e. The total phosphorus load shall not be required to be reduced to below the applicable standard for new development unless a more stringent standard has been established by a locality.

B. Compliance with subsection A of this section shall be determined in accordance with [9VAC25-875-590](#).

C. For plans submitted and deemed complete pursuant to [9VAC25-875-110](#) before July 1, 2025, the total phosphorus load of new development projects shall not exceed 0.41 pounds per acre per year, as calculated using the Virginia Runoff Reduction Method Version 3.0, May 2, 2016, or another equivalent methodology that is approved by the department.

D. For plans submitted and deemed complete pursuant to [9VAC25-875-110](#) before July 1, 2025, for land-disturbing activities on prior developed lands, compliance with subsection A 2 of this section shall be determined using the Virginia Runoff Reduction Method Version 3.0, May 2, 2016, [9VAC25-875-590](#), or another equivalent methodology that is approved by the department.

E. Nothing in this section shall prohibit a VESMP authority from establishing more stringent water quality design criteria requirements in accordance with § [62.1-44.15:33](#) of the Code of Virginia.

9VAC25-875-590. Water quality compliance.

A. Compliance with the water quality design criteria set out in subdivisions A 1 and A 2 of [9VAC25-875-580](#) shall be determined by utilizing the Virginia Runoff Reduction Method, effective April 27, 2024, which is hereby incorporated by reference or another equivalent methodology that is approved by the department.

B. The BMPs listed in the Virginia Stormwater Management Handbook (<https://online.encodeplus.com/regs/deq-va/index.aspx>) are approved for use as necessary to effectively reduce the phosphorus load and runoff volume in accordance with the Virginia Runoff Reduction Method, April 27, 2024. Other approved BMPs found through the Virginia Stormwater BMP Clearinghouse (<https://www.deq.virginia.gov/our-programs/water/stormwater/stormwater-construction/bmp-clearinghouse>) may also be utilized. Design specifications and the pollutant removal efficiencies for all approved BMPs are found through the Virginia Stormwater Management Handbook and the Virginia Stormwater BMP Clearinghouse.

C. Nonproprietary BMPs differing from those referenced in subsection B of this section shall be reviewed and approved by the director in accordance with procedures established by the department.

D. Proprietary BMPs listed through the Virginia Stormwater BMP Clearinghouse are approved for use in accordance with the Virginia Runoff Reduction Method, April 27, 2024. Any proprietary BMP approved for use after July 1, 2020, must meet the requirements of § [62.1-44.15:28](#) A 9 of the Code of Virginia.

E. A VESMP authority may establish limitations on the use of specific BMPs in accordance with § [62.1-44.15:33](#) of the Code of Virginia.

F. The VESMP authority or department as the VSMP authority shall have the discretion to allow for application of the design criteria to each drainage area of the site. However, where a site drains to more than one HUC, the pollutant load reduction requirements shall be applied independently within each HUC unless reductions are achieved in accordance with a comprehensive watershed stormwater management plan in accordance with [9VAC25-875-660](#).

G. Offsite alternatives where allowed in accordance with [9VAC25-875-610](#) may be utilized to meet the design criteria of subsection A of [9VAC25-875-580](#).

H. Any publicly owned treatment works that is permitted under the watershed general VPDES permit pursuant to § [62.1-44.19:14](#) of the Code of Virginia and is constructing or expanding the treatment works, wastewater collection system, or other facility used for public wastewater utility operations may, in accordance with § [62.1-44.19:21.2](#) C of the Code of Virginia, permanently retire a portion of the publicly owned treatment work's wasteload allocation to meet the design criteria of subsection A of [9VAC25-875-580](#). Notice shall be given by such applicant to the VESMP authority and to the department.

9VAC25-875-600. Water quantity.

A. Channel protection and flood protection shall be addressed in accordance with the minimum standards set out in this section, which are established pursuant to the requirements of § [62.1-44.15:28](#) of the Code of Virginia or as permitted in accordance with § [62.1-44.15:27.2](#) of the Code of Virginia. Nothing in this section shall prohibit a locality's VESMP authority from establishing a more stringent standard in accordance with § [62.1-44.15:33](#) of the Code of Virginia especially where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters. Compliance with the minimum standards set out in this section shall be deemed to satisfy the requirements of subdivision 19 of [9VAC25-875-560](#).

B. Channel protection. Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet the criteria in subdivision 1, 2, or 3 of this subsection, where applicable, from the point of discharge to a point to the limits of analysis in subdivision 4 of this subsection.

1. Manmade stormwater conveyance systems. When stormwater from a development is discharged to a manmade stormwater conveyance system, following the land-disturbing activity, either:

- a. The manmade stormwater conveyance system shall convey the post-development peak flow rate from the two-year 24-hour storm event without causing erosion of the system. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the VESMP authority or department as the VSMP authority; or
- b. The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in subdivision 3 of this subsection shall be met.

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

- a. The development shall be consistent, in combination with other stormwater runoff, with the design parameters of the restored stormwater conveyance system that is functioning in accordance with the design objectives; or
- b. The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in subdivision 3 of this subsection shall be met.

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

- a. In accordance with the following methodology:

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

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

I.F. (Improvement Factor) equals 0.8 for sites > 1 acre or 0.9 for sites ≤ 1 acre.

$Q_{\text{Developed}}$ = The allowable peak flow rate of runoff from the developed site.

$RV_{\text{Developed}}$ = The volume of runoff from the site in the developed condition.

$Q_{\text{Pre-Developed}}$ = The peak flow rate of runoff from the site in the pre-developed condition.

$RV_{\text{Pre-Developed}}$ = The volume of runoff from the site in pre-developed condition.

Q_{Forest} = The peak flow rate of runoff from the site in a forested condition.

RV_{Forest} = The volume of runoff from the site in a forested condition; or

- b. In accordance with another methodology that is demonstrated by the VESMP authority to achieve equivalent results and is approved by the department.

4. Limits of analysis. Unless subdivision 3 of this subsection is utilized to show compliance with the channel protection criteria, stormwater conveyance systems shall be analyzed for compliance with channel protection criteria to a point where either:

- a. Based on land area, the site's contributing drainage area is less than or equal to 1.0% of the total watershed area; or
- b. Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm is less than or equal to 1.0% of the existing peak flow rate from the one-year 24-hour storm prior to the implementation of any stormwater quantity control measures.

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

1. Concentrated stormwater flow to stormwater conveyance systems that currently do not experience localized flooding during the 10-year 24-hour storm event: The point of discharge releases stormwater into a stormwater conveyance system that, following the land-disturbing activity, confines the post-development peak flow rate from the 10-year 24-hour storm event within the stormwater conveyance system. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the VESMP authority.

2. Concentrated stormwater flow to stormwater conveyance systems that currently experience localized flooding during the 10-year 24-hour storm event: The point of discharge either:

- a. Confines the post-development peak flow rate from the 10-year 24-hour storm event within the stormwater conveyance system to avoid the localized flooding. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion at the discretion of the VESMP authority or department as the VSMP authority; or
- b. Releases a post-development peak flow rate for the 10-year 24-hour storm event that is less than the predevelopment peak flow rate from the 10-year 24-hour storm event. Downstream stormwater conveyance systems do not require any additional analysis to show compliance with flood protection criteria if this option is utilized.

3. Limits of analysis. Unless subdivision 2 b of this subsection is utilized to comply with the flood protection criteria, stormwater conveyance systems shall be analyzed for compliance with flood protection criteria to a point where:

- a. The site's contributing drainage area is less than or equal to 1.0% of the total watershed area draining to a point of analysis in the downstream stormwater conveyance system;
- b. Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm event is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24-hour storm event prior to the implementation of any stormwater quantity control measures; or
- c. The stormwater conveyance system enters a mapped floodplain or other flood-prone area, adopted by ordinance, of any locality.

D. Increased volumes of sheet flow resulting from pervious or disconnected impervious areas or from physical spreading of concentrated flow through level spreaders shall be identified and evaluated for potential impacts on down-gradient properties or resources. Increased volumes of sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient properties or resources shall be diverted to a stormwater management facility or a stormwater conveyance system that conveys the runoff without causing down-gradient erosion, sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of this subsection are met, no further water quantity controls are required.

E. For purposes of computing predevelopment runoff, all pervious lands on the site shall be assumed to be in good hydrologic condition in accordance with the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of conditions existing at the time of computation. Predevelopment runoff calculations utilizing other hydrologic conditions may be utilized provided that it is demonstrated to and approved by the VESMP authority that actual site conditions warrant such considerations.

F. Predevelopment and post-development runoff characteristics and site hydrology shall be verified by site inspections, topographic surveys, available soil mapping or studies, and calculations consistent with good engineering practices. Guidance provided in the Virginia Stormwater Management Handbook and the Virginia Stormwater BMP Clearinghouse shall be considered appropriate practices.

9VAC25-875-610. Offsite compliance options.

A. No offsite option shall be used in contravention of local water quality-based limitations (i) determined pursuant to subsection B of § [62.1-44.19:14](#) of the Code of Virginia, (ii) adopted pursuant to § [62.1-44.15:33](#) of the Code of Virginia or other applicable authority, (iii) deemed necessary to protect public water supplies from demonstrated adverse nutrient impacts, or (iv) as otherwise may be established or approved by the department. Where such a limitation exists, offsite options may be used provided that such options do not preclude or impair compliance with the local limitation.

B. Unless prohibited by subsection A of this section, a VESMP authority or the department as the VSMP authority:

1. May allow the use of offsite options for compliance with water quality and water quantity technical criteria established pursuant to § [62.1-44.15:28](#) of the Code of Virginia, in whole or in part; and

2. Shall allow the use of nutrient credits for compliance with the water quality technical criteria when:

- a. Less than five acres of land will be disturbed;
- b. The phosphorous water quality reduction requirement is less than 10 pounds per year; or
- c. It is demonstrated to the satisfaction of the VESMP authority or department as the VSMP authority 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) compliance with quality technical criteria cannot practicably be met onsite. The requirements of clauses (i) through (iv) of this subdivision shall be deemed to have been met if it is demonstrated that onsite control of at least 75% of the required phosphorous water quality reduction will be achieved.

C. The VESMP authority or department as the VSMP authority shall require that offsite options approved by the department or applicable state board achieve the necessary phosphorous water quality reductions prior to the commencement of the land-disturbing activity. In the case of a phased project, the land disturber may acquire or achieve the offsite nutrient reductions prior to the commencement of each phase of the land-disturbing activity in an amount sufficient for each such phase.

D. Nutrient credits shall not be used to address water quantity technical criteria.

E. Nutrient credits shall be generated in the same or adjacent fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, as the land-disturbing activity. If no credits are available within these subbasins when the VESMP or department as the VSMP authority accepts the final site design, credits available within the same tributary may be used. The following requirements apply to the use of nutrient credits:

1. Documentation of the acquisition of nutrient credits shall be provided to the VESMP authority and the department or the department as the VSMP authority in a certification from the credit provider documenting the number of phosphorus nutrient credits acquired and the associated ratio of nitrogen nutrient credits at the credit-generating entity.

2. Application fees are provided in Certification of Nonpoint Source Nutrient Credits ([9VAC25-900](#)). Fees shall be deposited into the Virginia Stormwater Management Fund established by § [62.1-44.15:29](#) of the Code of Virginia.

3. For that portion of a site's compliance with water quality technical criteria being obtained through nutrient credits, the land disturber shall (i) comply with a one-to-one 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 Article 4.02 (§ [62.1-44.19:12](#) et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

4. A VESMP or the department as the VSMP authority shall allow the full or partial substitution of perpetual nutrient credits for existing onsite nutrient controls when (i) the nutrient credits will compensate for 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 determination by the VESMP or department that the conditions established by clause (i) or (ii) of this subdivision have been met, the party responsible for maintenance shall be released from maintenance obligations related to the onsite phosphorous controls for which the nutrient credits are substituted.

F. Exchange of a credit released by the department is subject to the provisions of § [62.1-44.15:35](#), [62.1-44.19:15](#), or [62.1-44.19:21](#) of the Code of Virginia. Where necessary to ensure compliance with local water quality requirements, the exchange of a credit released by the department is conditioned by [9VAC25-900-91](#) B and C.

9VAC25-875-620. Design storms and hydrologic methods.

A. Unless otherwise specified, the prescribed design storms are the one-year, two-year, and 10-year 24-hour storms using the site-specific rainfall precipitation frequency data recommended by the U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14. Partial duration time series shall be used for the precipitation data.

B. Unless otherwise specified, all hydrologic analyses shall be based on the existing watershed characteristics and how the ultimate development condition of the subject project will be addressed.

C. The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) synthetic 24-hour rainfall distribution and models, including TR-55 and TR-20; hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or other standard hydrologic and hydraulic methods shall be used to conduct the analyses described in this part.

D. For drainage areas of 200 acres or less, the VESMP authority or department as the VSMP authority may allow for the use of the Rational Method for evaluating peak discharges.

E. For drainage areas of 200 acres or less, the VESMP authority or department as the VSMP authority may allow for the use of the Modified Rational Method for evaluating volumetric flows to stormwater conveyances.

9VAC25-875-630. Stormwater harvesting.

In accordance with § [62.1-44.15:28](#) of the Code of Virginia, stormwater harvesting is encouraged for the purposes of landscape irrigation systems, fire protection systems, flushing water closets and urinals, and other water handling systems to the extent such systems are consistent with federal, state, and local regulations.

9VAC25-875-640. Linear development projects.

Linear development projects shall control post-development stormwater runoff in accordance with a site-specific stormwater management plan or a comprehensive watershed stormwater management plan developed in accordance with this chapter.

9VAC25-875-650. Stormwater management impoundment structures or facilities.

A. Stormwater management wet ponds and extended detention ponds that are not covered by the Impounding Structure Regulations ([4VAC50-20](#)) shall, at a minimum, be engineered for structural integrity for the 100-year storm event.

B. Construction of stormwater management impoundment structures or facilities may occur in karst areas only after a study of the geology and hydrology of the area has been conducted to determine the presence or absence of karst features that may be impacted by stormwater runoff and BMP placement.

C. Discharge of stormwater runoff to a karst feature shall meet the water quality criteria set out in [9VAC25-875-580](#) and the water quantity criteria set out in [9VAC25-875-600](#). Permanent stormwater management impoundment structures or facilities shall only be constructed in karst features after completion of a geotechnical investigation that identifies any necessary modifications to the BMP to ensure its structural integrity and maintain its water quality and quantity efficiencies. The person responsible for the land-disturbing activity is encouraged to screen for known existence of heritage resources in the karst features.

9VAC25-875-660. Comprehensive stormwater management plans.

A VESMP authority may develop comprehensive stormwater management plans to be approved by the department that meet the water quality objectives, quantity objectives, or both of this part:

1. Such plans shall ensure that offsite reductions equal to or greater than those that would be required on each contributing site are achieved within the same HUC or within another locally designated watershed. Pertaining to water quantity objectives, the plan may provide for implementation of a combination of channel improvement, stormwater detention, or other measures that are satisfactory to the locality's VESMP authority to prevent downstream erosion and flooding.

2. If the land use assumptions upon which the plan was based change or if any other amendments are deemed necessary by the locality's VESMP authority, such authority shall provide plan amendments to the department for review and approval.
3. During the plan's implementation, the locality's VESMP authority shall document nutrient reductions credited to the BMPs specified in the plan.
4. State agencies and federal entities may develop comprehensive stormwater management plans and may participate in locality-developed comprehensive stormwater management plans where practicable and permitted by the locality's VESMP authority.

Article 4 Water Quantity and Water Quality Technical Criteria for Grandfathered Projects and Time Limits of Applicability Projects

9VAC25-875-670. Definitions.

For the purposes of this article only, the following words and terms have the following meanings unless the context clearly indicates otherwise:

"Aquatic bench" means a 10-foot to 15-foot wide bench around the inside perimeter of a permanent pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations, and enhances safety.

"Average land cover condition" means a measure of the average amount of impervious surfaces within a watershed, assumed to be 16% or a calculated watershed-specific value for the average land cover condition as approved by the Chesapeake Bay Local Assistance Board prior to September 13, 2011.

"Bioretention basin" means a water quality BMP engineered to filter the water quality volume (i) through an engineered planting bed consisting of a vegetated surface layer (vegetation, mulch, ground cover), planting soil, and sand bed and (ii) into the in-situ material.

"Bioretention filter" means a bioretention basin with the addition of a sand filter collector pipe system beneath the planting bed.

"Constructed wetlands" means areas intentionally designed and created to emulate the water quality improvement function of wetlands for the primary purpose of removing pollutants from stormwater.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control that is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

"Grassed swale" means an earthen conveyance system that is broad and shallow with erosion resistant grasses and check dams, engineered to remove pollutants from stormwater runoff by filtration through grass and infiltration into the soil.

"Infiltration facility" means a stormwater management facility that temporarily impounds runoff and discharges it via infiltration through the surrounding soil. While an infiltration facility may also be equipped with an outlet structure to discharge impounded runoff, such discharge is normally reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff only temporarily, it is normally dry during nonrainfall periods. Infiltration basin, infiltration trench, infiltration dry well, and porous pavement shall be considered infiltration facilities.

"Layout" means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

"Nonpoint source pollutant runoff load" or "pollutant discharge" means the average amount of a particular pollutant measured in pounds per year, delivered in a diffuse manner by stormwater runoff.

"Planning area" means a designated portion of the parcel on which the land development project is located. Planning areas shall be established by delineation on a master plan. Once established, planning areas shall be applied consistently for all future projects.

"Sand filter" means a contained bed of sand that acts to filter the first flush of runoff. The runoff is then collected beneath the sand bed and conveyed to an adequate discharge point or infiltrated into the in-situ soils.

"Shallow marsh" means a zone within a stormwater extended detention basin that exists from the surface of the normal pool to a depth of six to 18 inches, and has a large surface area and, therefore, requires a reliable source of baseflow, groundwater supply, or a sizeable drainage area to maintain the desired water surface elevations to support emergent vegetation.

"Stormwater detention basin" or "detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure to a downstream conveyance system. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and are, therefore, not considered in the facility's design. Since a detention facility impounds runoff only temporarily, it is normally dry during nonrainfall periods.

"Stormwater extended detention basin" or "extended detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure over a specified period of time to a downstream conveyance system for the purpose of water quality enhancement or stream channel erosion control. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and, therefore, are not considered in the facility's design. Since an extended detention basin impounds runoff only temporarily, it is normally dry during nonrainfall periods.

"Stormwater extended detention basin-enhanced" or "extended detention basin-enhanced" means an extended detention basin modified to increase pollutant removal by providing a shallow marsh in the lower stage of the basin.

"Stormwater retention basin" or "retention basin" means a stormwater management facility that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing water quality and, therefore, is normally wet even during nonrainfall periods. Storm runoff inflows may be temporarily stored above this permanent impoundment for the purpose of reducing flooding or stream channel erosion.

"Stormwater retention basin I" or "retention basin I" means a retention basin with the volume of the permanent pool equal to three times the water quality volume.

"Stormwater retention basin II" or "retention basin II" means a retention basin with the volume of the permanent pool equal to four times the water quality volume.

"Stormwater retention basin III" or "retention basin III" means a retention basin with the volume of the permanent pool equal to four times the water quality volume with the addition of an aquatic bench.

"Vegetated filter strip" means a densely vegetated section of land engineered to accept runoff as overland sheet flow from upstream development. It shall adopt any natural vegetated form, from grassy meadow to small forest. The vegetative cover facilitates pollutant removal through filtration, sediment deposition, infiltration, and absorption and is dedicated for that purpose.

"Water quality volume" means the volume equal to the first 1/2-inch of runoff multiplied by the impervious surface of the land development project.

9VAC25-875-680. Applicability.

This part specifies the technical criteria for regulated land-disturbing activities that are not subject to the technical criteria of Article 3 ([9VAC25-875-570](#) et seq.) of this part in accordance with [9VAC25-875-490](#).

9VAC25-875-690. General.

A. Determination of flooding and channel erosion impacts to receiving streams due to land-disturbing activities shall be measured at each point of discharge from the land disturbance and such determination shall include any runoff from the balance of the watershed that also contributes to that point of discharge.

- B. The specified design storms shall be defined as either a 24-hour storm using the rainfall distribution recommended by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) when using NRCS methods or as the storm of critical duration that produces the greatest required storage volume at the site when using a design method such as the Modified Rational Method.
- C. For purposes of computing runoff, all pervious lands in the site shall be assumed prior to development to be in good condition (if the lands are pastures, lawns, or parks), with good cover (if the lands are woods), or with conservation treatment (if the lands are cultivated); regardless of conditions existing at the time of computation.
- D. Construction of stormwater management facilities or modifications to channels shall comply with all applicable laws, regulations, and ordinances. Evidence of approval of all necessary permits shall be presented.
- E. Impounding structures that are not covered by the Impounding Structure Regulations ([4VAC50-20](#)) shall be engineered for structural integrity during the 100-year storm event.
- F. Predevelopment and post-development runoff rates shall be verified by calculations that are consistent with good engineering practices.
- G. Outflows from a stormwater management facility or stormwater conveyance system shall be discharged to an adequate channel.
- H. Proposed residential, commercial, or industrial subdivisions shall apply these stormwater management criteria to the land disturbance as a whole. Individual lots in new subdivisions shall not be considered separate land-disturbing activities, but rather the entire subdivision shall be considered a single land development project. Hydrologic parameters shall reflect the ultimate land disturbance and shall be used in all engineering calculations.
- I. All stormwater management facilities shall have an inspection and maintenance plan that identifies the owner and the responsible party for carrying out the inspection and maintenance plan.
- J. Construction of stormwater management impoundment structures within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided whenever possible. When this is unavoidable, all stormwater management facility construction shall be in compliance with all applicable regulations under the National Flood Insurance Program (44 CFR Part 59).
- K. Natural channel characteristics shall be preserved to the maximum extent practicable.
- L. Land-disturbing activities shall comply with the ESCL or VESMA, as applicable, and attendant regulations.
- M. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas defined in the Chesapeake Bay Preservation Act provided such facilities are allowed and constructed in accordance with the VESMA and this chapter, and provided that (i) the local government has conclusively established that the location of the facility within the Resource Protection Area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both; (iii) the facility must be consistent with a comprehensive stormwater management plan developed and approved in accordance with [9VAC25-875-660](#) or with a stormwater management plan that has been approved prior to July 1, 2012, by the department, the Chesapeake Bay Local Assistance Board prior to its abolishment on July 1, 2012, or the Board of Conservation and Recreation; (iv) all applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies; (v) approval must be received from the local government prior to construction; and (vi) routine maintenance is allowed to be performed on such facilities to ensure that they continue to function as designed. It is not the intent of this subsection to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a Resource Protection Area.

9VAC25-875-700. Water quality.

A. Compliance with the water quality criteria may be achieved by applying the performance-based criteria or the technology-based criteria to either the site or a planning area.

B. Performance-based criteria. For land-disturbing activities, the calculated post-development nonpoint source pollutant runoff load shall be compared to the calculated predevelopment load based upon the average land cover condition or the existing site condition. A BMP shall be located, designed, and maintained to achieve the target pollutant removal efficiencies specified in Table 1 of this section to effectively reduce the pollutant load to the required level based upon the following four applicable land development situations for which the performance criteria apply:

1. Situation 1 consists of land-disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover that is less than the average land cover condition.

Requirement: No reduction in the after disturbance pollutant discharge is required.

2. Situation 2 consists of land-disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover that is greater than the average land cover condition.

Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the average land cover condition.

3. Situation 3 consists of land-disturbing activities where the existing percent impervious cover is greater than the average land cover condition.

Requirement: The pollutant discharge after disturbance shall not exceed (i) the pollutant discharge based on existing conditions less 10% or (ii) the pollutant discharge based on the average land cover condition, whichever is greater.

4. Situation 4 consists of land-disturbing activities where the existing percent impervious cover is served by an existing stormwater management BMP that addresses water quality.

Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the existing percent impervious cover while served by the existing BMP. The existing BMP shall be shown to have been designed and constructed in accordance with proper design standards and specifications and to be in proper functioning condition.

C. Technology-based criteria. For land-disturbing activities, the post-developed stormwater runoff from the impervious cover shall be treated by an appropriate BMP as required by the post-developed condition percent impervious cover as specified in Table 1 of this section. The selected BMP shall be located, designed, and maintained to perform at the target pollutant removal efficiency specified in Table 1 or those found in [9VAC25-875-590](#).

D. Design standards and specifications for the BMPs in Table 1 of this section that meet the required target pollutant removal efficiency are available in the Virginia Stormwater Management Handbook. Other approved BMPs available through the Virginia Stormwater BMP Clearinghouse may also be utilized.

Table 1		
Water Quality BMP*	Target Phosphorus Removal Efficiency	Percent Impervious Cover
Vegetated filter strip	10%	16-21%
Grassed swale	15%	
Constructed wetlands	20%	22-37%
Extended detention (2 x WQ Vol)	35%	
Retention basin I (3 x WQ Vol)	40%	
Bioretention basin	50%	38-66%
Bioretention filter	50%	
Extended detention basin-enhanced	50%	
Retention basin II (4 x WQ Vol)	50%	
Infiltration (1 x WQ Vol)	50%	
Sand filter	65%	67-100%
Infiltration (2 x WQ Vol)	65%	
Retention basin III (4 x WQ Vol with aquatic bench)	65%	
*Innovative or alternate BMPs not included in this table may be allowed at the discretion of the local program administrator or the department. Innovative or alternate BMPs not included in this table that target appropriate nonpoint source pollution other than phosphorous may be allowed at the discretion of the local program administrator or the department		

E. The VESMP authority or department as the VSMP authority may allow the use of offsite nutrient credits under Article 4 ([9VAC25-875-670](#) et seq.) of this part in accordance with [9VAC25-875-610](#).

9VAC25-875-710. Stream channel erosion.

A. Properties and receiving waterways downstream of any land-disturbing activity shall be protected from erosion and damage due to changes in runoff rate of flow and hydrologic characteristics, including changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The VESMP authority or department as the VSMP authority shall require compliance with subdivision 19 of [9VAC25-875-560](#).

C. The locality's VESMP authority may determine that some watersheds or receiving stream systems require enhanced criteria in order to address the increased frequency of bankfull flow conditions (top of bank) brought on by land-disturbing activities or where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional waters. Therefore, in lieu of the reduction of the two-year post-developed peak rate of runoff as required in subsection B of this section, the land development project being considered shall provide 24-hour extended detention of the runoff generated by the one-year, 24-hour duration storm.

D. In addition to subsections B and C of this section, a locality's VESMP authority by local ordinance may in accordance with § [62.1-44.15:33](#) of the Code of Virginia, or the board by state regulation may adopt more stringent channel analysis criteria or design standards to ensure that the natural level of channel erosion, to

the maximum extent practicable, will not increase due to the land-disturbing activities. These criteria may include the following:

1. Criteria and procedures for channel analysis and classification.
2. Procedures for channel data collection.
3. Criteria and procedures for the determination of the magnitude and frequency of natural sediment transport loads.
4. Criteria for the selection of proposed natural or manmade channel linings.

9VAC25-875-720. Flooding.

A. Downstream properties and waterways shall be protected from damages from localized flooding due to changes in runoff rate of flow and hydrologic characteristics, including changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The 10-year post-developed peak rate of runoff from the development site shall not exceed the 10-year predeveloped peak rate of runoff.

C. In lieu of subsection B of this section, localities may, by ordinance in accordance with § [62.1-44.15:33](#) of the Code of Virginia, adopt alternate design criteria based upon geographic, land use, topographic, geologic factors, or other downstream conveyance factors as appropriate.

D. Linear development projects shall not be required to control post-developed stormwater runoff for flooding, except in accordance with a watershed or regional stormwater management plan.

9VAC25-875-730. Regional (watershed-wide) stormwater management plans.

Water quality requirements and where allowed, water quantity requirements, may be achieved in accordance with sections [9VAC25-875-610](#) and [9VAC25-875-660](#).

Article 5 Criteria for Land-Disturbing Activities in Chesapeake Bay Preservation Areas

9VAC25-875-740. Land-disturbing activities in Chesapeake Bay Preservation Areas.

A. In order to protect the quality of state waters and to control the discharge of stormwater pollutants from land-disturbing activities, runoff associated with land-disturbing activities in Chesapeake Bay Preservation Areas that are equal to or greater than 2,500 square feet but less than one acre shall be regulated by localities subject to the Chesapeake Bay Preservation Act or, in the case of state and federal agency projects, the department. In regulating such land-disturbing activities in accordance with subsection B of this section, localities shall have the same authority and responsibilities as set forth for VESCP and VESMP authorities.

B. After June 30, 2014, such land-disturbing activities shall not require completion of a registration statement or require coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities but shall be subject to the following technical criteria and program and administrative requirements unless excluded under [9VAC25-875-90](#) and [9VAC25-875-280](#):

1. An erosion and sediment control plan consistent with the requirements of [9VAC25-875-550](#) must be designed and implemented during land-disturbing activities. Prior to land disturbance, this plan must be approved by either the VESCP or VESMP authority in accordance with this chapter;
2. A stormwater management plan consistent with the requirements of [9VAC25-875-510](#) must be designed and implemented during the land-disturbing activity. The stormwater management plan shall be developed and submitted in accordance with [9VAC25-875-510](#). Prior to land disturbance, this plan must be approved by the VESCP or VESMP authority;
3. Exceptions may be requested in accordance with [9VAC25-875-170](#);
4. Long-term maintenance of stormwater management facilities shall be provided for and conducted in accordance with [9VAC25-875-535](#);

5. Water quality design criteria in [9VAC25-875-580](#) shall be applied to the site;
6. Water quality compliance shall be achieved in accordance with [9VAC25-875-590](#);
7. Channel protection and flood protection shall be achieved in accordance with [9VAC25-875-600](#) or as permitted by subsection B of [9VAC25-875-750](#);
8. Offsite compliance options in accordance with [9VAC25-875-610](#) shall be available to land-disturbing activities in Chesapeake Bay Preservation Areas that are equal to or greater than 2,500 square feet but less than one acre; and
9. Such land-disturbing activities shall be subject to the design storm and hydrologic methods set out in [9VAC25-875-620](#), linear development controls in [9VAC25-875-640](#), and criteria associated with stormwater impoundment structures or facilities in [9VAC25-875-650](#).

9VAC25-875-750. Land-disturbing activities in Chesapeake Bay Preservation Areas in rural Tidewater localities.

A. Acceptance of signed and sealed plans in lieu of local plan review. In lieu of a local plan review or retaining a local certified plan reviewer, a rural Tidewater locality may accept plans and supporting calculations for erosion and sediment control and stormwater management for any land-disturbing activity equal to or greater than 2,500 square feet but less than one acre if the following criteria are met:

1. The plans are prepared and submitted by a professional licensed to engage in practice in the Commonwealth under Chapter 4 (§ [54.1-400](#) et seq.) or 22 (§ [54.1-2200](#) et seq.) of Title 54.1 of the Code of Virginia and who shall hold a certificate of competence in the appropriate subject area, as provided in § [62.1-44.15:30](#) of the Code of Virginia; and
2. The plan and supporting calculations are appropriately signed and sealed by the professional with a certification that states: "This plan is designed in accordance with applicable state law and regulations."

B. For determining the water quantity technical criteria applicable to a land disturbance equal to or greater than 2,500 square feet, but less than one acre, any rural Tidewater locality may elect to use certain tiered water quantity control standards based on the percentage of impervious cover in the watershed as provided in § [62.1-44.15:27.2](#) of the Code of Virginia.

C. Tiered approach to water quantity technical criteria compliance.

1. A rural Tidewater locality may adopt the following tiered approach to water quantity management based on the percent impervious cover of the watershed in accordance with this subsection for land-disturbing activities that disturb an area of 2,500 square feet or more but less than one acre:

- a. For less than 5.0% impervious cover, apply the Virginia Erosion and Sediment Control Minimum Standard 19 in effect prior to July 1, 2014, for the protection of downstream properties and waterways from sediment deposition, erosion, and damage due to increases in volume, velocity, and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour duration.
- b. For 5.0% or more impervious cover but less than 7.5%, detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm, which practices shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels.
- c. For 7.5% impervious cover or more, apply the water quantity technical criteria in accordance with [9VAC25-875-600](#).

2. The establishment and conduct of the tiered approach by the locality pursuant to this section shall be subject to review by the department.

3. Prior to the adoption and implementation of the tiered approach to water quantity management, the local governing body shall:

- a. Develop a watershed map that includes the following:
 - (1) The boundaries of the locality and each watershed located partially or wholly within the locality based on the most recent version of Virginia's 6th order National Watershed Boundary Dataset;

(2) The percentage of impervious cover within each watershed. Data provided by the Virginia Geographic Information Network (VGIN) shall be sufficient for the initial determination of impervious cover percentage at the time of the initial adoption of the map; and

(3) The locations at which the governing body expects or proposes that development should occur and may indicate the projected future percentage of impervious cover based on proposed development. The governing body may designate certain areas within a watershed in which it proposes that denser-than-average development shall occur and may designate environmentally sensitive areas in which the water quantity technical criteria in [9VAC25-875-600](#) shall apply.

b. After the watershed map has been developed, the governing body may then approve and adopt the map by a majority vote of its membership and publish it as the official watershed map of the locality. No official watershed map shall be adopted by the governing body or have any effect until it is approved by an ordinance duly passed by the governing body of the locality after a public hearing, preceded by public notice as required by § [15.2-2204](#) of the Code of Virginia. Within 30 days after adoption of the official watershed map, the governing body shall file the watershed map in the office of the clerk of the circuit court.

4. At least once per year, the governing body shall by majority vote make additions to or modifications of the official watershed map to reflect actual development projects. The governing body shall change the indication on the map of the impervious cover percentage within a watershed where the percentage has changed and shall update the map and supporting datasets with actual development project information, including single-family housing projects and any projects covered by the General VPDES Permit for Discharges of Stormwater from Construction Activities ([9VAC25-880](#)) and administered by the department for opt-out localities pursuant to § [62.1-44.15:27](#) of the Code of Virginia. The governing body may incorporate into the official watershed map the most recent VGIN data, including data on state and federal projects that are not reviewed or approved by the locality. The governing body shall keep current its impervious cover percentage for each watershed located within the locality as reflected in the official watershed map and shall make the map and such percentages available to the public.

5. The locality shall notify the department and update the official watershed map within 12 months of the approval of the development plan for any project that exceeds the percent impervious cover percentage of the watershed in which it is located and causes the impervious cover percentage for the watershed to increase such that the watershed percent impervious cover is categorized by the next higher tier pursuant to subdivision 1 of this subsection.

6. No official watershed map or its adopting or amending ordinance shall take precedence over any duly adopted zoning ordinance, comprehensive plan, or other local land-use ordinance, and in the case of a conflict, the official watershed map or ordinance shall yield to such land-use ordinance.

Article 6 Additional Criteria and Requirements for Land-Disturbing Activities by State Agencies and Federal Entities

9VAC25-875-760. Soil erosion control and stormwater management for land-disturbing activities.

The department shall act as a VESMP where state agencies and federal entities have not submitted standards and specifications to the department for approval. When a state agency or federal entity submits a soil erosion control and stormwater management plan (ESM plan) for a project, land disturbance shall not commence until the department has reviewed and approved the plan and has issued permit coverage when it is required in accordance with § [62.1-44.15:34](#) of the Code of Virginia.

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

2. The department shall not approve an ESM plan submitted by a state agency or federal entity for a project involving a land-disturbing activity in one locality with a local program with more stringent

ordinances than those of the state program, unless the plan is consistent with the requirements of the local program.

3. If onsite changes occur, the state agency or federal entity shall submit an amended ESM plan to the department.

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

9VAC25-875-770. State agency land-disturbing activities.

A. All state agency land-disturbing activities that are not exempt and that have commenced without an approved erosion and sediment control plan shall immediately cease until the state agency has either submitted standards and specifications for its conduct of land-disturbing activities which has been reviewed and approved by the department as being consistent with the VESMA and attendant regulations or an erosion and sediment control plan has been submitted to and approved by the department. A formal Notice of Plan Requirement will be sent to the state agency under whose purview the project lies since that agency is responsible for compliance with the State Water Control Law and this chapter.

B. Where inspections by department personnel reveal deficiencies in carrying out an approved plan, the person responsible for carrying out the plan, as well as the state agency responsible, will be issued a notice to comply with specific actions and the deadlines that shall be met. Failure to meet the prescribed deadlines can result in the issuance of a stop work order for all land-disturbing activities on the project at the discretion of the department. The stop work order will be lifted once the required erosion and sediment control measures are in place and inspected by department staff.

C. Whenever the Commonwealth or any of its agencies fails to comply within the time provided in an appropriate final order, the director of the department may petition for compliance as follows: For violations in the Natural and Historic Resources Secretariat, to the Secretary of Natural and Historic Resources; for violations in other secretariats, to the appropriate Secretary; for violations in other state agencies, to the head of such agency. Where the petition does not achieve timely compliance, the director shall bring the matter to the Governor for resolution. The department may also pursue enforcement as provided by § [62.1-44.15:48](#) of the Code of Virginia and Article 5 (§ [62.1-44.20](#) et seq.) of the State Water Control Law.

D. Where compliance will require the appropriation of funds, the director shall cooperate with the appropriate agency head in seeking such an appropriation; where the director determines that an emergency exists, the director shall petition the Governor for funds from the Civil Contingency Fund or other appropriate source.

9VAC25-875-780. Stormwater management permit applications.

A. Approval of a permit application (registration statement) for a land-disturbing activity by a state agency or federal entity shall be subject to the following conditions:

1. The state agency or federal entity shall comply with all applicable requirements of the permit ([9VAC25-880](#)) and shall certify that all land clearing, construction, land development, and drainage will be done according to the permit.

2. The land development shall be conducted only within the area specified in the approved plan and covered by the permit.

3. No changes may be made to a plan for which a permit has been issued without review and written approval by the department.

4. The department shall be notified at least one week prior to the preconstruction meeting and at least one week prior to the commencement of land-disturbing activity.

5. The department shall conduct random inspections of the project to ensure compliance with the permit.

6. The department shall require inspections and reports from the state agency or federal entity responsible for compliance with the permit and to determine if the measures required in the permit provide effective stormwater management.

B. Compliance with the permit shall be subject to the following conditions:

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1. Where inspection by the responsible state agency or federal entity reveals deficiencies in carrying out a permitted activity, the responsible state agency or federal entity shall ensure compliance with the issued permit, permit conditions, and plan specifications.
2. Where inspections by department personnel reveal deficiencies in carrying out the permit, the responsible state agency or federal entity shall be issued a notice to comply, with corrective actions specified and the deadline within which the work shall be performed.
3. Whenever the Commonwealth or any of its state agencies fail to comply within the time provided in a notice to comply, the director may petition the secretary of a given secretariat or an agency head for a given state agency for compliance. Where the petition does not achieve timely compliance, the director shall bring the matter to the Governor for resolution.
4. Where compliance for a state agency will require the appropriation of funds, the director shall cooperate with the appropriate agency head in seeking such an appropriation; where the director determines that an emergency exists, the director shall petition the Governor for funds from the Civil Contingency Fund or other appropriate source.
5. The department may also seek compliance through other means specified in the State Water Control Law.

9VAC25-875-790. Maintenance and inspections.

- A. Responsibility for the operation and maintenance of stormwater management facilities shall remain with the state agency or federal entity and shall pass to any successor or owner. If portions of the land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.
- B. At a minimum, a stormwater management facility shall be inspected by the responsible state agency or federal entity on an annual basis and after any storm which causes the capacity of the facility principal spillway to be exceeded.
- C. During construction of the stormwater management facilities, the department shall make inspections on a random basis.
- D. The department shall require inspections and reports from the state agency or federal entity responsible for ensuring compliance with the permit and to determine if the measures required in the permit provide effective stormwater management.
- E. Inspection reports shall be maintained as part of the land disturbance project file.

9VAC25-875-800. Reporting on stormwater management.

State agencies shall report annually, on a schedule to be specified, to the department on the extent to which stormwater management programs have reduced nonpoint source pollution to the Commonwealth's waters and mitigated the effects of localized flooding. The report shall provide the following: data on the number and types of stormwater management facilities installed in the preceding year; the drainage area or watershed size served; the receiving stream or hydrologic unit; a summary of monitoring data, if any; and other data useful in determining the effectiveness of the programs and BMP technologies in current use.

9VAC25-875-810. Technical criteria and requirements for state or federal projects.

- A. Erosion and sediment control and stormwater management plans prepared for state projects shall comply with the technical criteria outlined in this part and any locality's VESCP or VESMP authority's technical requirements adopted pursuant to §§ [62.1-44.15:28](#) and [62.1-44.15:52](#) of the Code of Virginia.
- B. The department may establish criteria for selecting either the site or a planning area on which to apply the water quality criteria.

Part VI Standards and Specifications Program

9VAC25-875-820. Applicability.

This part is applicable to any state agency, federal entity, or public or private entity that is authorized to submit standards and specifications to the department in accordance with § [62.1-44.15:31](#) of the Code of Virginia.

9VAC25-875-830. Standards and specifications for state agencies, federal entities, and other specified entities.

A. The program requirements in Part V ([9VAC25-875-470](#) et seq.) shall be implemented by a state agency or federal entity, and other specified entities with department-approved standards and specifications.

B. As an alternative to submitting soil erosion control and stormwater management plans for its land-disturbing activities, the Virginia Department of Transportation shall and any other state agency or federal entity may submit standards and specifications for its conduct of land-disturbing activities for department approval. Approved standards and specifications shall be consistent with the VESMA. The department shall have 60 days after receipt in which to act on any standards and specifications submitted or resubmitted to the department for approval.

C. As an alternative to submitting soil erosion control and stormwater management plans, electric, natural gas, and telephone utility companies; interstate and intrastate natural gas pipeline companies; railroad companies; and authorities created pursuant to § [15.2-5102](#) of the Code of Virginia may submit standards and specifications for department approval that describe how land-disturbing activities shall be conducted. Such standards and specifications may be submitted for the following types of projects:

1. Construction, installation, or maintenance of electric transmission and distribution lines, oil or gas transmission and distribution pipelines, communication utility lines, and water and sewer lines; and
2. Construction of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

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

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

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

1. Technical criteria to meet the requirements of the VESMA and regulations developed under it;
2. Provisions for the long-term responsibility and maintenance of any stormwater management control devices and other techniques specified to manage the quantity and quality of runoff;
3. Provisions for administration of the standards and specifications program, project-specific plan design, plan review and plan approval, and construction inspection and compliance;

4. Provisions for ensuring that personnel and contractors assisting the owner in carrying out the land-disturbing activity obtain training or qualifications for soil erosion control and stormwater management as set forth in Part IV ([9VAC25-875-380](#) et seq.) of this chapter;
 5. Provisions for ensuring that personnel implementing approved standards and specifications pursuant to this section obtain certifications or qualifications comparable to those required for VESMP personnel pursuant to subsection C of § [62.1-44.15:30](#) of the Code of Virginia;
 6. Implementation of a project tracking system that ensures notification to the department of all land-disturbing activities covered under the VESMA; and
 7. Requirements for documenting onsite changes as they occur to ensure compliance with the requirements of the VESMA.
- F. The department shall perform random site inspections or inspections in response to a complaint to ensure compliance with the VESMA and this chapter.
- G. The department shall assess an administrative charge to cover the costs of services rendered associated with its responsibilities pursuant to this section, including standards and specifications review and approval, project inspections, and compliance. The department may take enforcement actions in accordance with the VESMA and related regulations.

9VAC25-875-840. Reserved.