

Virginia Erosion and Stormwater Management Act

Virginia Erosion and Stormwater Management Regulation

General VPDES Permit for Discharges of Stormwater from Construction Activities Regulation

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

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Virginia Erosion and Stormwater Management Act

TITLE 62.1 CHAPTER 3.1 ARTICLE 2.3

NOTE: This copy of the act is up-to-date as of August 14, 2025. The most recent version of the act can be found on the Virginia General Assembly's Legislative Information System website:

<https://law.lis.virginia.gov/vacodefull/title62.1/chapter3.1/article2.3/>

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§ 62.1-44.15:24. Definitions.

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

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

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

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

"Department" means the Department of Environmental Quality.

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

"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 any shoreline 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.

"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.

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

"Land-disturbance approval" means the same as that term is defined in § [62.1-44.3](#).

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

"Municipal Separate Storm Sewer System Management Program" means a management program covering the duration of a permit for a municipal separate storm sewer system 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 this article 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.

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

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

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

"Permit" means a Virginia Pollutant Discharge Elimination System (VPDES) permit issued by the Board pursuant to § [62.1-44.15](#) for stormwater discharges from a land-disturbing activity or MS4.

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

"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 (§ [62.1-44.15:67](#) et seq.) 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.

"Small construction activity" means:

1. A construction activity, including clearing, grading, or 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 an area equal to or greater than one acre 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 Board 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 Board that the construction activity will take place, and that stormwater discharges will occur, within the drainage area addressed by the TMDL or provide an equivalent analysis.

As of the start date in the table of start dates for electronic submissions of Virginia Pollutant Discharge Elimination System (VPDES) information within the regulation governing the implementation of electronic reporting requirements for certain VPDES permittees, facilities, and entities, all certifications submitted in support of such waiver shall be submitted electronically by the owner or operator to the Department in compliance with (i) this subdivision; (ii) 40 C.F.R. Part 3, including, in all cases, 40 C.F.R. Part 3 Subpart D; (iii) the regulation addressing signatories to state permit applications and reports; and (iv) regulations addressing the VPDES electronic reporting requirements. Such regulations addressing the VPDES electronic reporting requirements shall not undo existing requirements for electronic reporting. Prior to such date, and independent of the regulations addressing the VPDES electronic reporting requirements, a permittee shall be required to report electronically if specified by a particular permit.

2. Any other construction activity designated by either the Board or the Regional Administrator of the U.S. Environmental Protection Agency, 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" or "plan" means a document describing methods for controlling soil erosion and managing stormwater in accordance with the requirements adopted pursuant to this article.

"Stormwater," for the purposes of this article, 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 management plan" means a document containing material describing methods for complying with the requirements of a VSMP.

"Subdivision" means the same as that term is defined in § [15.2-2201](#).

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the Board that is established by a VESCP authority pursuant to Article 2.4 (§ [62.1-44.15:51](#) et seq.) 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. The VESCP shall include, where applicable, such items as local ordinances, rules, policies and guidelines, technical materials, and requirements for plan review, inspection, and evaluation consistent with the requirements of Article 2.4 (§ [62.1-44.15:51](#) et seq.).

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means a locality that is approved by the Board to operate a Virginia Erosion and Sediment Control Program in accordance with Article 2.4 (§ [62.1-44.15:51](#) et seq.). 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.).

"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 this article.

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

"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 more of land disturbance.

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

"Water quality technical criteria" means standards set forth in regulations adopted pursuant to this article 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 this article 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.

§ 62.1-44.15:25. Further powers and duties of the State Water Control Board.

In addition to other powers and duties conferred upon the Board by this chapter, it shall permit, regulate, and control soil erosion and stormwater runoff in the Commonwealth and may otherwise act to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater and soil erosion. It shall be the duty of the Board and it shall have the authority to:

1. Issue special orders pursuant to subdivision (8a) or (8b) of § [62.1-44.15](#) to any owner subject to requirements under this article, except that for any land-disturbing activity that disturbs an area measuring not less than 10,000 square feet but less than one acre in an area of a locality that is not designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.) and that is not part of a larger common plan of development or sale that disturbs one acre or more of land, such special orders may include civil penalties of up to \$5,000 per violation, not to exceed \$50,000 per order. Such civil penalties shall 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](#).

The provisions of this section notwithstanding, the Board may proceed directly under § [62.1-44.15:48](#) or Article 5 (§ [62.1-44.20](#) et seq.) for any past violation or violations of any provision of this article or any regulation duly adopted hereunder.

2. With the consent of any owner subject to requirements under this article, the Board may provide, in an order issued by the Board pursuant to subdivision (8d) of § [62.1-44.15](#) against such owner, for the payment of civil charges for violations in specific sums. Such sums shall not exceed the limit specified in subdivision A 1 or B 1, as applicable, of § [62.1-44.15:48](#). Such civil charges shall be collected in lieu of any appropriate civil penalty that could be imposed pursuant to § [62.1-44.15:48](#) and shall not be subject to the provisions of § [2.2-514](#). Such civil charges shall 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](#).

§ 62.1-44.15:25.1. Additional local authority.

Any locality serving as a VESMP authority shall have the authority to:

1. Issue orders in accordance with the procedures of subdivision 10 a of § [15.2-2122](#) to any owner subject to the requirements of this article. Such orders may include civil penalties in specific sums not to exceed the limit specified in subdivision A 2 or B 2, as applicable, of § [62.1-44.15:48](#), and such civil penalties shall be paid into the treasury of the locality in accordance with subdivision A 2 of § [62.1-44.15:48](#). The provisions of this section notwithstanding, the locality may proceed directly under § [62.1-44.15:48](#) for any past violation or violations of any provision of this article or any ordinance duly adopted hereunder.

2. Issue consent orders with the consent of any person who has violated or failed, neglected, or refused to obey any ordinance adopted pursuant to the provisions of this article, any condition of a locality's land-disturbance approval, or any order of a locality serving as a VESMP authority. Such consent order may provide for the payment of civil charges not to exceed the limits specified in subdivision A 2 or B 2, as applicable, of § [62.1-44.15:48](#). Such civil charges shall be in lieu of any appropriate civil penalty that could be imposed under this article. Any civil charges collected shall be paid to the treasury of the locality in accordance with subdivision A 2 of § [62.1-44.15:48](#).

§ 62.1-44.15:26.1. Termination of Construction General Permit coverage.

A. A VSMP authority shall recommend that the Department of Environmental Quality terminate coverage under a General Permit for Discharges of Stormwater from Construction Activities (Construction General Permit) within 60 days of receiving a complete notice of termination from the operator of the construction activity.

B. Coverage under a Construction General Permit shall be deemed to be terminated 90 days after the receipt by the VSMP authority of a complete notice of termination from the operator of the construction activity.

C. If a VSMP authority receives a notice of termination of a Construction General Permit that it determines to be incomplete, the VSMP authority shall, within a reasonable time, inform the operator of the construction activity of such incompleteness and provide the operator with a detailed list itemizing the elements of information that are missing from the notice.

§ 62.1-44.15:27. Virginia Programs for Erosion Control and Stormwater Management.

A. Any locality that operates a regulated MS4 or that administers a Virginia Stormwater Management Program (VSMP) as of July 1, 2017, shall be required to adopt and administer a VESMP consistent with the provisions of this article that regulates any land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.). The VESMP shall be adopted according to a process established by the Department.

B. Any locality that does not operate a regulated MS4 and for which the Department administers a VSMP as of July 1, 2017, shall choose one of the following options and shall notify the Department of its choice according to a process established by the Department:

1. Adopt and administer a VESMP consistent with the provisions of this article that regulates any land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.);

2. Adopt and administer a VESMP consistent with the provisions of this article that regulates any land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.), except that the Department shall provide the locality with review of the plan required by § [62.1-44.15:34](#) and provide a recommendation to the locality on the plan's compliance with the water quality and water quantity technical criteria; or

3. Adopt and administer a VESCP pursuant to Article 2.4 (§ [62.1-44.15:51](#) et seq.) that regulates any land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.). For such a land-disturbing activity in a Chesapeake Bay Preservation Area, the VESCP authority also shall adopt requirements set forth in this article and attendant regulations as required to regulate those activities in accordance with §§ [62.1-44.15:28](#) and [62.1-44.15:34](#).

The Board shall administer a VSMP on behalf of each VESCP authority for any land-disturbing activity that (a) disturbs one acre or more of land or (b) 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.

C. Any town that is required to or elects to adopt and administer a VESMP or VESCP, as applicable, may choose one of the following options and shall notify the Department of its choice according to a process established by the Department:

1. Any town, including a town that operates a regulated MS4, lying within a county may enter into an agreement with the county to become subject to the county's VESMP. If a town lies within the boundaries of more than one county, it may enter into an agreement with any of those counties that operates a VESMP.

2. Any town that chooses not to adopt and administer a VESMP pursuant to subdivision B 3 and that lies within a county may enter into an agreement with the county to become subject to the county's VESMP or VESCP, as applicable. If a town lies within the boundaries of more than one county, it may enter into an agreement with any of those counties.

3. Any town that is subject to the provisions of the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.) may enter into an agreement with a county pursuant to subdivision C 1 or 2 only if the county administers a VESMP for land-disturbing activities that disturb 2,500 square feet or more.

D. Any locality that chooses not to implement a VESMP pursuant to subdivision B 3 may notify the Department at any time that it has chosen to implement a VESMP pursuant to subdivision B 1 or 2. Any locality that chooses to implement a VESMP pursuant to subdivision B 2 may notify the Department at any time that it has chosen to implement a VESMP pursuant to subdivision B 1. A locality may petition the Board at any time for approval to change from fully administering a VESMP pursuant to subdivision B 1 to administering a VESMP in coordination with the Department pursuant to subdivision B 2 due to a significant change in economic conditions or other fiscal emergency in the locality. The provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.) shall govern any appeal of the Board's decision.

E. To comply with the water quantity technical criteria set forth in this article and attendant regulations for land-disturbing activities that disturb an area of 2,500 square feet or more but less than one acre, any rural Tidewater locality may adopt a tiered approach to water quantity management pursuant to § [62.1-44.15:27.2](#).

F. In support of VESMP authorities, the Department shall provide technical assistance and training and general assistance to localities in the establishment and administration of their individual or regional programs.

G. The Department shall develop a model ordinance for establishing a VESMP consistent with this article.

H. Each locality that operates a regulated MS4 or that chooses to administer a VESMP shall, by ordinance, establish a VESMP that shall be administered in conjunction with a local MS4 management program, if applicable, and which shall include the following:

1. Ordinances, policies, and technical materials consistent with regulations adopted in accordance with this article;
2. Requirements for land-disturbance approvals;
3. Requirements for plan review, inspection, and enforcement consistent with the requirements of this article, including provisions requiring periodic inspections of the installation of stormwater management measures. A VESMP authority may require monitoring and reports from the person responsible for meeting the permit conditions to ensure compliance with the permit and to determine whether the measures required in the permit provide effective stormwater management;
4. Provisions charging each applicant a reasonable fee to defray the cost of program administration for a regulated land-disturbing activity that does not require permit coverage. Such fee may be in addition to any fee charged pursuant to the statewide fee schedule established in accordance with subdivision 9 of § [62.1-44.15:28](#), although payment of fees may be consolidated in order to provide greater convenience and efficiency for those responsible for compliance with the program. A VESMP authority shall hold a public hearing prior to establishing such fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VESMP authority's expense involved;
5. Provisions for long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff; and
6. Provisions for the coordination of the VESMP with flood insurance, flood plain management, and other programs requiring compliance prior to authorizing land disturbance in order to make the submission and approval of plans, issuance of land-disturbance approvals, 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.

I. The Board shall approve a VESMP when it deems a program consistent with this article and associated regulations.

J. A VESMP authority may enter into agreements or contracts with the Department, soil and water conservation districts, adjacent localities, planning district commissions, or other public or private entities to carry out or assist with plan review and inspections. A VESMP authority may enter into contracts with third-party professionals who hold certifications in the appropriate subject areas, as provided in subsection A of § [62.1-44.15:30](#), to carry out any or all of the responsibilities that this article requires of a VESMP authority, including plan review and inspection but not including enforcement.

K. A VESMP authority shall be required to obtain evidence of permit coverage from the Department's online reporting system, where such coverage is required, prior to providing land-disturbance approval.

L. The VESMP authority responsible for regulating the land-disturbing activity shall require compliance with its applicable ordinances and the conditions of its land-disturbance approval and plan specifications. The Board 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 subdivision B 3.

M. In the case of a land-disturbing activity located on property controlled by a regional industrial facility authority established pursuant to Chapter 64 (§ [15.2-6400](#) et seq.) of Title 15.2, if a participating local member of such an authority also administers a VESMP, such locality shall be authorized to administer the VESMP on authority property, in accordance with an agreement entered into with all relevant localities and the existing VSMP or VESMP for the property.

§ 62.1-44.15:27.1. Virginia Stormwater Management Programs administered by the Board.

A. The Board shall administer a Virginia Stormwater Management Program (VSMP) on behalf of any locality that notifies the Department pursuant to subsection B of § [62.1-44.15:27](#) that it has chosen to not administer a VESMP as provided by subdivision B 3 of § [62.1-44.15:27](#). In such a locality:

1. The Board shall implement a VSMP in order to manage the quality and quantity of stormwater 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, as required by this article.

2. No person shall conduct a land-disturbing activity until he has obtained land-disturbance approval from the VESCP authority and, if required, submitted to the Department an application that includes a permit registration statement and stormwater management plan, and the Department has issued permit coverage.

B. The Board shall adopt regulations establishing specifications for the VSMP, including permit requirements and requirements for plan review, inspection, and enforcement that reflect the analogous stormwater management requirements for a VESMP set forth in applicable provisions of this article.

§ 62.1-44.15:27.2. Rural Tidewater localities; water quantity technical criteria; tiered approach.

A. 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 this section. The establishment and conduct of the tiered approach by the locality pursuant to this section shall be subject to review by the Department. The Board shall adopt regulations to carry out provisions of this section.

B. 1. The local governing body shall make, or cause to be made, a watershed map showing the boundaries of the locality. The governing body shall use the most recent version of Virginia's 6th order National Watershed Boundary Dataset to show the boundaries of each watershed located partially or wholly within the locality. The map shall indicate 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.

2. The watershed map also shall show 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 energy balance method for water quantity management, as set forth in the regulations adopted by the Board pursuant to this article, shall apply.

3. After the watershed map has been made, 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](#). Within 30 days after adoption of the official watershed map, the governing body shall cause the map to be filed in the office of the clerk of the circuit court.

4. At least once each year, the local 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 Permit for Discharges of Stormwater from Construction Activities and administered by the Department for opt-out localities pursuant to § [62.1-44.15:27](#). 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 map within 12 months of the approval of the development plan for any project that exceeds the impervious cover percentage of the watershed in which it is located and causes the percentage for that watershed to rise such that the watershed steps up to the next higher tier pursuant to subsection C.

6. No official watershed map or its adopting or amending ordinances 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.

C. When the locality evaluates any development project in a watershed that is depicted on the official watershed map as having an impervious cover percentage of:

1. Less than five percent, the locality shall apply the regulatory minimum standards and criteria adopted by the Board pursuant to Article 2.4 (§ [62.1-44.15:51](#) et seq.) and 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.

2. Five percent or more but less than 7.5 percent, the locality shall require practices designed to 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 man-made channels.

3. Seven and one-half percent or more, the locality shall apply the energy balance method as set forth in regulations adopted by the Board.

D. The locality shall require that any project whose construction would cause the impervious cover percentage of the watershed in which it is located to rise, such that the watershed steps up to the next higher tier, shall meet the current water quantity technical criteria using the energy balance method or a more stringent alternative.

§ 62.1-44.15:27.3. Acceptance of signed and sealed plan in lieu of local plan review.

A. Any rural Tidewater locality, whether or not it administers a VSMP or VESCP pursuant to § [62.1-44.15:27](#), may require that a licensed professional retained by the applicant prepare and submit a set of plans and supporting calculations for a land-disturbing activity of 2,500 square feet or more but less than one acre in extent.

B. Such professional shall be 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 and shall hold a certificate of competence in the appropriate subject area, as provided in § [62.1-44.15:30](#).

C. Such plans and supporting calculations shall be appropriately signed and sealed by the professional with a certification that states: "This plan is designed in accordance with applicable state law and regulations."

D. The rural Tidewater locality is authorized to accept such signed and sealed plans in satisfaction of the requirement of this article that, for a land-disturbing activity of 2,500 square feet or more but less than one acre in extent, it retain a local certified plan reviewer or conduct a local plan review. This section shall not excuse any applicable performance bond requirement pursuant to § [62.1-44.15:34](#) or [62.1-44.15:57](#).

§ 62.1-44.15:27.4. Department acceptance of plans in lieu of plan review.

A. Notwithstanding any other provision of this article, the Board, when administering a VSMP or VESMP pursuant to Article 2.3 (§ [62.1-44.15:24](#) 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 Board 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 § [62.1-44.15:34](#) or § [62.1-44.15:57](#).

§ 62.1-44.15:28. Development of regulations.

The Board is authorized to adopt regulations that establish requirements for the effective control of soil erosion, sediment deposition, and stormwater, including nonagricultural runoff, that shall be met in any VESMP to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources, and that specify minimum technical criteria and administrative procedures for VESMPs. The regulations shall:

1. Establish standards and procedures for administering a VESMP;
2. Establish minimum standards of effectiveness of the VESMP and criteria and procedures for reviewing and evaluating its effectiveness. The minimum standards of program effectiveness established by the Board shall provide that (i) no soil erosion control and stormwater management plan shall be approved until it is reviewed by a plan reviewer certified pursuant to § [62.1-44.15:30](#), (ii) each inspection of a land-disturbing activity shall be conducted by an inspector certified pursuant to § [62.1-44.15:30](#), and (iii) each VESMP shall contain a program administrator, a plan reviewer, and an inspector, each of whom is certified pursuant to § [62.1-44.15:30](#) and all of whom may be the same person;
3. Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the Commonwealth, including 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;
4. Include any survey of lands and waters as the Board deems appropriate or as any applicable law requires to identify areas, including multijurisdictional and watershed areas, with critical soil erosion and sediment problems;
5. Contain conservation standards for various types of soils and land uses, which shall include criteria, techniques, and methods for the control of soil erosion and sediment resulting from land-disturbing activities;
6. Establish water quality and water quantity technical criteria. These criteria shall be periodically modified as required in order to reflect current engineering methods;
7. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;
8. Require as a minimum the inclusion in VESMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VESMP authority shall grant land-disturbance approval, the conditions and processes under which such approval shall be granted, the procedures for

communicating disapproval, the conditions under which an approval may be changed, and requirements for inspection of approved projects;

9. Establish a statewide fee schedule to cover all costs associated with the implementation of a VESMP related to land-disturbing activities where permit coverage is required, and for land-disturbing activities where the Board serves as a VESMP authority or VSMP authority. Such fee attributes include the costs associated with plan review, permit registration statement review, permit issuance, permit coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing activities as well as program oversight costs. The fee schedule shall also include a provision for a reduced fee for a land-disturbing activity that disturbs 2,500 square feet or more but less than one acre in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.). The fee schedule shall be governed by the following:

a. The revenue generated from the statewide fee shall be collected utilizing, where practicable, an online payment system, and the Department's portion shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to § [62.1-44.15:29](#) . However, whenever the Board has approved a VESMP, no more than 30 percent of the total revenue generated by the statewide fees collected shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund, with the balance going to the VESMP authority;

b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department or other supporting revenue from a VESMP; however, the fees shall be set at a level sufficient for the Department, the Board, and the VESMP to fully carry out their responsibilities under this article and local ordinances or standards and specifications where applicable. When establishing a VESMP, the VESMP authority shall assess the statewide fees pursuant to the schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in the regulations as available to the Department for program oversight responsibilities pursuant to subdivision a. A VESMP's portion of the fees shall be used solely to carry out the VESMP's responsibilities under this article and associated ordinances;

c. In establishing the fee schedule under this subdivision, the Department shall ensure that the VESMP authority portion of the statewide fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities for small construction activity involving a single-family detached residential structure with a site or area, within or outside a common plan of development or sale, that is equal to or greater than one acre but less than five acres shall be no greater than the VESMP authority portion of the fee for coverage of sites or areas with a land-disturbance acreage of less than one acre within a common plan of development or sale;

d. When any fees are collected pursuant to this section by credit cards, business transaction costs associated with processing such payments may be additionally assessed;

e. Notwithstanding the other provisions of this subdivision 9, establish a procedure by which payment of the Department's portion of the statewide fee established pursuant to this subdivision 9 shall not be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale;

f. Establish a procedure by which a registration statement shall not be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for a small construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale;

10. Establish statewide standards for soil erosion control and stormwater management from land-disturbing activities;

11. Establish a procedure by which a soil erosion control and stormwater management plan or stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners;

12. Provide for the certification and use of a proprietary best management practice only if another state, regional, or national program has verified its nutrient or sediment removal effectiveness and all of such program's established test protocol requirements were met or exceeded. As used in this subdivision and any regulations or guidance adopted pursuant to this subdivision, "certification" means a determination by the Department that a proprietary best management practice is approved for use in accordance with this article;

13. Require that VESMPs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition.

a. Except where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters, any land-disturbing activity that was subject to the water quantity requirements that were in effect pursuant to this article prior to July 1, 2014, shall be deemed to satisfy the conditions of this subsection 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. Any land-disturbing activity that complies with these requirements 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 any ordinances adopted pursuant to § [62.1-44.15:27](#) or [62.1-44.15:33](#);

b. Any stream restoration or relocation project that incorporates natural channel design concepts is not a man-made channel 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 article;

14. Encourage low-impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater;

15. Promote the reclamation and reuse of stormwater for uses other than potable water in order to protect state waters and the public health and to minimize the direct discharge of pollutants into state waters;

16. Establish procedures to be followed when a locality chooses to change the type of program it administers pursuant to subsection D of § [62.1-44.15:27](#);

17. Establish a statewide permit fee schedule for stormwater management related to MS4 permits;

18. Provide for the evaluation and potential inclusion of emerging or innovative nonproprietary stormwater control technologies that may prove effective in reducing nonpoint source pollution;

19. Require the owner of property that is zoned for residential use and on which is located a privately owned stormwater management facility serving one or more residential properties to record the long-term maintenance and inspection requirements for such facility with the deed for the owner's property; and

20. Require that all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ [54.1-400](#) et seq.) or 22 (§ [54.1-2200](#) et seq.) of Title 54.1 be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing in this subdivision shall authorize any person to engage in practice outside his area of professional competence.

§ 62.1-44.15:28.1. Pollutant removal by dredging.

Upon approval by the Chesapeake Bay Program as a creditable practice for pollutant removal, the Board shall establish a procedure for the approval of dredging operations in the Chesapeake Bay Watershed as a method of meeting pollutant reduction and loading requirements. The dredging operation and disposal of dredged material shall be conducted in compliance with all applicable local, state, and federal laws and

regulations. Any locality imposing a fee relating to stormwater pursuant to § [15.2-2114](#) may make funds available for stormwater maintenance dredging, including at the point of discharge, where stormwater has contributed to the deposition of sediment in state waters.

§ 62.1-44.15:29. Virginia Stormwater Management Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Stormwater Management Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys collected by the Department pursuant to § [62.1-44.15:28](#) 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 under this article. 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.

§ 62.1-44.15:29.1. Stormwater Local Assistance Fund.

A. The State Comptroller shall continue in the state treasury the Stormwater Local Assistance Fund (the Fund) established by Chapter 806 of the Acts of Assembly of 2013, which shall be administered by the Department. All civil penalties and civil charges collected by the Board pursuant to §§ [62.1-44.15:25](#), [62.1-44.15:48](#), [62.1-44.15:63](#), and [62.1-44.15:74](#), subdivision (19) of § [62.1-44.15](#), and § [62.1-44.19:22](#) shall be paid into the state treasury and credited to the Fund, together with such other funds as may be made available to the Fund, which shall also receive bond proceeds from bonds authorized by the General Assembly, sums appropriated to it by the General Assembly, and other grants, gifts, and moneys as may be made available to it from any other source, public or private. 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.

B. The purpose of the Fund is to provide matching grants to local governments for the planning, design, and implementation of stormwater best management practices that address cost efficiency and commitments related to reducing water quality pollutant loads. Moneys in the Fund shall be used to meet (i) obligations related to the Chesapeake Bay total maximum daily load (TMDL) requirements, (ii) requirements for local impaired stream TMDLs, (iii) water quality measures of the Chesapeake Bay Watershed Implementation Plan, and (iv) water quality requirements related to the permitting of small municipal separate storm sewer systems. The grants shall be used solely for stormwater capital projects, including (a) new stormwater best management practices, (b) stormwater best management practice retrofitting or maintenance, (c) stream restoration, (d) low-impact development projects, (e) buffer restoration, (f) pond retrofitting, and (g) wetlands restoration. Such grants shall be made in accordance with eligibility determinations made by the Department pursuant to criteria established by the Board. Grants awarded for projects related to Chesapeake Bay TMDL requirements may take into account total phosphorus reductions or total nitrogen reductions. Grants awarded for eligible projects in localities with high or above average fiscal stress as reported by the Commission on Local Government may account for more than 50 percent of the costs of a project.

C. Moneys in the Fund shall be used solely for the purpose set forth herein and disbursements from it shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

§ 62.1-44.15:29.2. Stormwater Local Assistance Fund, estimate of requests.

The Department, in consultation with stakeholders, including representatives of the Virginia Municipal Stormwater Association, local governments, and conservation organizations, shall annually determine an estimate of the amount of stormwater local assistance matching grants expected to be requested by local governments for projects that are related to planning, designing, and implementing stormwater best

management practices and are eligible for funding. The Department shall include such estimate in (i) the biennial funding report that is submitted to the Governor pursuant to the provisions of § [2.2-1504](#) and (ii) the annual progress report on the impaired waters clean-up plan that is submitted to legislative committees pursuant to the provisions of § [62.1-44.118](#).

§ 62.1-44.15:30. Training and certification.

A. The Board shall issue separate or combined certifications concerning specified subject areas of this article, including program administration, plan review, and project inspection, to persons who have demonstrated adequate knowledge to the satisfaction of the Board. The Board also shall issue a Responsible Land Disturber certificate to personnel and contractors who have demonstrated adequate knowledge to the satisfaction of the Board.

B. The Department shall administer education and training programs for specified subject areas of this article and is authorized to charge persons attending such programs reasonable fees to cover the costs of administering the programs.

C. Personnel of VSMP or VESMP authorities who are administering programs, reviewing plans, or conducting inspections pursuant to this article shall hold a certification in the appropriate subject area as provided in subsection A. This requirement shall not apply to third-party individuals who prepare and submit plans to a VESMP or VSMP authority.

D. The Department shall establish procedures and requirements for issuance and periodic renewal of certifications.

E. Professionals registered in the Commonwealth pursuant to Article 1 (§ [54.1-400](#) et seq.) of Chapter 4 of Title 54.1 shall be deemed to have met the provisions of this section for the purposes of renewals of such certifications.

§ 62.1-44.15:31. Standards and specifications for state agencies, federal entities, and other specified entities.

A. As an alternative to submitting soil erosion control and stormwater management plans for its land-disturbing activities pursuant to § [62.1-44.15:34](#), 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 of Environmental Quality approval. Approved standards and specifications shall be consistent with this article. The Department of Environmental Quality shall have 60 days after receipt in which to act on any standards and specifications submitted or resubmitted to it for approval.

B. As an alternative to submitting soil erosion control and stormwater management plans pursuant to § [62.1-44.15:34](#), electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, and authorities created pursuant to § [15.2-5102](#) 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, 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.

C. As an alternative to submitting soil erosion control and stormwater management plans pursuant to § [62.1-44.15:34](#), any person engaging in more than one jurisdiction in the creation and operation of a wetland

mitigation or stream restoration bank that has been approved and is operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of (i) a wetlands mitigation or stream restoration bank, pursuant to a mitigation banking instrument signed by the Department, the Marine Resources Commission, or the U.S. Army Corps of Engineers, or (ii) a stream restoration project for purposes of reducing nutrients or sediment entering state waters may submit standards and specifications for Department approval that describe how land-disturbing activities shall be conducted. 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.

D. 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 this article. 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 this article and regulations developed under this article;
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 regulations adopted pursuant to this article;
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](#);
6. Implementation of a project tracking system that ensures notification to the Department of all land-disturbing activities covered under this article; and
7. Requirements for documenting onsite changes as they occur to ensure compliance with the requirements of this article.

E. The Department shall perform random site inspections or inspections in response to a complaint to ensure compliance with this article and regulations adopted thereunder.

F. 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 Board may take enforcement actions in accordance with this article and related regulations.

§62.1-44.15:33. Authorization for more stringent ordinances.

A. Localities that are serving as VESMP authorities are authorized to adopt more stringent soil erosion control or stormwater management ordinances than those necessary to ensure compliance with the Board's minimum 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 an MS4 permit or 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 twice in a newspaper of general circulation in the locality seeking to adopt the ordinance, with the first publication appearing no more than 28 days before and the second publication appearing no less than seven days before the hearing. This process shall not be required when a VESMP

authority chooses to reduce the threshold for regulating land-disturbing activities to a smaller area of disturbed land pursuant to § [62.1-44.15:34](#). However, this section shall not be construed to authorize a VESMP authority to impose a more stringent timeframe for land-disturbance review and approval than those provided in this article.

B. Localities that are serving as VESMP authorities shall submit a letter report to the Department when more stringent stormwater management ordinances or more stringent requirements authorized by such stormwater management ordinances, such as may be set forth in design manuals, policies, or guidance documents developed by the localities, are determined to be necessary pursuant to this section within 30 days after adoption thereof. Any such letter report shall include a summary explanation as to why the more stringent ordinance or requirement has been determined to be necessary pursuant to this section. Upon the request of an affected landowner or his agent submitted to the Department with a copy to be sent to the locality, within 90 days after adoption of any such ordinance or derivative requirement, localities shall submit the ordinance or requirement and all other supporting materials to the Department for a determination of whether the requirements of this section have been met and whether any determination made by the locality pursuant to this section is supported by the evidence. The Department shall issue a written determination setting forth its rationale within 90 days of submission. Such a determination, or a failure by the Department to make such a determination within the 90-day period, may be appealed to the Board.

C. Localities shall not prohibit or otherwise limit the use of any best management practice (BMP) approved for use by the Director or the Board except as follows:

1. When the Director or the Board approves the use of any BMP in accordance with its stated conditions, the locality serving as a VESMP authority shall have authority to preclude the onsite use of the approved BMP, or to require more stringent conditions upon its use, for a specific land-disturbing project based on a review of the stormwater management plan and project site conditions. Such limitations shall be based on site-specific concerns. Any project or site-specific determination purportedly authorized pursuant to this subsection may be appealed to the Department and the Department shall issue a written determination regarding compliance with this section to the requesting party within 90 days of submission. Any such determination, or a failure by the Department to make any such determination within the 90-day period, may be appealed to the Board.

2. When a locality is seeking to uniformly preclude jurisdiction-wide or otherwise limit geographically the use of a BMP approved by the Director or Board, or to apply more stringent conditions to the use of a BMP approved by the Director or Board, upon the request of an affected landowner or his agent submitted to the Department, with a copy submitted to the locality, within 90 days after adoption, such authorizing ordinances, design manuals, policies, or guidance documents developed by the locality that set forth the BMP use policy shall be provided to the Department in such manner as may be prescribed by the Department that includes a written justification and explanation as to why such more stringent limitation or conditions are determined to be necessary. The Department shall review all supporting materials provided by the locality to determine whether the requirements of this section have been met and that any determination made by the locality pursuant to this section is reasonable under the circumstances. The Department shall issue its determination to the locality in writing within 90 days of submission. Such a determination, or a failure by the Department to make such a determination within the 90-day period, may be appealed to the Board.

D. Based on a determination made in accordance with subsection B or C, any ordinance or other requirement enacted or established by a locality that is found to not comply with this section shall be null and void, replaced with state minimum standards, and remanded to the locality for revision to ensure compliance with this section. Any such ordinance or other requirement that has been proposed but neither enacted nor established shall be remanded to the locality for revision to ensure compliance with this section.

E. Any provisions of a local erosion and sediment control or stormwater management program in existence before January 1, 2016, that contains more stringent provisions than this article shall be exempt from the requirements of this section if the locality chooses to retain such provisions when it becomes a VESMP authority. However, such provisions shall be reported to the Board at the time of submission of the locality's VESMP approval package.

§ 62.1-44.15:34. Regulated activities; submission and approval of a permit application; security for performance; exemptions.

A. A person shall not conduct any land-disturbing activity until (i) he has submitted to the appropriate VESMP authority an application that includes a permit registration statement, if required, a soil erosion control and stormwater management plan or an executed agreement in lieu of a plan, if required, and (ii) the VESMP authority has issued its land-disturbance approval. In addition, as a prerequisite to engaging in an approved land-disturbing activity, the name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber certificate pursuant to § [62.1-44.15:30](#) shall be submitted to the VESMP authority. Any VESMP 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. 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 this article.

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

2. A VESMP authority implementing its program in coordination with the Department pursuant to subdivision B 2 of § [62.1-44.15:27](#) shall determine the completeness of any application within 15 days after receipt, and shall act on any application within 60 days after it has been determined by the VESMP authority to be complete. The VESMP authority shall forward a soil erosion control and stormwater management plan to the Department for review within five days of receipt. If the plan is incomplete, the Department shall return the plan to the locality immediately and the application process shall start over. If the plan is complete, the Department shall review it for compliance with the water quality and water quantity technical criteria and provide its recommendation to the VESMP authority. The VESMP authority shall either (i) issue the land-disturbance approval or (ii) issue a denial and provide a written rationale for the denial. In no case shall a locality have more than 60 days for its decision on an application after it has been determined to be complete. Prior to issuing a land-disturbance approval, a VESMP authority shall be required to obtain evidence of permit coverage when such coverage is required.

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

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

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

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

- c. If onsite changes occur, the state agency or federal entity shall submit an amended soil erosion control and stormwater management plan to the Department.
- d. The state agency or federal entity responsible for the land-disturbing activity shall ensure compliance with the approved plan. As necessary, the Board shall provide project oversight and enforcement.
4. Prior to issuance of any land-disturbance approval, the VESMP authority may also require an applicant, excluding state agencies and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the VESMP authority, to ensure that measures could be taken by the VESMP authority at the applicant's expense should he fail, after proper notice, within the time specified to comply with the conditions imposed by the VESMP authority as a result of his land-disturbing activity. If the VESMP authority takes such action upon such failure by the applicant, the VESMP authority may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the completion of the VESMP authority's conditions, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.
- B. The VESMP authority may require changes to an approved soil erosion control and stormwater management plan in the following cases:
1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations or ordinances; or
 2. Where the owner finds that because of changed circumstances or for other reasons the plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article, are agreed to by the VESMP authority and the owner.
- C. In order to prevent further erosion, a VESMP authority may require approval of a soil erosion control and stormwater management plan for any land identified as an erosion impact area by the VESMP authority.
- D. A VESMP authority may enter into an agreement with an adjacent VESMP authority regarding the administration of multijurisdictional projects, specifying who shall be responsible for all or part of the administrative procedures. Should adjacent VESMP authorities fail to reach such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction.
- E. The following requirements shall apply to land-disturbing activities in the Commonwealth:
1. Any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or greater of land disturbance may, in accordance with regulations adopted by the Board, be required to obtain permit coverage.
 2. For a land-disturbing activity occurring in an area not designated as a Chesapeake Bay Preservation Area subject to the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.):
 - a. Soil erosion control requirements and water quantity technical criteria adopted pursuant to this article shall apply to any activity that disturbs 10,000 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land. A plan addressing these requirements shall be submitted to the VESMP authority in accordance with subsection A. This subdivision shall also apply to additions or modifications to existing single-family detached residential structures.
 - b. Soil erosion control requirements and water quantity and water quality technical criteria shall apply to any 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, although the locality may reduce this regulatory threshold to a smaller area of disturbed land. A plan addressing these requirements shall be submitted to the VESMP authority in accordance with subsection A.

3. For a land-disturbing activity occurring in an area designated as a Chesapeake Bay Preservation Area subject to the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.):
- a. Soil erosion control and water quantity and water quality technical criteria shall apply to any land-disturbing activity that disturbs 2,500 square feet or more of land, other than a single-family detached residential structure. However, the governing body of any affected locality may reduce this regulatory threshold to a smaller area of disturbed land. A plan addressing these requirements shall be submitted to the VESMP authority in accordance with subsection A.
 - b. For land-disturbing activities for single-family detached residential structures, soil erosion control and water quantity technical criteria 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. A plan addressing these requirements shall be submitted to the VESMP authority in accordance with subsection A.
- 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. Minor land-disturbing activities, including home gardens and individual home landscaping, repairs, and maintenance work;
 2. Installation, maintenance, or repair of any individual service connection;
 3. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
 4. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
 5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2;
 6. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally set forth by the Board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ [10.1-1100](#) et seq.) or is converted to bona fide agricultural or improved pasture use as described in subsection B of § [10.1-1163](#);
 7. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
 8. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto;
 9. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;
 10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, 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; and
 11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity.

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

1. Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;
2. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and
3. Discharges from a land-disturbing activity to a sanitary sewer or a combined sewer system.

§ 62.1-44.15:35. Nutrient credit use and additional offsite options for construction activities.

A. As used in this section:

"Nutrient credit" or "credit" means a type of offsite option that is a nutrient credit certified pursuant to Article 4.02 (§ [62.1-44.19:12](#) et seq.).

"Offsite option" means an alternative available, away from the real property where land disturbance is occurring, to address water quality or water quantity technical criteria established pursuant to § [62.1-44.15:28](#).

"Tributary," within the Chesapeake Bay watershed, has the same meaning as in § [62.1-44.19:13](#).

For areas outside of the Chesapeake Bay watershed, "tributary" includes the following watersheds: Albemarle Sound, Coastal; Atlantic Ocean, Coastal; Big Sandy; Chowan; Clinch-Powell; New Holston (Upper Tennessee); New River; Roanoke; and Yadkin.

B. 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](#), (ii) adopted pursuant to § [62.1-44.15:33](#) 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 Board. Where such a limitation exists, offsite options may be used provided that such options do not preclude or impair compliance with the local limitation.

C. Unless prohibited by subsection B, a VESMP authority or a 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](#), 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 or 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 water quality technical criteria cannot practicably be met onsite. The requirements of clauses (i) through (iv) shall be deemed to have been met if it is demonstrated that onsite control of at least 75 percent of the required phosphorous water quality reduction will be achieved.

D. No VSMP or VESMP authority may grant an exception to, or waiver of, post-development nonpoint nutrient runoff compliance requirements unless offsite options have been considered and found not available.

E. The VSMP or VESMP 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. A pollutant loading pro rata share program established by a locality pursuant to § [15.2-2243](#) and approved by the Department or applicable state board prior to

January 1, 2011, including those that may achieve nutrient reductions after the commencement of the land-disturbing activity, may continue to operate in the approved manner for a transition period ending July 1, 2014. 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. The land disturber shall have the right to select between the use of nutrient credits or other offsite options, except during the transition period in those localities to which the transition period applies.

F. With the consent of the land disturber, in resolving enforcement actions, the VESMP authority or the Board may include the use of offsite options to compensate for (i) nutrient control deficiencies occurring during the period of noncompliance and (ii) permanent nutrient control deficiencies.

G. This section shall not be construed as limiting the authority established under § [15.2-2243](#); however, under any pollutant loading pro rata share program established thereunder, the subdivider or developer shall be given appropriate credit for nutrient reductions achieved through offsite options. The locality may use funds collected for nutrient reductions pursuant to a locality pollutant loading pro rata share program for nutrient reductions in the same tributary within the same locality as the land-disturbing activity, or for the acquisition of nutrient credits.

H. Nutrient credits shall not be used to address water quantity technical criteria. 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 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 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. Until the effective date of regulations establishing application fees in accordance with § [62.1-44.19:20](#), the credit provider shall pay the Department a water quality enhancement fee equal to six percent of the amount paid for the credits. Such fee shall be deposited into the Virginia Stormwater Management Fund established by § [62.1-44.15:29](#).

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 1:1 ratio of the nutrient credits to the site's remaining post-development nonpoint nutrient runoff compliance requirement being met by credit use and (ii) use credits certified as perpetual credits pursuant to Article 4.02 (§ [62.1-44.19:12](#) et seq.).

4. A VESMP or 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 VSMP authority that the conditions established by clause (i) or (ii) 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.

I. The use of nutrient credits to meet post-construction nutrient control requirements shall be accounted for in the implementation of total maximum daily loads and MS4 permits as specified in subdivisions 1, 2, and 3. In order to ensure that the nutrient reduction benefits of nutrient credits used to meet post-construction nutrient control requirements are attributed to the location of the land-disturbing activity where the credit is used, the following account method shall be used:

1. Chesapeake Bay TMDL.

a. Where nutrient credits are used to meet nutrient reduction requirements applicable to redevelopment projects, a 1:1 credit shall be applied toward MS4 compliance with the Chesapeake Bay TMDL waste load allocation or related MS4 permit requirement applicable to the MS4 service area, including the site of the land-disturbing activity, such that the nutrient reductions of redevelopment projects are counted as part of the MS4 nutrient reductions to the same extent as when land-disturbing activities use onsite measures to comply.

b. Where nutrient credits are used to meet post-construction requirements applicable to new development projects, the nutrient reduction benefits represented by such credits shall be attributed to the location of the land-disturbing activity where the credit is used to the same extent as when land-disturbing activities use onsite measures to comply.

c. A 1:1 credit shall be applied toward compliance by a locality that operates a regulated MS4 with its Chesapeake Bay TMDL waste load allocation or related MS4 permit requirement to the extent that nutrient credits are obtained by the MS4 jurisdiction from a nutrient credit-generating entity as defined in § [62.1-44.19:13](#) independent of or in excess of those required to meet the post-construction requirements.

2. Local nutrient-related TMDLs adopted prior to the land-disturbing activity.

a. Where nutrient credits are used to meet nutrient reduction requirements applicable to redevelopment projects, a 1:1 credit shall be applied toward MS4 compliance with any local TMDL waste load allocation or related MS4 permit requirement applicable to the MS4 service area, including the site of the land-disturbing activity, such that the nutrient reductions of redevelopment projects are counted as part of the MS4 nutrient reductions to the same extent as when land-disturbing activities use onsite measures to comply, provided the nutrient credits are generated upstream of where the land-disturbing activity discharges to the water body segment that is subject to the TMDL.

b. Where nutrient credits are used to meet post-construction requirements applicable to new development projects, the nutrient reduction benefits represented by such credits shall be attributed to the location of the land-disturbing activity where the credit is used to the same extent as when land-disturbing activities use onsite measures to comply, provided the nutrient credits are generated upstream of where the land-disturbing activity discharges to the water body segment that is subject to the TMDL.

c. A 1:1 credit shall be applied toward MS4 compliance with any local TMDL waste load allocation or related MS4 permit requirement to the extent that nutrient credits are obtained by the MS4 jurisdiction from a nutrient credit-generating entity as defined in § [62.1-44.19:13](#) independent of or in excess of those required to meet the post-construction requirements. However, such credits shall be generated upstream of where the land-disturbing activity discharges to the water body segment that is subject to the TMDL.

3. Future local nutrient-related TMDLs.

This subdivision applies only to areas where there has been a documented prior use of nutrient credits to meet nutrient control requirements in an MS4 service area that flows to or is upstream of a water body segment for which a nutrient-related TMDL is being developed. For a TMDL waste load allocation applicable to the MS4, the Board shall develop the TMDL waste load allocation with the nutrient reduction benefits represented by the nutrient credit use being attributed to the MS4, except when the Board determines during the TMDL development process that reasonable assurance of implementation cannot be provided for nonpoint source load allocations due to the nutrient reduction benefits being attributed in this manner. The Board shall have no obligation to account for nutrient reduction benefits in this manner if the MS4 does not provide the Board with adequate documentation of (i) the location of the land-disturbing activities, (ii) the number of nutrient credits, and (iii) the generation of the nutrient credits upstream of the site at which the land-disturbing activity discharges to the water body segment addressed by the TMDL. Such attribution shall not be interpreted as amending the requirement that the TMDL be established at a level necessary to meet the applicable water quality standard.

§ 62.1-44.15:37. Notices to comply and stop work orders.

A. When the VESMP authority or the Board determines that there is a failure to comply with the permit conditions or conditions of land-disturbance approval, or to obtain an approved plan, permit, or land-disturbance approval prior to commencing land-disturbing activities, the VESMP authority or the Board may serve a notice to comply upon the owner, permittee, or person conducting land-disturbing activities without an approved plan, permit, or approval. Such notice to comply shall be served by delivery by facsimile, email, or other technology; by mailing with confirmation of delivery to the address specified in the permit 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 VESMP authority by the permittee or owner. The notice to comply shall specify the measures needed to comply with the permit or land-disturbance approval conditions, or shall identify the plan approval or permit 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 permit or land-disturbance approval has not been obtained, the VESMP authority or the Board may require immediate compliance. In any other case, the VESMP 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 VESMP authority or the Board may count any days of noncompliance as days of violation should the VESMP 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](#).

B. Upon failure to comply within the time specified in a notice to comply issued in accordance with subsection A, a locality serving as the VESMP authority or the Board may issue a stop work order requiring the owner, permittee, or person conducting the land-disturbing activities without an approved plan or required permit or land-disturbance approval to cease all land-disturbing activities until the violation has ceased, or an approved plan and required permits and approvals are obtained, and specified corrective measures have been completed. The VESMP authority or the Board shall lift the order immediately upon completion and approval of corrective action or upon obtaining an approved plan or any required permits or approvals.

C. 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.). Such orders shall become effective upon service on the person in the manner set forth in subsection A. However, where the alleged noncompliance is causing or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, the locality serving as the VESMP authority or the Board may issue, without advance notice or procedures, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.

D. The owner, permittee, or person conducting a land-disturbing activity may appeal the issuance of any order to the circuit court of the jurisdiction wherein the violation was alleged to occur or other appropriate court.

E. An aggrieved owner of property sustaining pecuniary damage from soil erosion or sediment deposition resulting from a violation of an approved plan or required land-disturbance approval, or from the conduct of a land-disturbing activity commenced without an approved plan or required land-disturbance approval, may give written notice of an alleged violation to the locality serving as the VESMP authority and to the Board.

1. If the VESMP 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 the property of the aggrieved owner.

2. Upon receipt of the request, the Board shall conduct an investigation of the aggrieved owner's complaint. If the Board's investigation of the complaint indicates that (i) there is a violation and the VESMP authority has

not responded to the violation as required by the VESMP and (ii) the VESMP 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 from receipt of the notice from the aggrieved owner, then the Board shall give written notice to the VESMP authority that the Board intends to issue an order pursuant to subdivision 3.

3. If the VESMP 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 plan, or person conducting the land-disturbing activity 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 VESMP.

4. 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.

5. If a person who has been issued an order or an 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. 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 in accordance with the provisions of § [62.1-44.15:48](#). 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 established pursuant to § [62.1-44.15:29.1](#).

§ 62.1-44.15:37.1. 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 § [62.1-44.15:31](#) 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.

§ 62.1-44.15:39. Right of entry.

In addition to the Board's authority set forth in § [62.1-44.20](#), a locality serving as a VESMP authority or as an operator of a regulated municipal separate storm sewer system 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. For operators of regulated municipal separate storm sewer systems that are not a locality or any duly authorized agent thereof, this authority shall apply only to those properties from which a discharge enters their municipal separate storm sewer systems.

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

§ 62.1-44.15:40. Information to be furnished.

The Board, the Department, or a locality serving as a VESMP authority may require every owner, including every applicant for a permit or land-disturbance approval, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this article. The Board or Department also may require any locality that is a VESMP authority to furnish when requested any information as may be required to accomplish the purposes of this article. Any personal information shall not be disclosed except to an appropriate official of the Board, Department, U.S. Environmental Protection Agency, or VESMP authority or as may be authorized pursuant to the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.). However, disclosure of records of the Department, the Board, or the VESMP authority relating to (i) active federal environmental enforcement actions that are considered confidential under federal law, (ii) enforcement strategies, including proposed sanctions for enforcement actions, and (iii) any secret formulae, secret processes, or secret methods other than effluent data used by any owner or under that owner's direction is prohibited. Upon request, such enforcement records shall be

disclosed after a proposed sanction resulting from the investigation has been determined by the Board or the locality serving as a VESMP authority. This section shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any land-disturbing activity that may have occurred, or similar documents.

§ 62.1-44.15:41. Liability of common interest communities.

Whenever a common interest community cedes responsibility for the maintenance, repair, and replacement of a stormwater management facility on its real property to the Commonwealth or political subdivision thereof, such common interest community shall be immune from civil liability in relation to such stormwater management facility. In order for the immunity established by this subsection to apply, (i) the common interest community must cede such responsibility by contract or other instrument executed by both parties and (ii) the Commonwealth or the governing body of the political subdivision shall have accepted the responsibility ceded by the common interest community in writing or by resolution. As used in this section, maintenance, repair, and replacement shall include, without limitation, cleaning of the facility, maintenance of adjacent grounds that are part of the facility, maintenance and replacement of fencing where the facility is fenced, and posting of signage indicating the identity of the governmental entity that maintains the facility. Acceptance or approval of an easement, subdivision plat, site plan, or other plan of development shall not constitute the acceptance by the Commonwealth or the governing body of the political subdivision required to satisfy clause (ii). The immunity granted by this section shall not apply to actions or omissions by the common interest community constituting intentional or willful misconduct or gross negligence. For the purposes of this section, "common interest community" means the same as that term is defined in § [54.1-2345](#).

§ 62.1-44.15:46. Appeals.

Any permittee or party aggrieved by (i) a permit or permit enforcement decision of the Board under this article or (ii) a decision of the Board under this article concerning a land-disturbing activity in a locality subject to the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.), or any person who has participated, in person or by submittal of written comments, in the public comment process related to such decision of the Board under this article, whether such decision is affirmative or negative, is entitled to judicial review thereof in accordance with § [62.1-44.29](#). Appeals of other final decisions of the Board under this article shall be subject to judicial review in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

A final decision by a locality, when serving as a VESMP authority, shall be subject to judicial review, provided that an appeal is filed in the appropriate court 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 a land-disturbing activity.

§ 62.1-44.15:48. Penalties, injunctions, and other legal actions.

A. For a land-disturbing activity that disturbs 2,500 square feet or more of land in an area of a locality that is designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.), or that disturbs one acre or more of land or is part of a larger common plan of development or sale that disturbs one acre or more of land anywhere else in the Commonwealth:

1. Any person who violates any applicable provision of this article or of any regulation, permit, or standard and specification adopted or approved by the Board hereunder, or who fails, neglects, or refuses to comply with any order of the Board, or a court, issued as herein provided, shall be subject to a civil penalty pursuant to § [62.1-44.32](#). The court shall direct that any penalty 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](#).

2. Any person who violates any applicable provision of this article, or any ordinance adopted pursuant to this article, including those adopted pursuant to the conditions of an MS4 permit, or any condition of a local land-disturbance approval, or who fails, neglects, or refuses to comply with any order of a locality serving as a VESMP authority or a court, issued as herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute

a separate offense. Such civil penalties 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, 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, 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. For a land-disturbing activity that disturbs an area measuring not less than 10,000 square feet but less than one acre in an area that is not designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.) and is not part of a larger common plan of development or sale that disturbs one acre or more of land:

1. Any person who violates any applicable provision of this article or of any regulation or order of the Board issued pursuant to this article, or any condition of a land-disturbance approval issued by the Board, or fails to obtain a required land-disturbance approval, shall be subject to a civil penalty not to exceed \$5,000 for each violation with a limit of \$50,000 within the discretion of the court in a civil action initiated by the Board. 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 \$50,000. 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](#).

2. Any locality serving as a VESMP authority shall adopt an ordinance providing that a violation of any ordinance or provision of its program adopted pursuant to this article, or any condition of a land-disturbance approval, shall be subject to a civil penalty. Such ordinance shall provide that any person who violates any applicable provision of this article or any ordinance or order of a locality issued pursuant to this article, or any condition of a land-disturbance approval issued by the locality, or fails to obtain a required land-disturbance approval, shall be subject to a civil penalty not to exceed \$5,000 for each violation with a limit of \$50,000 within the discretion of the court in a civil action initiated by the locality. 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 \$50,000. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies and used pursuant to subdivision A 2, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to § [62.1-44.15:29.1](#).

C. The violation of any provision of this article may also result in the following sanctions:

1. The Board may seek an injunction, mandamus, or other appropriate remedy pursuant to § [62.1-44.23](#). A locality serving as a VESMP authority may apply to the appropriate court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation of the provisions of a local ordinance or order or the conditions of a local land-disturbance approval. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this article shall be subject, in the discretion of the court, to a civil penalty that shall be assessed and used in accordance with the provisions of subsection A or B, as applicable.

2. The Board or a locality serving as a VESMP authority may use the criminal provisions provided in § [62.1-44.32](#).

§ 62.1-44.15:49. Enforcement authority of MS4 localities.

Each locality subject to an MS4 permit shall adopt an ordinance to implement a municipal separate storm sewer system management program that is consistent with this chapter and that contains provisions as required to comply with an MS4 permit. Such locality may utilize the civil penalty provisions in subdivision A 2 of § [62.1-44.15:48](#), the injunctive authority as provided for in subsection C of § [62.1-44.15:48](#), the civil charges as authorized in § [62.1-44.15:25.1](#), and the criminal provisions in § [62.1-44.32](#), to enforce the ordinance. At the request of another MS4, the locality may apply the penalties provided for in this section to direct or indirect discharges to any MS4 located within its jurisdiction.

§ 62.1-44.15:49.1. MS4 industrial and high-risk programs.

A. Any locality that owns or operates a municipal separate storm sewer system that is subject to a discharge permit issued pursuant to this chapter shall have the authority to adopt and administer an industrial and high-risk runoff program for industrial and commercial facilities as part of its municipal separate storm sewer system management program.

B. The Board shall not delegate to the locality the Board's authority or responsibilities under the federal Clean Water Act (33 U.S.C. § 1251 et seq.) as to such industrial and commercial facilities.

C. Unless it is required to do so by the adoption on or after January 1, 2018, of a federal regulation or an amendment to the federal Clean Water Act (33 U.S.C. § 1251 et seq.), the Board shall not impose upon the locality, by permit issuance or reissuance, any municipal separate storm sewer system permit condition requiring that (i) an industrial or commercial facility also subject to a permit issued by the Board under this chapter be included in the locality's industrial and high-risk runoff program, (ii) any state discharge monitoring reports or other required reports submitted by such a facility to the Department also be reviewed or enforced by the locality, or (iii) the locality impose additional monitoring requirements on a facility that exceed or conflict with the requirements of any permit issued by the Board under this chapter. The limitation contained in this subsection shall not be cause for the Board or the locality to initiate a major or minor modification of any municipal separate storm sewer system permit that is in effect as of January 1, 2018, during the term of that permit.

D. Notwithstanding the provisions of this section, the Board may, through a municipal separate storm sewer system permit that is issued to the locality, require a locality to refer any industrial or commercial facility to the Board or the Department if the locality becomes aware of a violation of any industrial stormwater management requirement contained in an individual or general Virginia Pollutant Discharge Elimination System permit issued to the facility pursuant to this chapter.

§ 62.1-44.15:50. Cooperation with federal and state agencies.

A VESMP authority and the Department are authorized to cooperate and enter into agreements with any federal or state agency in connection with the requirements for land-disturbing activities.

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 Stormwater 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 II Virginia Erosion and Stormwater Management Program

Article 1 Definitions, Purpose, and Applicability

9VAC25-875-40. 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 Virginia Erosion and Stormwater Management Act (VESMA), Article 2.3 (§ [62.1-44.15:24](#) et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Development" means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures or the clearing of land for nonagricultural or nonsilvicultural purposes. The regulation of discharges from development, for purposes of stormwater management, does not include the exclusions found in [9VAC25-875-860](#).

9VAC25-875-50. Purpose

The purpose of this part is to provide the framework for the administration, implementation, and enforcement of the VESMA. This part delineates the roles and responsibilities associated with a locality's VESMP and the department's VSMP. This part also establishes the department's procedures for approving the administration of a VESMP authority and includes the department's oversight authority over a VESMP.

9VAC25-875-60. Applicability

This part is applicable to:

1. Any local government that administers a VESMP;
2. The department that administers a VESMP and VSMP; and
3. The department in its administrative oversight of VESMPs.

Article 2 Land-Disturbing Activities

9VAC25-875-70. 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, is less than one acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area, and not part of a common plan of development or sale, is subject to criteria defined in Article 2 ([9VAC25-875-540](#) et seq.) of Part V ([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, 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 Part V of this chapter, unless Article 4 ([9VAC25-875-670](#) et seq.) of Part V of this chapter 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 Part V of this chapter 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 Part V of this chapter, unless Article 4 of Part V of this chapter 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 Part V of this chapter, unless Article 4 of Part V of this chapter 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.

9VAC25-875-80. Land-disturbing activities in a Chesapeake Bay Preservation Area

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

1. 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 ([9VAC25-880](#) et seq.) but shall be subject to 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](#).

9VAC25-875-90. Activities not required to comply with the VESMA

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

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

2. Installation, maintenance, or repair of any individual service connection;
3. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
4. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2 of the Code of Virginia;
6. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally set forth by the board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ [10.1-1100](#) et seq.) of 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;
7. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
8. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the 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 VESMA and the regulations adopted pursuant thereto;
9. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;
10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VESMP or VSMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of [9VAC25-875-530](#) is required within 30 days of commencing the land-disturbing activity; and
11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity.

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

1. Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;
2. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and
3. Discharges from a land-disturbing activity to a sanitary sewer or a combined sewer system.

Article 3 Programs Operated by a VESMP Authority

9VAC25-875-100. Criteria for programs operated by a VESMP authority

A. Each locality that operates a regulated MS4 or that chooses to administer a VESMP shall, by ordinance, establish a VESMP that shall be administered in conjunction with a local MS4 management program, if applicable, and that shall include the following:

1. Ordinances, policies, and technical materials consistent with regulations adopted in accordance with the VESMA;
2. Requirements for land-disturbance approvals;
3. Requirements for plan review, inspection, and enforcement consistent with the requirements of the VESMA, including provisions requiring periodic inspections of the installation of stormwater management measures. A VESMP authority may require monitoring and reports from the person responsible for meeting the permit conditions to ensure compliance with the permit and to determine whether the measures required in the permit provide effective stormwater management;
4. Provisions charging each applicant a reasonable fee to defray the cost of program administration for a regulated land-disturbing activity that does not require permit coverage. Such fee may be in addition to any fee charged pursuant to the statewide fee schedule established in accordance with subdivision 9 of § [62.1-44.15:28](#) of the Code of Virginia, although payment of fees may be consolidated in order to provide greater convenience and efficiency for those responsible for compliance with the program. A VESMP authority shall hold a public hearing prior to establishing such fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VESMP authority's expense involved;
5. Provisions for long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff; and
6. Provisions for the coordination of the VESMP with flood insurance, flood plain management, and other programs requiring compliance prior to authorizing land disturbance in order to make the submission and approval of plans, issuance of land-disturbance approvals, 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.

B. A VESMP authority may enter into agreements or contracts with the department, soil and water conservation districts, adjacent localities, planning district commissions, or other public or private entities to carry out or assist with plan review and inspections.

C. A VESMP authority shall obtain evidence of permit coverage from the department's online reporting system, where such coverage is required, prior to providing land-disturbance approval.

D. The VESMP authority responsible for regulating the land-disturbing activity shall require compliance with its applicable ordinances and the conditions of its land-disturbance approval and plan specifications.

E. A locality serving as a VESMP authority is authorized to adopt more stringent soil erosion control or stormwater management ordinances than those necessary to ensure compliance with the board's minimum regulations when adopted in accordance with § [62.1-44.15:33](#) of the Code of Virginia.

F. Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state or federal project, unless authorized by separate statute.

G. A VESMP authority may require, excluding state agencies and federal entities, the submission of a reasonable performance bond or other financial surety and provide for the release of such sureties in accordance with the criteria set forth in § [62.1-44.15:34](#) of the Code of Virginia.

H. A VESMP authority shall have provisions for collection, distribution to the state if required, and expenditure of permit fees.

I. Notice of termination of general permit coverage.

1. A VESMP authority shall recommend that the department terminate coverage under a General VPDES Permit for Discharges of Stormwater from Construction Activities (Construction General Permit) within 60 days of receiving a complete notice of termination from the operator of the construction activity.
2. Coverage under a Construction General Permit shall be deemed to be terminated 90 days after the receipt by the VESMP authority of a complete notice of termination from the operator of the construction activity.
3. If a VESMP authority receives a notice of termination of a Construction General Permit that it determines to be incomplete, the VESMP authority shall, within a reasonable time, inform the operator of the construction activity of such incompleteness and provide the operator with a detailed list itemizing the elements of information that are missing from the notice.

9VAC25-875-110. Plan review requirements

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

B. Section [62.1-44.15:34](#) of the Code of Virginia and [9VAC25-875-530](#) state that a person shall not conduct any land-disturbing activity until (i) that person has submitted to the appropriate VESMP authority an application that includes a permit registration statement, if required, a soil erosion control and stormwater management plan or an executed agreement in lieu of a plan, if required; and (ii) the VESMP authority has issued its land-disturbance approval. In addition, as a prerequisite to engaging in an approved land-disturbing activity, the name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber Certificate pursuant to § [62.1-44.15:30](#) of the Code of Virginia shall be submitted to the VESMP authority. Any VESMP 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 by the VESMA.

C. A VESMP authority shall approve or disapprove an ESM plan according to the following:

1. A VESMP authority shall determine the completeness of any application within 15 days after receipt, and shall act on any application within 60 days after it has been determined to be complete.
2. The VESMP authority shall issue either land-disturbance approval or denial and provide written rationale for any denial.
3. Prior to issuing a land-disturbance approval, a VESMP authority shall be required to obtain evidence of permit coverage when such coverage is required.
4. The VESMP authority shall act on the resubmitted application within 45 days after receipt including determination of completeness within the first 15 days.

D. Prior to issuance of any land-disturbance approval, the VESMP authority may also require an applicant, excluding state agencies and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the VESMP authority, to ensure that measures could be taken by the VESMP authority at the applicant's expense should the applicant fail, after proper notice, within the time specified to comply with the conditions imposed by the VESMP authority as a result of the applicant's land-disturbing activity. If the VESMP authority takes such action upon such failure by the applicant, the VESMP authority may collect from the applicant the difference

should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the completion of the VESMP authority's conditions, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.

E. The VESMP authority may require changes to an approved ESM plan in the following cases:

1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations or ordinances; or
2. Where the owner finds that because of changed circumstances or for other reasons the plan cannot be effectively carried out, and proposed amendments to the plan consistent with the requirements of the Act are agreed to by the VESMP authority and the owner.

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

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

H. No VESMP authority may grant an exception to, or waiver of, post-development nonpoint nutrient runoff compliance requirements unless offsite options have been considered and found not available in accordance with subsection D of § [62.1-44.15:35](#) of the Code of Virginia.

I. A VESMP authority is authorized to cooperate and enter into agreements with any federal or state agency in connection with the requirements for land-disturbing activities in accordance with § [62.1-44.15:50](#) of the Code of Virginia.

9VAC25-875-120. Plan review coordination with the department

A. A VESCP authority that chooses to become a VESMP authority may opt to coordinate the plan review component of its program with the department through an executed agreement pursuant to § [62.1-44.15:27](#) B 2 of the Code of Virginia. The department may recover the cost of the plan review service from the VESMP authority.

B. A VESMP authority implementing its program in coordination with the department pursuant to § [62.1-44.15:27](#) B 2 of the Code of Virginia shall determine the completeness of any application within 15 days after receipt, and shall:

1. Act on any application within 60 days after it has been determined by the VESMP authority to be complete;
2. Forward a soil erosion control and stormwater management plan to the department for review within five days of receipt. If the plan is incomplete, the department shall return the plan to the locality immediately and the application process shall start over. If the plan is complete, the department shall review the plan for compliance with the water quality and water quantity technical criteria and provide the department's recommendation to the VESMP authority; and
3. Either (i) issue the land-disturbance approval or (ii) issue a denial and provide a written rationale for the denial. In no case shall a locality have more than 60 days for its decision on an application after the application has been determined to be complete. Prior to issuing a land-disturbance approval, a VESMP authority shall be required to obtain evidence of permit coverage when such coverage is required.

C. The VESMP authority also shall forward to the department any resubmittal of a previously disapproved application within five days after receipt, and the VESMP authority shall determine whether the plan is complete within 15 days of its receipt of the plan. The department shall review the plan for compliance with

the water quality and water quantity technical criteria and provide its recommendation to the VESMP authority, and the VESMP authority shall act on the resubmitted application within 45 days after receipt.

9VAC25-875-130. Long-term maintenance of stormwater management facilities

A. As required in [9VAC25-875-535](#), the operator shall submit a construction record drawing for permanent stormwater management facilities to the VESMP authority. 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, VESMP, or VSMP 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 such facilities 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.

9VAC25-875-140. Inspections

A. The VESMP authority shall inspect the land-disturbing activity during construction for:

1. Compliance with the approved erosion and sediment control plan;
2. Compliance with the approved stormwater management plan;
3. Development, updating, and implementation of a pollution prevention plan; and
4. Development and implementation of any additional control measures necessary to address a TMDL.

B. The VESMP authority shall conduct periodic inspections on all projects during construction. The VESMP authority shall either:

1. Provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds; or
2. Establish an alternative inspection program 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.

C. The VESMP authority shall establish an inspection program that ensures that permanent stormwater management facilities are being adequately maintained as designed after completion of land-disturbing activities. Inspection programs shall:

1. Be approved by the department;
2. Ensure that each stormwater management facility is inspected by the VESMP authority or the VESMP authority's designee, not to include the owner, except as provided in subsections D and E of this section, at least once every five years; and
3. Be documented by records.

D. The VESMP authority may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established in subsection C of this section if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ [54.1-400](#) et seq.) of Chapter 4 of Title 54.1 of the code of Virginia; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the department.

E. If a recorded instrument is not required pursuant to [9VAC25-875-130](#), a VESMP authority shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the VESMP authority.

9VAC25-875-150. Enforcement

A. A locality's VESMP authority shall incorporate components from subdivisions 1 and 2 of this subsection into its ordinance.

1. Informal and formal administrative enforcement procedures may include:
 - a. Right of entry in accordance with § [62.1-44.15:39](#) of the Code of Virginia.
 - b. Verbal warnings and inspection reports;
 - c. Notices of corrective action;
 - d. Notices to comply in accordance with § [62.1-44.15:37](#) of the Code of Virginia;
 - e. Stop work orders in accordance with § [62.1-44.15:37](#) of the Code of Virginia;
 - f. Special orders in accordance with §§ [62.1-44.15:25.1](#) and [62.1-44.15:48](#) of the Code of Virginia;
 - g. Consent orders in accordance with §§ [62.1-44.15:25.1](#) and [62.1-44.15:48](#) of the Code of Virginia; and
 - h. Public notice and comment periods.
2. Civil and criminal judicial enforcement procedures may include:
 - a. Schedule of civil penalties in accordance with §§ [62.1-44.15:25.1](#) and [62.1-44.15:48](#) of the Code of Virginia;
 - b. Criminal penalties in accordance with § [62.1-44.15:48](#) of the Code of Virginia; and
 - c. Injunctions in accordance with § [62.1-44.15:48](#) of the Code of Virginia.

B. A locality's VESMP authority shall develop policies and procedures that outline the steps to be taken regarding enforcement actions under the VESMA and attendant regulations and local ordinances.

C. Each locality subject to an MS4 permit shall adopt an ordinance to implement a municipal separate storm sewer system management program that is consistent with this chapter and that contains provisions as required to comply with an MS4 permit. Such locality may utilize the civil penalty provisions in subdivision A

2 of § [62.1-44.15:48](#) of the Code of Virginia, the injunctive authority as provided for in subsection C of § [62.1-44.15:48](#) of the Code of Virginia, the civil charges as authorized in § [62.1-44.15:25.1](#) of the Code of Virginia, and the criminal provisions in § [62.1-44.32](#) of the Code of Virginia, to enforce the ordinance. At the request of another MS4, the locality may apply the penalties provided for in this section to direct or indirect discharges to any MS4 located within its jurisdiction in accordance with § [62.1-44.15:49](#) of the Code of Virginia.

D. Penalties imposed in accordance with § [62.1-44.15:48](#) 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.

E. Pursuant to subsection L of § [62.1-44.15:27](#) of the Code of Virginia, authorization to administer a VESMP program shall not remove from the department the authority to enforce the provisions of the VESMA and attendant regulations.

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

G. Pursuant to § [62.1-44.15:48](#) of the Code of Virginia, civil penalties recovered by a locality's VESMP 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.

9VAC25-875-160. Hearings

Any permit applicant, permittee, or person subject to permit requirements under the VESMA aggrieved by any action of the department taken without a formal hearing may demand in writing a formal hearing pursuant to § [62.1-44.25](#) of the Code of Virginia and shall ensure that all hearings held under this chapter shall be conducted in a manner consistent with § [62.1-44.26](#) of the Code of Virginia or as otherwise provided by law. A locality holding hearings under this chapter shall do so in a manner consistent with local hearing procedures. The provisions of the Administrative Process Act (§ [2.2-4000](#) et seq. of the Code of Virginia) shall not apply to decisions rendered by localities. Appeals of decisions rendered by localities shall be conducted in accordance with local appeal procedures and shall include an opportunity for judicial review in the circuit court of the locality in which the land disturbance occurs or is proposed to occur. Unless otherwise provided by law, the circuit court shall conduct such review in accordance with the standards established in § [2.2-4027](#) of the Code of Virginia, and the decisions of the circuit court shall be subject to review by the Court of Appeals, as in other cases under this chapter.

9VAC25-875-170. Variances and exceptions

A. A VESMP authority may grant variances to waive or modify any of the erosion and sediment control requirements of Article 2 ([9VAC25-875-540](#) 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 VESMP 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.
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.

B. A VESMP authority may grant exceptions to the provisions of Article 3 ([9VAC25-875-570](#) et seq.) of Part V of this chapter. An exception may be granted provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the VESMA and this chapter are preserved, (iii) granting the exception will not

confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

C. Economic hardship alone is not a sufficient reason to grant an exception from the requirements of this chapter.

D. Under no circumstance shall the authority (i) grant an exception to the requirement that the land-disturbing activity obtain required permits, or (ii) approve the use of a BMP not found through the Virginia Stormwater BMP Clearinghouse, except where allowed under Article 4 ([9VAC25-875-670](#) et seq.) of Part V of this chapter.

E. Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options available through [9VAC25-875-610](#) have been considered and found not available.

F. A record of all exceptions granted shall be maintained by the authority in accordance with [9VAC25-875-180](#).

9VAC25-875-180. Reports and recordkeeping

A. On a fiscal year basis (July 1 to June 30), a VESMP authority shall report to the department by October 1 of each year in a format provided by the department. The information to be provided shall include the following:

1. Information, not previously reported to the department through other reporting requirements, on each permanent stormwater management facility completed during the fiscal year to include type of stormwater management facility, geographic coordinates, acres treated, and the surface waters or karst features into which the stormwater management facility will discharge;
2. A listing of each land-disturbing activity for which a plan has been approved by the VESMP authority;
3. Number and type of enforcement actions during the fiscal year; and
4. Number of exceptions granted during the fiscal year.

B. A VESMP authority shall keep records in accordance with the following:

1. Project records, including approved soil erosion control and stormwater management plans, shall be kept for three years after permit termination or project completion;
2. Stormwater management facility inspection records shall be documented and retained for at least five years from the date of inspection;
3. Construction record drawings shall be maintained in perpetuity or until a stormwater management facility is removed; and
4. All registration statements submitted in accordance with [9VAC25-875-530](#) shall be documented and retained for at least three years from the date of project completion or permit termination.

Article 4 Authorization and Review Procedures for VESMPs

9VAC25-875-190. Review and evaluation of VESMPs

- A. The department shall review each approved VESMP at least once every five years on a review schedule approved by the department. The department may review a VESMP on a more frequent basis if deemed necessary and shall notify the VESMP authority if such review is scheduled.
- B. The review of an approved VESMP shall consist of the following:
1. Consultation with the VESMP administrator or designee;
 2. A review of the local ordinances and other applicable documents;
 3. A review of a subset of the plans approved by the VESMP authority for consistency of application, including exceptions granted and calculations or other documentation that demonstrates that all erosion and sediment control minimum standards are met and required nutrient reductions are achieved using appropriate onsite and offsite compliance options;
 4. Inspections of regulated activities; and
 5. A review of enforcement actions and an accounting of amounts recovered through enforcement actions where applicable.
- C. The department shall coordinate the once per five year review with the department's other program reviews for the same entity to avoid redundancy.
- D. The department shall determine if the VESMP and ordinances where applicable are consistent with the VESMA and this chapter and notify the VESMP authority of its findings. The Administrative Process Act (§ [2.2-4000](#) et seq. of the Code of Virginia) shall govern the review activities and proceedings of the department and the judicial review thereof.
- E. If the department determines that the deficiencies noted in the review will cause the VESMP to be out of compliance with the VESMA and attendant regulations, the department shall notify the VESMP authority concerning the deficiencies and provide a reasonable period of time in accordance with subdivision 19 of § [62.1-44.15](#) of the Code of Virginia for corrective action to be taken. If the VESMP authority agrees to the corrective action approved by the department, the VESMP will be considered to be conditionally compliant with the VESMA and attendant regulations until a subsequent finding of compliance is issued by the department. If the VESMP authority fails to implement the necessary compliance actions identified by the department within the specified time, the department may take action pursuant to subdivision 19 of § [62.1-44.15](#) of the Code of Virginia.

Article 5 VSMP Operated by the Department

9VAC25-875-200. Criteria for a VSMP

- A. The department shall administer a VSMP on behalf of any locality that notifies the department that the locality has chosen to not administer a VESMP as provided by § [62.1-44.15:27](#) B 3 of the Code of Virginia.
- B. Per § [62.1-44.15:27.1](#) B of the Code of Virginia, the department shall administer a VSMP consistent with the stormwater management requirements defined for a VESMP.
- C. The department shall review and approve stormwater management plans by the schedule defined in [9VAC25-875-110](#), except for activities not required to comply with the requirements of the VESMA, pursuant to § [62.1-44.15:34](#) of the Code of Virginia and [9VAC25-875-90](#).
- D. The director or the director's designee may perform any act of the department provided under the VESMA and this chapter, except as limited by § [62.1-44.14](#) 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/regsva/deq-virginia/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:

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

Part VII Virginia Pollutant Discharge Elimination System (VPDES) Permits

Article 1 Definitions

9VAC25-875-850. Definitions

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

"Administrator" means the Administrator of the U.S. Environmental Protection Agency or an authorized representative.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA) (33 USC § 1251 et seq.) and VESMA, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308, 403, and 405 of the CWA.

"Approved program" or "approved state" means a state or interstate program that has been approved or authorized by EPA under 40 CFR Part 123.

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

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906 June 15, 1972).

"Continuous discharge" means a discharge that occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

"Co-permittee" means a permittee to a VPDES permit that is only responsible for permit conditions relating to the discharge for which it is the operator.

"Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

"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.

"Discharge Monitoring Report" or "DMR" means the form supplied by the department, or an equivalent form developed by the operator and approved by the department, for the reporting of self-monitoring results by operators.

"Draft permit" means a document indicating the department's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue an individual or general permit. A notice of intent to deny an

individual or general permit is a type of draft permit. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit.

"Effluent limitation" means any restriction imposed by the board on quantities, discharge rates, and concentrations of pollutants that are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means a regulation published by the administrator under § 304(b) of the CWA to adopt or revise effluent limitations.

"Existing permit" means a permit issued by the department and currently held by a permit applicant.

"Existing source" means any source that is not a new source or a new discharger.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery that form a permanent part of a new source and that will be used in its operation if these facilities or equipment are of such value as to represent a substantial commitment to construct. The term excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

"Facility or activity" means any VPDES point source or treatment works treating domestic sewage or any other facility or activity, including land or appurtenances thereto, that is subject to regulation under the VPDES program.

"Hazardous substance" means any substance designated under the Code of Virginia or 40 CFR Part 116 pursuant to § 311 of the CWA.

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

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities within the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Indirect discharger" means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works" or "(POTW)."

"Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 250,000 or more as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F);
2. Located in the counties listed in 40 CFR Part 122 Appendix H, except municipal separate storm sewers that are located in the incorporated places, townships, or towns within such counties;
3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the department as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the department may consider the following factors:
 - a. Physical interconnections between the municipal separate storm sewers;
 - b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
 - c. The quantity and nature of pollutants discharged to surface waters;
 - d. The nature of the receiving surface waters; and

e. Other relevant factors;

4. The department may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in this definition.

"Major facility" means any facility or activity classified as such by the regional administrator in conjunction with the board.

"Major municipal separate storm sewer outfall" or "major outfall" means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), with an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of two acres or more).

"Maximum daily discharge limitation" means the highest allowable daily discharge.

"Maximum extent practicable" or "MEP" means, in the context of a municipal separate stormwater sewer system, the technology-based discharge standard for municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, and BMPs to attain compliance with water quality standards.

"Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix G);
2. Located in the counties listed in 40 CFR Part 122 Appendix I, except municipal separate storm sewers that are located in the incorporated places, townships, or towns within such counties;
3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the department as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the department may consider the following factors:
 - a. Physical interconnections between the municipal separate storm sewers;
 - b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
 - c. The quantity and nature of pollutants discharged to surface waters;
 - d. The nature of the receiving surface waters; or
 - e. Other relevant factors;
4. The department may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivisions 1, 2, and 3 of this definition.

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes or an Indian tribe or an authorized Indian tribal organization or a designated and approved management agency under § 208 of the CWA.

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. That is not a new source; and
4. That has never received a finally effective separate VPDES or permit for discharges at that site.

This definition includes an indirect discharger that commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant that begins discharging at a site for which it does not have a separate VPDES or permit, and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

1. After promulgation of standards of performance under § 306 of the CWA that are applicable to such source; or
2. After proposal of standards of performance in accordance with § 306 of the CWA that are applicable to such source, but only if the standards are promulgated in accordance with § 306 of the CWA within 120 days of their proposal.

"Oil and gas exploration, production, processing, or treatment operations or transmission facilities" means all field activities or operations associated with exploration, production, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activity. (33 USC § 1362(24))

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

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"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.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or
2. Water, gas, or other material that is injected into a well to facilitate production of oil or gas or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the department and if the department determines that the injection or disposal will not result in the degradation of groundwater or surface water resources.

"Privately owned treatment works" or "PVOTW" means any device or system that is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a POTW.

"Publicly owned treatment works" or "POTW" means a treatment works as defined by § 212 of the CWA that is owned by a state or municipality (as defined by § 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in § 502(4) of the CWA, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Recommencing discharger" means a source that recommences discharge after terminating operations.

"Regional administrator" means the Regional Administrator of Region III of the Environmental Protection Agency or the authorized representative of the regional administrator.

"Revoked" means an existing VPDES permit that is terminated by the department before its expiration.

"Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

"Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the VESMA, the CWA, and regulations.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Significant materials" means but is not limited to raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under § 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with stormwater discharges.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are (i) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity or an Indian tribe or an authorized Indian tribal organization or a designated and approved management agency under § 208 of the CWA that discharges to surface waters and (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated under [9VAC25-875-950](#) A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"Stormwater discharge associated with construction activity" means a discharge of stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

"Stormwater discharge associated with large construction activity" means the discharge of stormwater from large construction activities.

"Stormwater discharge associated with small construction activity" means the discharge of stormwater from small construction activities.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

"Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing § 405(d) of the CWA.

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

"Variance" means any mechanism or provision under § 301 or 316 of the CWA or under 40 CFR Part 125, or in the applicable federal effluent limitations guidelines that allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions that allow the establishment of alternative limitations based on fundamentally different factors or on § 301(c), (g), (h), or (i), or 316(a) of the CWA.

"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.

"Water quality standards" or "WQS" means provisions of state or federal law that consist of designated uses for the waters of the Commonwealth and water quality criteria for such waters based on such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water, and serve the purposes of the State Water Control Law (§ [62.1-44.2](#) et seq. of the Code of Virginia), the VESMA (§ [62.1-44.15:24](#) et seq. of the Code of Virginia), and the CWA (33 USC § 1251 et seq.).

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Article 2 General Program Requirements Related to MS4s and Land-Disturbing Activities

9VAC25-875-860. Exclusions

The following discharges do not require permits:

1. Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion neither applies to rubbish, trash, garbage, or other such materials discharged overboard nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility, or a seafood processing facility or when secured to a storage facility or a seafood processing facility or when secured to the bed of the ocean, contiguous zone, or surface waters for the purpose of mineral or oil exploration or development.
2. Discharges of dredged or fill material into surface waters that are regulated under § 404 of the CWA.
3. The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to surface waters are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other party not leading to treatment works.
4. Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

5. Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including stormwater runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations, discharges from concentrated aquatic animal production facilities, discharges to aquaculture projects, and discharges from silvicultural point sources.
6. Return flows from irrigated agriculture.
7. Discharges into a privately owned treatment works, except as the department may otherwise require.

9VAC25-875-870. Prohibitions

A. Except in compliance with a permit issued by the department pursuant to the Virginia Erosion and Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from municipal separate storm sewer systems or land-disturbing activities.

B. Any person in violation of subsection A of this section that discharges or causes or allows a discharge of stormwater into or upon state waters from municipal separate storm sewer systems or land-disturbing activities or that discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subsection A of this section, shall notify the department of the discharge immediately upon discovery of the discharge but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted by the owner to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharges not authorized by the permit.

C. No permit may be issued:

1. When the conditions of the permit do not provide for compliance with the applicable requirements of the CWA or the State Water Control Law or regulations promulgated under the CWA or the State Water Control Law;
2. When the permit applicant is required to obtain a state or other appropriate certification under § 401 of the CWA and that certification has not been obtained or waived;
3. When the regional administrator has objected to issuance of the permit;
4. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states;
5. When, in the judgment of the Secretary of the Army, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;
6. For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;
7. For any discharge inconsistent with a plan or plan amendment approved under § 208(b) of the CWA;

8. For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

- a. Before the promulgation of guidelines under § 403(c) of the CWA (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the department determines permit issuance to be in the public interest; or
- b. After promulgation of guidelines under § 403(c) of the CWA, when insufficient information exists to make a reasonable judgment whether the discharge complies with them.

9. To a new source or a new discharger if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment that does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the State Water Control Law and § 301(b)(1)(A) and (b)(1)(B) of the CWA, and for which the department has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:

- a. There are sufficient remaining pollutant load allocations to allow for the discharge; and
- b. The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The department may waive the submission of information by the new source or new discharger required by this subdivision 9 b if the department determines that it already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this subdivision 9 b is to be included in the fact sheet to the permit under [9VAC25-875-1090](#).

9VAC25-875-880. Effect of a permit

A. Except for any toxic effluent standards and prohibitions imposed under § 307 of the CWA and standards for sewage sludge use or disposal under § 405(d) of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with the State Water Control Law and with §§ 301, 302, 306, 307, 318, 403, and 405(a) through (b) of the CWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in this chapter.

B. The issuance of a permit does not convey any property rights of any sort or any exclusive privilege.

C. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights or any infringement of state or local law or regulations.

9VAC25-875-890. Continuation of expiring permits

A. The permit shall expire at the end of its term, except that the conditions of an expired permit continue in force until the effective date of a new permit if:

1. The permittee has submitted a timely application as required by this chapter, which is a complete application for a new permit; and
2. The department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit.

B. Permits continued under this section remain fully effective and enforceable.

C. When the permittee is not in compliance with the conditions of the expiring or expired permit, the department may choose to do any or all of the following:

1. Initiate enforcement action based upon the permit which has been continued;
2. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

3. Issue a new permit with appropriate conditions; or
4. Take other actions authorized by this chapter.

9VAC25-875-900. Confidentiality of information

A. The department or the VESMP authority may require every permit applicant or permittee to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of permit applicant's or permittee's discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law and this chapter. Any personal information shall not be disclosed except to an appropriate official of the department or VESMP authority or as may be authorized pursuant to the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq. of the Code of Virginia). However:

1. Disclosure of records of the department or the VESMP authority relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions, is prohibited. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been determined by the department or the VESMP authority.
2. Any secret formula, secret processes, or secret methods other than effluent data submitted to the department pursuant to this chapter may be claimed as confidential by the submitter in accordance with 40 CFR 122.7. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "secret formulae," "secret processes," or "secret methods" on each page containing such information. If no claim is made at the time of submission, the department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq. of the Code of Virginia).
3. This section shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any land-disturbing activity that may have occurred, or similar documents.

B. Claims of confidentiality for the following information will be denied:

1. The name and address of any permit applicant or permittee; and
2. Permit applications, permits, and effluent data.

C. Information required by permit application forms provided by the department may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

9VAC25-875-910. Guidance documents

The department may develop and use guidance, as appropriate, to implement technical and regulatory details of the VPDES permit program. Such guidance is distinguished from regulation by the fact that it is not binding on either the department or permittees. If a more appropriate methodology than that called for in guidance is available in a given situation, the more appropriate methodology shall be used to the extent it is consistent with applicable regulations and the Virginia Erosion and Stormwater Management Act.

Article 3 Permit Applications

9VAC25-875-920. Application for a permit

A. Duty to apply. Any person who discharges or proposes to discharge stormwater into or upon state waters from municipal separate storm sewer systems or land-disturbing activities and who does not have an effective permit, except persons covered by general permits, excluded from the requirement for a permit by this chapter, shall submit a complete application in accordance with this section.

B. Who applies. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

C. Time to apply. Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the department. Stormwater discharges from large construction activities and stormwater discharges associated with small construction activities shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90-day or 180-day requirements to avoid delay.

D. Duty to reapply. All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit unless permission for a later date has been granted by the department. The department shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

E. Completeness. The department shall not issue a permit before receiving a complete application for a permit except for general permits. An application for a permit is complete when the department receives an application form and any supplemental information which are completed to its satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

F. Information requirements. All applicants for permits shall provide the following information using the application form provided by the department:

1. The activities conducted by the permit applicant which require it to obtain a permit;
2. Name, mailing address, and location of the facility for which the application is submitted;
3. Up to four SIC codes which best reflect the principal products or services provided by the facility;
4. The operator's name, address, telephone number, email address, ownership status, and status as federal, state, private, public, or other entity;
5. Whether the facility is located on Indian lands;
6. A listing of all permits or construction approvals received, applied for, or to be applied for under any of the following programs:
 - a. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA) (42 USC § 6921);
 - b. Underground Injection Control (UIC) program under the Safe Drinking Water Act (SDWA) (42 USC § 300h);
 - c. VPDES program under the CWA and the State Water Control Law;
 - d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42 USC § 4701 et seq.);
 - e. Nonattainment program under the Clean Air Act (42 USC § 4701 et seq.);
 - f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act (42 USC § 4701 et seq.);

- g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act (33 USC § 14 et seq.);
- h. Dredge or fill permits under § 404 of the CWA;
- i. A permit under the CWA and the Virginia Erosion and Stormwater Management Act; and
- j. Other relevant environmental permits;

7. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, that depicts: the facility and (i) each of the source's intake and discharge structures; (ii) each of the source's hazardous waste treatment, storage, or disposal facilities; (iii) each well where fluids from the facility are injected underground; and (iv) those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the permit applicant in the map area; and

8. A brief description of the nature of the business.

G. Variance requests. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this subsection:

1. Fundamentally different factors.

a. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows:

(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft permit; or

(2) For a request from best available technology economically achievable (BAT) or best conventional pollutant control technology (BCT), by no later than 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

b. The request shall explain how the requirements of the applicable regulatory or statutory criteria have been met.

2. A request for a variance from the BAT requirements for CWA § 301(b)(2)(F) pollutants (commonly called nonconventional pollutants) pursuant to § 301(c) of the CWA because of the economic capability of the owner or operator, or pursuant to § 301(g) of the CWA (provided, however, that a § 301(g) variance may only be requested for ammonia, chlorine, color, iron, total phenols (when determined by the administrator to be a pollutant covered by § 301(b)(2)(F) of the CWA), and any other pollutant that the administrator lists under § 301(g)(4) of the CWA) must be made as follows:

a. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

(1) Submitting an initial request to the regional administrator, as well as to the department, stating the name of the discharger, the permit number, the outfall number, the applicable effluent guideline, and whether the discharger is requesting a § 301(c) or § 301(g) of the CWA modification, or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline; and

(2) Submitting a completed request no later than the close of the public comment period for the draft permit demonstrating that: (i) all reasonable ascertainable issues have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 have been met. Notwithstanding this provision, the complete application for a request under § 301(g) of the CWA shall be filed 180 days before EPA must make a decision (unless the Regional Administrator establishes a shorter or longer period); or

b. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with subdivision 2 a (2) of this subsection and need not be preceded by an initial request under subdivision 2 a (1) of this subsection.

3. A modification under § 302(b)(2) of the CWA of requirements under § 302(a) of the CWA for achieving water quality related effluent limitations may be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

4. A variance for alternate effluent limitations for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established on a case-by-case basis or are based on water quality standards the request for a variance may be filed by the close of the public comment period for the draft permit. A copy of the request shall be sent simultaneously to the department.

H. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in subsection G of this section, the department may notify a permit applicant before a draft permit is issued that the draft permit will likely contain limitations that are eligible for variances. In the notice the department may require the permit applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations that may become effective upon final grant of the variance.

2. A discharger who cannot file a timely complete request required under subdivisions G 2 a (2) or G 2 b of this section may request an extension. The extension may be granted or denied at the discretion of the department. Extensions shall be no more than six months in duration.

I. Recordkeeping. Permit applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed.

9VAC25-875-930. Permit rationale

In granting a permit pursuant to this chapter, the department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the department is to deny a permit, the department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

9VAC25-875-940. Signatories to permit applications and reports

A. All permit applications shall be signed as follows:

1. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

2. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

3. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency

includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

B. All reports required by permits, and other information requested by the department shall be signed by a person described in subsection A of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in subsection A of this section;
2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and
3. The written authorization is submitted to the department.

C. If an authorization under subsection B of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection B of this section must be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

D. Any person signing a document under subsection A or B of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

E. Electronic reporting. If documents described in subsection A or B of this section are submitted electronically by or on behalf of a VPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section and shall ensure that all of the relevant requirements of Part XI ([9VAC25-31-950](#) et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D) are met for that submission.

9VAC25-875-950. Stormwater discharges

A. Permit requirements.

1. Prior to October 1, 1994, discharges composed entirely of stormwater shall not be required to obtain a permit except:
 - a. A discharge with respect to which a permit has been issued prior to February 4, 1987;
 - b. A stormwater discharge associated with large construction activity;
 - c. A discharge from a large municipal separate storm sewer system;
 - d. A discharge from a medium municipal separate storm sewer system; or
 - e. A discharge that either the department or the regional administrator determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to surface waters. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying stormwater runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances that do not require a permit under subdivision 2 of this subsection or agricultural stormwater runoff that is exempted from the definition of point source.

The department may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the department may consider the following factors:

- (1) The location of the discharge with respect to surface waters;
- (2) The size of the discharge;
- (3) The quantity and nature of the pollutants discharged to surface waters; and
- (4) Other relevant factors.

2. The department may not require a permit for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows that are from conveyances or systems of conveyances, including pipes, conduits, ditches, and channels, used for collecting and conveying precipitation runoff and that are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

3. a. Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

b. The department may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system, including all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

c. The operator of a discharge from a municipal separate storm sewer that is part of a large or medium municipal separate storm sewer system must either:

(1) Participate in a permit application (to be a permittee or a state co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system that covers all, or a portion of all, discharges from the municipal separate storm sewer system;

(2) Submit a distinct permit application that only covers discharges from the municipal separate storm sewers for which the operator is responsible; or

(3) A regional authority may be responsible for submitting a permit application under the following guidelines:

(a) The regional authority together with permit co-applicants shall have authority over a stormwater management program that is in existence or shall be in existence at the time Part 1 of the application is due;

(b) The permit applicant or co-applicants shall establish their ability to make a timely submission of Part 1 and Part 2 of the municipal application;

(c) Each of the operators of municipal separate storm sewers within large or medium municipal separate storm sewer systems, which are under the purview of the designated regional authority, shall comply with the application requirements of subsection C of this section.

d. One permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The department may issue one system-wide permit covering all or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

e. Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed, or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas that contribute stormwater to the system.

f. State co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

4. In addition to meeting the requirements of subsection B of this section, an operator of a stormwater discharge associated with a large construction activity that discharges through a large or medium municipal separate storm sewer system shall submit to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing such discharge, the name of the facility; a contact person and telephone number; the location of the discharge; a description, including Standard Industrial Classification, that best reflects the principal products or services provided by each facility; and any existing permit number.

5. The department may issue permits for municipal separate storm sewers that are designated under subdivision A 1 e of this section on a system-wide basis, jurisdiction-wide basis, watershed basis, or other appropriate basis or may issue permits for individual discharges.

6. Conveyances that discharge stormwater runoff combined with municipal sewage are point sources that must obtain separate VPDES permits in accordance with the procedures of [9VAC25-31](#) and are not subject to the provisions of this section.

7. Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this subsection shall have no bearing on whether the owner or operator of the discharge is eligible for funding under Title II, Title III, or Title VI of the CWA.

8. a. On and after October 1, 1994, for discharges composed entirely of stormwater, that are not required by subdivision 1 of this subsection to obtain a permit, operators shall be required to obtain a permit only if:

- (1) The discharge is from a small MS4 required to be regulated pursuant to [9VAC25-875-970](#) B;
 - (2) The discharge is a stormwater discharge associated with small construction activity as defined in [9VAC25-875-20](#);
 - (3) The department or the EPA regional administrator determines that stormwater controls are needed for the discharge based on wasteload allocations that are part of total maximum daily loads (TMDLs) that address the pollutants of concern; or
 - (4) The department or the EPA regional administrator determines that the discharge or category of discharges within a geographic area contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.
- b. Operators of small MS4s designated pursuant to subdivisions 8 a (1), (3), and (4) of this subsection shall seek coverage under a permit in accordance with [9VAC25-875-970](#) C, D, and E. Operators of nonmunicipal sources designated pursuant to subdivisions 8 a (2), (3), and (4) of this subsection shall seek coverage under a permit in accordance with subdivision B 1 of this section.
- c. Operators of stormwater discharges designated pursuant to subdivisions 8 a (3) and (4) of this subsection shall apply to the department for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the department.

B. Application requirements for stormwater discharges associated with large and small construction activity. Dischargers of stormwater associated with large and small construction activity are required to apply for an individual permit or seek coverage under a promulgated stormwater general permit. Facilities that are required to obtain an individual permit or any discharge of stormwater that the department is evaluating for designation under subdivision A 1 e of this section and is not a municipal separate storm sewer shall submit a state application in accordance with the requirements of [9VAC25-875-920](#) as modified and supplemented by the provisions of this subsection.

1. The operator of an existing or new stormwater discharge that is associated with a large or small construction activity shall provide a narrative description of:

- a. The location, including a map, and the nature of the construction activity;

- b. The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;
- c. Proposed measures, including best management practices, to control pollutants in stormwater discharges during construction, including a brief description of applicable state and VESCP requirements;
- d. Proposed measures to control pollutants in stormwater discharges that will occur after construction operations have been completed, including a brief description of applicable state or local VESCP requirements;
- e. An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil, or the quality of the discharge;
- f. The name of the receiving water; and
- g. The location of Chesapeake Bay Preservation Areas.

2. Permit applicants shall provide such other information the department may reasonably require to determine whether to issue a permit.

C. Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the department under subdivision A 1 e of this section may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a permit co-applicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under subdivision A 1 e of this section shall include;

1. Part 1 of the application shall consist of:

- a. The permit applicant's name, address, telephone number, and email address; ownership status; status as a state or local government entity; and the name, address, telephone number, and email address of a contact person;
- b. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in subdivision 2 a of this subsection, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria;
- c. Source identification.
 - (1) A description of the historic use of ordinances, guidance, or other controls that limited the discharge of nonstormwater discharges to any publicly owned treatment works serving the same area as the municipal separate storm sewer system.
 - (2) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000, if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:
 - (a) The location of known municipal storm sewer system outfalls discharging to surface waters;
 - (b) A description of the land use activities (e.g., divisions indicating undeveloped, residential, commercial, agricultural, and industrial uses) accompanied with estimates of population densities and projected growth for a 10-year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;
 - (c) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage, or disposal facility for municipal waste;
 - (d) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a permit;

- (e) The location of major structural controls for stormwater discharge (retention basins, detention basins, major infiltration devices, etc.); and
 - (f) The identification of publicly owned parks, recreational areas, and other open lands;
- d. Discharge characterization.
- (1) Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.
 - (2) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures, and analytical methods used.
 - (3) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes, and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:
 - (a) Assessed and reported in § 305(b) of the CWA reports submitted by the state, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of the State Water Control Law and the CWA goals (fishable and swimmable waters), and causes of nonsupport of designated uses;
 - (b) Listed under § 304(l)(1)(A)(i), (1)(A)(ii), or (l)(1)(B) of the CWA that is not expected to meet water quality standards or water quality goals;
 - (c) Listed in State Nonpoint Source Assessments required by § 319(a) of the CWA that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance, and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);
 - (d) Identified and classified according to eutrophic condition of publicly owned lakes listed in state reports required under § 314(a) of the CWA (include the following: a description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes, and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);
 - (e) Areas of concern of the Great Lakes identified by the International Joint Commission;
 - (f) Designated estuaries under the National Estuary Program under § 320 of the CWA;
 - (g) Recognized by the permit applicant as highly valued or sensitive waters;
 - (h) Defined by the state or U.S. Fish and Wildlife Service's National Wetlands Inventory as wetlands; and
 - (i) Found to have pollutants in bottom sediments, fish tissue or biosurvey data.
 - (4) Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24-hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, and the presence of an oil sheen or surface scum, as well as any other relevant observations regarding the potential presence of nonstormwater discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR Part 136, the permit applicant shall provide a description of the method used, including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (or any other point of access such as manholes)

randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid that contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

- (a) A grid system consisting of perpendicular north-south and east-west lines spaced 1/4 mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells;
- (b) All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;
- (c) Field screening points should be located downstream of any sources of suspected illegal or illicit activity;
- (d) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;
- (e) Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or buildings in the area; history of the area; and land use types;
- (f) For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells that contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and
- (g) Large or medium municipal separate storm sewer systems that are unable to utilize the procedures described in subdivisions 1 d (4) (a) through (f) of this subsection because a sufficiently detailed map of the separate storm sewer systems is unavailable shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if fewer); in such circumstances, the permit applicant shall establish a grid system consisting of north-south and east-west lines spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the permit applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

(5) Information and a proposed program to meet the requirements of subdivision 2 c of this subsection. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under subdivision 2 c (1) of this subsection, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, and a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns (see subdivision 1 d (3) of this subsection) to the extent practicable;

e. Management programs.

(1) A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include procedures to control pollution resulting from construction activities, floodplain management controls, wetland protection measures, best management practices for new subdivisions, and emergency spill response programs. The description may address controls established under state law as well as local requirements.

(2) A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges and describe areas where this program has been implemented; and

f. Fiscal resources. A description of the financial resources currently available to the municipality to complete Part 2 of the permit application. A description of the municipality's budget for existing

stormwater programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for stormwater programs.

2. Part 2 of the application shall consist of:

a. A demonstration that the permit applicant can operate pursuant to legal authority established by statute, ordinance, or series of contracts that authorizes or enables the permit applicant at a minimum to:

(1) Control through ordinance, permit, contract, order, or similar means the contribution of pollutants to the municipal storm sewer by stormwater discharges associated with industrial activity and the quality of stormwater discharged from sites of industrial activity;

(2) Prohibit through ordinance, order, or similar means illicit discharges to the municipal separate storm sewer;

(3) Control through ordinance, order, or similar means the discharge to a municipal separate storm sewer of spills, dumping, or disposal of materials other than stormwater;

(4) Control through interagency agreements among permit co-applicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

(5) Require compliance with conditions in ordinances, permits, contracts, or orders; and

(6) Carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with permit conditions, including the prohibition on illicit discharges to the municipal separate storm sewer;

b. The location of any major outfall that discharges to surface waters that was not reported under subdivision 1 c (2) (a) of this subsection. Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) that best reflects the principal products or services provided by each facility that may discharge, to the municipal separate storm sewer, stormwater associated with industrial activity;

c. When quantitative data for a pollutant are required under subdivision 2 c (1) (c) of this subsection, the permit applicant must collect a sample of effluent in accordance with [9VAC25-875-960](#) and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the permit applicant may use any suitable method but must provide a description of the method. The permit applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

(1) Quantitative data from representative outfalls designated by the department (based on information received in Part 1 of the application, the department shall designate between five and 10 outfalls or field screening points as representative of the commercial, residential, and industrial land use activities of the drainage area contributing to the system or where there are less than five outfalls) covered in the application, the department shall designate all outfalls developed as follows:

(a) For each outfall or field screening point designated under this subsection, samples shall be collected of stormwater discharges from three storm events occurring at least one month apart in accordance with the requirements at [9VAC25-875-960](#) (the department may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

(b) A narrative description shall be provided of the date and duration of the storm event or events sampled, rainfall estimates of the storm event that generated the sampled discharge, and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

(c) For samples collected and described under subdivisions 2 c (1) (a) and (1) (b) of this subsection, quantitative data shall be provided for the organic pollutants listed in Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of 40 CFR Part 122 Appendix D, and for the following pollutants:

Total suspended solids (TSS)

Total dissolved solids (TDS)

Chemical oxygen demand (COD)
Biochemical oxygen demand (BOD₅)
Oil and grease
Fecal coliform
Fecal streptococcus
pH
Total Kjeldahl nitrogen
Nitrate plus nitrite
Dissolved phosphorus
Total ammonia plus organic nitrogen
Total phosphorus

(d) Additional limited quantitative data required by the department for determining permit conditions (the department may require that quantitative data shall be provided for additional parameters and may establish sampling conditions, such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to ensure representativeness);

(2) Estimates of the annual pollutant load of the cumulative discharges to surface waters from all identified municipal outfalls and the event mean concentration of the cumulative discharges to surface waters from all identified municipal outfalls during a storm event (as described under [9VAC25-875-960](#)) for BOD₅, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modeling, data analysis, and calculation methods;

(3) A proposed schedule to provide estimates for each major outfall identified in either subdivision 2 b or 1 c (2) (a) of this subsection of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under subdivision 2 c (1) of this subsection; and

(4) A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment;

d. A proposed management program that covers the duration of the permit. It shall include a comprehensive planning process that involves public participation and, where necessary, intergovernmental coordination to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions that are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each permit co-applicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the department when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

(1) A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

(a) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

- (b) A description of planning procedures, including a comprehensive master plan to develop, implement, and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers that receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in subdivision 2 d (4) of this subsection;
 - (c) A description of practices for operating and maintaining public streets, roads, and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;
 - (d) A description of procedures to ensure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from stormwater is feasible;
 - (e) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage, or disposal facilities for municipal waste that shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under subdivision 2 d (3) of this subsection); and
 - (f) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides, and fertilizer that will include, as appropriate, controls such as educational activities, permits, certifications, and other measures for commercial applicators and distributors and controls for application in public right-of-ways and at municipal facilities;
- (2) A description of a program, including a schedule to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:
- (a) A description of a program, including inspections, to implement and enforce an ordinance, orders, or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of nonstormwater discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to surface waters: water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration to separate storm sewers, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from firefighting only where such discharges or flows are identified as significant sources of pollutants to surface waters);
 - (b) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;
 - (c) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of nonstormwater (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (Methylene Blue Active Substances - MBAS), residual chlorine, fluorides, and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation.);
 - (d) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

(e) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

(f) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

(g) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary.

(3) A description of a program to monitor and control pollutants in stormwater discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to § 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA, 42 USC § 11023), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

(a) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges;

(b) Describe a monitoring program for stormwater discharges associated with the industrial facilities identified in subdivision 2 d (3) of this subsection, to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing separate VPDES permit for a facility; oil and grease, COD, pH, BOD₅, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under [9VAC25-875-960](#) G and H; and

(4) A description of a program to implement and maintain structural and nonstructural best management practices to reduce pollutants in stormwater runoff from construction sites to the municipal storm sewer system, which program shall include:

(a) A description of procedures for site planning that incorporate consideration of potential water quality impacts;

(b) A description of requirements for nonstructural and structural best management practices;

(c) A description of procedures for identifying priorities for inspecting sites and enforcing control measures that consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

(d) A description of appropriate educational and training measures for construction site operators;

e. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal stormwater quality management program. The assessment shall also identify known impacts of stormwater controls on groundwater;

f. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under subdivisions 2 c and d of this subsection. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds;

g. Where more than one legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination; and

h. Where requirements under subdivisions 1 d (5), 2 b, 2 c (2), and 2 d of this subsection are not practicable or are not applicable, the department may exclude any operator of a discharge from a municipal separate storm sewer that is designated under subdivision A 1 e of this section or that is located in the counties listed in 40 CFR Part 122 Appendix H or Appendix I (except municipal separate storm sewers that are located in the incorporated places, townships, or towns within such counties) from such requirements. The department shall not exclude the operator of a discharge from a

municipal separate storm sewer identified in 40 CFR Part 122 Appendix F, G, H, or I from any of the permit application requirements under this subdivision except where authorized under this subsection.

D. Petitions.

1. Any operator of a municipal separate storm sewer system may petition the appropriate authority or the department to require a separate permit for any discharge into the municipal separate storm sewer system.
2. Any person may petition the department to require a permit for a discharge that is composed entirely of stormwater that contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.
3. Any person may petition the department for the designation of a large, medium, or small municipal separate storm sewer system as defined by this chapter.
4. The department shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of petitions to designate a small MS4, in which case the department shall make a final determination on the petition within 180 days after the petition's receipt.

General VPDES Permit for Discharges of Stormwater from Construction Activities
Chapter 880

NOTE: This copy of the regulation is up-to-date as of August 18, 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/chapter880/>

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9VAC25-880-1. Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. For the purposes of this chapter, words and terms that are defined in the Virginia Erosion and Stormwater Management Act (Article 2.3 (§ [62.1-44.15:24](#) et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia) and the Virginia Erosion and Stormwater Management Regulation ([9VAC25-875](#)) shall have those meanings unless the context clearly indicates otherwise.

"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.

"Business day" means Monday through Friday excluding state holidays.

"Commencement of land disturbance" means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities (e.g., stockpiling of fill material).

"Construction dewatering" means the act of draining or pumping stormwater or groundwater from building foundations, vaults, and trenches, or other similar points of accumulation, including from sediment basins or similar impoundments for maintenance or decommissioning purposes. Construction dewatering does not include temporary pumparounds associated with instream construction activities.

"Construction site" means the land or water area where any construction activity is physically located or conducted, including any adjacent land used or preserved in connection with the land-disturbing activity. The term "construction site" includes construction support activities located on-site or off-site.

"Construction support activity" means a construction-related activity that specifically supports construction and involves land disturbance or pollutant-generating activities of its own and can include activities associated with concrete or asphalt batch plants, equipment staging yards, materials storage areas, excavated material disposal areas, and borrow areas.

"Department" means the Department of Environmental Quality.

"Final stabilization" means that one of the following situations has occurred:

1. All soil disturbing activities at the construction site have been completed and a permanent vegetative cover has been established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform (e.g., evenly distributed), provides 75% or more vegetative cover with no significant bare areas, is mature enough to survive, and will inhibit erosion.
2. For individual lots in residential construction, final stabilization can occur by either:
 - a. The homebuilder completing stabilization as specified in subdivision 1 of this definition; or
 - b. The homebuilder establishing temporary soil stabilization, including perimeter controls for an individual lot prior to occupation of the home by the homeowner, and providing written notification to the homeowner of the need for, and benefits of, stabilization as specified in subdivision 1 of this definition. The homebuilder shall maintain a copy of the written notification and a signed statement certifying that the information was provided to the homeowner in accordance with the stormwater pollution prevention plan recordkeeping requirements as specified in Part II G 6 of [9VAC25-880-70](#).
3. For construction activities on land used for agricultural purposes, final stabilization may be accomplished by returning the disturbed area to its preconstruction agricultural use. Disturbed areas that were not previously used for agricultural activities, such as buffer strips immediately adjacent to surface waters, and areas that are not being returned to their preconstruction agricultural use shall meet the stabilization criteria specified in subdivision 1 or 2 of this definition.

"Immediately" means as soon as practicable, but no later than the end of the next business day, following the day when the construction activities have temporarily or permanently ceased. In the context of this general permit, "immediately" is used to define the deadline for initiating stabilization measures.

"Impaired waters" means surface waters identified as impaired on the 2022 § 305(b)/303(d) Water Quality Assessment Integrated Report.

"Infeasible" means not technologically possible or not economically practicable and achievable in light of best industry practices.

"Initiation of stabilization activities" means:

1. Prepping the soil for vegetative or nonvegetative stabilization;
2. Applying mulch or other nonvegetative product to the exposed area;
3. Seeding or planting the exposed area;
4. Starting any of the activities listed in subdivision 1, 2, or 3 of this definition on a portion of the area to be stabilized, but not on the entire area; or
5. Finalizing arrangements to have the stabilization product fully installed in compliance with the applicable deadline for completing stabilization.

This list is not exhaustive.

"Measurable storm event" means a rainfall event producing 0.25 inches of rain or greater over 24 hours or snow melt from a snow event producing 3.25 inches or more of snow within a 24-hour period.

"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. On or after July 1, 2025, "qualified personnel" shall hold an unexpired Dual Inspector certification issued by the department; an unexpired Inspector for Erosion and Sediment Control certification and an unexpired Inspector for Stormwater Management certification, both issued by the department ; a Construction General Permit Qualified Personnel Certificate issued by the department or the Virginia Department of Transportation; or an equivalent certification provided by EPA (currently titled Construction Inspection Training Course).

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

9VAC25-880-10. Purpose

This general permit regulation governs stormwater discharges from regulated construction activity, which includes large construction activity, small construction activity, or construction support activity, through a point source to surface waters or through a municipal or nonmunicipal separate storm sewer system to surface waters. Stormwater discharges associated with regulated industrial activity that originate from a construction site that has been completed and where the site has undergone final stabilization are not authorized by this general permit.

9VAC25-880-15. Applicability of incorporated 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 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.

9VAC25-880-20. Effective date of general permit

This general permit is effective on July 1, 2024. The general permit will expire on June 30, 2029. This general permit is effective for any covered operator upon compliance with all provisions of [9VAC25-880-30](#).

9VAC25-880-30. Authorization to discharge

A. Any operator governed by this general permit is authorized to discharge to surface waters of the Commonwealth of Virginia provided that:

1. The operator submits a complete and accurate registration statement in accordance with [9VAC25-880-50](#), unless not required, and receives acceptance of the registration by the department;
2. The operator submits all permit fees, including all outstanding permit maintenance fees, in accordance with [9VAC25-875-1290](#) et seq., unless not required;
3. The operator complies with the applicable requirements of [9VAC25-880-70](#);
4. The operator obtains approval of:
 - a. An erosion and sediment control plan from the appropriate Virginia Erosion and Stormwater Management Program (VESMP) authority or Virginia Erosion and Sediment Control Program (VЕСP) authority, unless the operator receives from the VЕСP authority an "agreement in lieu of a plan" as defined in [9VAC25-875-20](#) and [9VAC25-875-210](#), respectively, or an erosion and sediment control plan in accordance with standards and specifications approved by the department; and
 - b. Except as specified in [9VAC25-880-70](#) Part II B 3 b, a stormwater management plan from the appropriate VЕСP authority, unless the operator receives from the VЕСP authority an "agreement in lieu of a plan" as defined in [9VAC25-875-20](#) or a stormwater management plan in accordance with standards and specifications approved by the department; and
5. The department has not notified the operator that the discharge is not eligible for coverage in accordance with subsection B of this section.

B. The department will notify an operator that the discharge is not eligible for coverage under this general permit in the event of any of the following:

1. The operator is required to obtain an individual permit in accordance with [9VAC25-875-980](#) B;
2. The operator is proposing discharges to surface waters specifically named in other board regulations that prohibit such discharges;
3. The discharge causes, may reasonably be expected to cause, or contributes to a violation of water quality standards ([9VAC25-260](#));
4. The discharge violates or would violate the antidegradation policy in the Water Quality Standards ([9VAC25-260-30](#)); or
5. The discharge is not consistent with the assumptions and requirements of an applicable TMDL approved prior to the term of this general permit.

C. This general permit also authorizes stormwater discharges from construction support activities located on-site or off-site provided that:

1. The support activity is directly related to a construction site that is required to have general permit coverage for stormwater discharges;
2. The support activity is not a commercial operation, nor does it serve multiple unrelated construction sites;
3. The support activity does not operate beyond the completion of the last construction activity it supports;
4. The support activity is reported in the registration statement at the time of general permit coverage or reported in a modified registration statement once the need for the support activity is known;
5. Appropriate control measures are identified in a stormwater pollution prevention plan and implemented to address the discharges from the support activity; and

6. All applicable state, federal, and local approvals are obtained for the support activity.

D. Stormwater discharges from an off-site construction support activity may be authorized under another state or VPDES permit. Where stormwater discharges from an off-site construction support activity are not authorized under this general permit, the land area of the off-site construction support activity shall not be included in determining the total land area of the construction site and estimated area to be disturbed reported in the registration statement.

E. Discharges authorized by this general permit may be commingled with other sources of stormwater that are not required to be covered under a state permit, so long as the commingled discharge is in compliance with this general permit. Discharges authorized by a separate state or VPDES permit may be commingled with discharges authorized by this general permit so long as all such discharges comply with all applicable state and VPDES permit requirements.

F. Authorized nonstormwater discharges. The following nonstormwater discharges from construction activities are authorized by this general permit:

1. Discharges from emergency firefighting activities;
2. Fire hydrant flushings managed to avoid an instream impact;
3. Water used to wash vehicles or equipment, provided no soaps, solvents, or detergents are used and the wash water is filtered, settled, or similarly treated prior to discharge;
4. Water used to control dust that is filtered, settled, or similarly treated prior to discharge;
5. Potable water, including uncontaminated waterline flushings, managed in a manner to avoid an instream impact;
6. Routine external building wash down, provided no soaps, solvents, or detergents are used, external building surfaces do not contain hazardous substances, and the wash water is filtered, settled, or similarly treated prior to discharge;
7. Pavement wash water, provided spills or leaks of toxic or hazardous materials have not occurred, unless all spilled or leaked material is removed prior to washing; soaps, solvents, or detergents are not used; and the wash water is filtered, settled, or similarly treated prior to discharge;
8. Uncontaminated air conditioning or compressor condensate;
9. Uncontaminated groundwater or spring water;
10. Foundation or footing drains, provided flows are not contaminated with process materials such as solvents or contaminated groundwater;
11. Uncontaminated, excavation dewatering, including dewatering of trenches and excavations that are filtered, settled, or similarly treated prior to discharge; and
12. Landscape irrigation.

G. Coverage under this general permit does not relieve any operator of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

H. Continuation of general permit coverage.

1. Permit coverage shall expire at the end of its term. However, expiring permit coverages are automatically continued if an operator has submitted a complete registration statement at least 90 days prior to the expiration date of the permit, or a later submittal date established by the department and has paid all past due general permit maintenance fees. The permittee is authorized to continue to discharge until such time as the department either:

- a. Issues coverage to the operator under this general permit; or
- b. Notifies the operator that the discharge is not eligible for coverage under this general permit.

2. When an operator that was covered under the expiring or expired general permit has violated the conditions of that permit, the department may choose to do any or all of the following:

- a. Initiate enforcement action based upon the general permit coverage that has been continued;
- b. Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the operator would then be required to cease discharges authorized by the continued general permit coverage or be subject to enforcement action for operating without a permit;
- c. Issue an individual permit with appropriate conditions; or
- d. Take other actions authorized by the Virginia Erosion and Stormwater Management Regulation ([9VAC25-875](#)).

9VAC25-880-40. Delegation of authorities to state and local programs

A department-approved VESMP authority is authorized to administer requirements of this general permit, including (i) registration statement acceptance, (ii) general permit fee collection, and (iii) stormwater management plan review and approval dependent upon conditions established as part of the approval.

9VAC25-880-50. Registration statement

A. Deadlines for submitting registration statement. Any operator seeking coverage under this general permit, and that is required to submit a registration statement, shall submit a complete and accurate general VPDES permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the general VPDES permit for discharges of stormwater from construction activities.

1. New construction activities.

a. Any operator proposing a new stormwater discharge from construction activities shall submit a complete and accurate registration statement to the VESMP authority prior to the commencement of land disturbance.

b. Any operator proposing a new stormwater discharge from construction activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment is authorized to discharge under this general permit, provided that:

(1) The operator submits a complete and accurate registration statement to the VESMP authority no later than 30 days after the commencement of land disturbance; and

(2) Documentation to substantiate the occurrence of the public emergency is provided with the registration statement.

c. Any operator proposing a new stormwater discharge associated with a small construction activity involving the construction of a single-family detached residential structure, within or outside a common plan of development or sale, is authorized to discharge under this general permit and is not required to submit a registration statement. Any operator proposing a new stormwater discharge associated with the construction of a single-family detached residential structure, within or outside a common plan of development or sale, is not required to submit the department portion of the permit fee.

2. Existing construction activities.

a. Any operator who was authorized to discharge under the expiring or expired 2019 general permit and who intends to continue coverage under this general permit shall:

(1) Submit a complete and accurate registration statement to the VESMP authority at least 90 days prior to the expiration date of the existing permit or a later submittal date established by the department; and

(2) Update its stormwater pollution prevention plan to comply with the requirements of this general permit no later than 60 days after the date of coverage under this general permit.

b. Any operator with an existing stormwater discharge associated with a small construction activity involving the construction of a single-family detached residential structure, within or outside a common plan of development or sale, that intends to continue coverage under this general permit, is authorized to discharge under this general permit and is not required to submit a registration statement, provided that the operator updates its stormwater pollution prevention plan to comply with the requirements of this general permit no later than 60 days after the date of coverage under this general permit. Any operator with an existing stormwater discharge associated with the construction of a single-family detached residential structure, within or outside a common plan of development or sale, that intends to continue coverage under this general permit is not required to submit the department portion of the permit fee.

3. Transfer of ownership. The new operator shall submit a complete and accurate registration statement or transfer of ownership agreement form and any other documents required by the VESMP authority to the VESMP authority prior to assuming operational control over construction site specifications or the commencement of land disturbance.

4. Late submissions. Operators are not prohibited from submitting registration statements after the commencement of land disturbance. When a late registration statement is submitted, authorization for discharges shall not occur until coverage under the general permit is issued. The VESMP authority, department, and EPA reserve the right to take enforcement action for any unpermitted discharges that occur between the commencement of land disturbance and discharge authorization.

5. Late registration statements. Registration statements for existing facilities covered under subdivision A 2 a of this section will be accepted after the expiration date of this permit, but authorization to discharge will not be retroactive. The VESMP authority, department, and EPA reserve the right to take enforcement action for any unpermitted discharges that occur after existing permit coverage expires and prior to coverage under this permit is approved.

B. Registration statement. The operator shall submit a complete and accurate registration statement to the VESMP authority that contains the following information:

1. Name, contact, mailing address, telephone number, and email address if available of the construction activity operator. No more than one operator may receive coverage under each registration statement;

General permit coverage will be issued to this operator, and the certification in subdivision 18 of this subsection shall be signed by the appropriate person associated with this operator as described in Part III K of [9VAC25-880-70](#).

2. State Corporation Commission entity identification number if the operator is required to obtain an entity identification number;

3. Name and physical location address of the construction activity, when available, to be covered under this general permit, including city or county, and latitude and longitude in decimal degrees (six digits - ten-thousandths place);

4. A legible site map showing the location of the existing or proposed land-disturbing activities for which the operator is seeking permit coverage, the limits of land disturbance, construction entrances, construction support activities, and all water bodies receiving stormwater discharges from the construction site;

5. If off-site construction support activities will be used, the name and physical location address, when available, of all off-site construction support activities, including city or county; latitude and longitude in decimal degrees (six digits - ten-thousandths place); and whether or not the off-site construction support activity will be covered under this general permit or a separate VPDES permit;

6. If excavated material (i.e., fill) will be transported off the construction site for disposal, the name and physical location address, when available, of all off-site excavated material disposal areas, including city or county; latitude and longitude in decimal degrees (six digits - ten-thousandths place); and the contents of the excavated material;
7. Status of the construction activity (i.e., federal, state, public, or private);
8. Nature of the construction activity (e.g., commercial, industrial, residential, agricultural, oil and gas);
9. If stormwater management or erosion and sediment control plans for the construction activity have been approved by an entity with department approved standards and specifications, a complete and accurate standard and specification entity form shall be submitted with the registration statement;
10. The date of erosion and sediment control plan approval for the estimated area to be disturbed during this permit term for construction activities that were authorized to discharge under the expiring or expired 2019 general permit;
11. If land disturbance has commenced for construction activities that were authorized to discharge under the expiring or expired 2019 general permit;
12. Name of the receiving waters and sixth order Hydrologic Unit Code (HUC);
13. The name of the municipal separate storm sewer system (MS4) operator if the construction activity discharges to an MS4;
14. Estimated construction activity start date and completion date;
15. Total area of the construction site and estimated area to be disturbed by the construction activity during the 2024 general permit term (to the nearest one-hundredth of an acre);
16. If the area to be disturbed by the construction activity is part of a larger common plan of development or sale;
17. If nutrient credits will be used to comply with the water quality design criteria requirements ([9VAC25-875-580](#)), a letter of availability from an appropriate nutrient bank that nonpoint source nutrient credits are available; and
18. The following certification: "I certify under penalty of law that I have read and understand this registration statement and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

C. A stormwater pollution prevention plan (SWPPP) shall be prepared in accordance with this general permit prior to submitting the registration statement. By signing the registration statement, the operator certifies that the SWPPP has been prepared.

D. The registration statement shall be signed in accordance with Part III K of [9VAC25-880-70](#).

9VAC25-880-60. Termination of general permit coverage

A. Requirements. The operator of the construction activity shall submit a complete and accurate notice of termination, unless a registration statement was not required to be submitted in accordance with [9VAC25-880-50](#) A 1 c or A 2 b for a stormwater discharge associated with a small construction activity of a single-family detached residential structure, within or outside a common plan of development or sale, to the VESMP authority after one or more of the following conditions have been met:

1. Necessary permanent control measures included in the SWPPP for the construction site are in place and functioning effectively and final stabilization has been achieved on all portions of the construction site for which the operator has operational control. When applicable, long-term responsibility and

maintenance requirements for permanent control measures shall be recorded in the local land records prior to the submission of a complete and accurate notice of termination, and the construction record drawing prepared;

2. Another operator has assumed control over all areas of the construction site that have not been finally stabilized and obtained coverage for the ongoing discharge;
3. Coverage under an alternative VPDES permit or other applicable permit has been obtained; or
4. For individual lots in residential construction only, final stabilization as defined in [9VAC25-880-1](#) has been completed, including providing written notification to the homeowner and incorporating a copy of the notification and signed certification statement into the SWPPP, and the residence has been transferred to the homeowner.

B. Notice of termination due date and effective date.

1. The notice of termination shall be submitted no later than 30 days after one of the conditions in subsection A of this section is met.
2. Termination of authorization shall become effective upon notification from the department that the provisions of subdivision A 1 of this section have been met or 90 days after receipt of a complete and accurate notice of termination, whichever occurs first, unless otherwise notified by the VESMP authority or the department.

C. Notice of termination. The complete notice of termination shall contain the following information:

1. Name, contact, mailing address, telephone number, and email address, if available, of the construction activity operator;
2. Name and physical location address of the construction activity, when available, covered under this general permit, including city or county, and latitude and longitude in decimal degrees (six digits - ten-thousandths place);
3. The general permit registration number;
4. The basis for submission of the notice of termination, pursuant to subsection A of this section;
5. Where applicable, a list of the on-site and off-site permanent control measures (both structural and nonstructural) that were installed to comply with the stormwater management water quality and water quantity technical criteria. For each permanent control measure that was installed, the following information shall be included:
 - a. The type of permanent control measure installed and the date that it became functional as a permanent control measure;
 - b. The location of the permanent control measure, including city or county, and latitude and longitude in decimal degrees;
 - c. The receiving water to which the permanent control measures discharge; and
 - d. The number of total and impervious acres treated by the permanent control measures (to the nearest one-hundredth of an acre);
6. Where applicable, the following information related to participation in a regional stormwater management plan. For each regional stormwater management facility, the following information shall be included:
 - a. The type of regional facility to which the site contributes;
 - b. The location of the regional facility, including city or county, and latitude and longitude in decimal degrees; and
 - c. The number of total and impervious site acres treated by the regional facility (to the nearest one-hundredth of an acre);

7. Where applicable, the following information related to perpetual nutrient credits that were acquired in accordance with § [62.1-44.15:35](#) of the Code of Virginia:

- a. The name of the nonpoint nutrient credit generating entity from which perpetual nutrient credits were acquired; and
- b. The number of perpetual nutrient credits acquired (pounds per acre per year).

8. A construction record drawing in a format as specified by the VESMP authority for long-term stormwater management facilities in accordance with [9VAC25-875-535](#) appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan;

9. Where applicable, evidence that the signed Stormwater Management Maintenance Agreement has been recorded in an instrument within the local land records;

10. For individual lots in residential construction only when the homebuilder established temporary soil stabilization, a signed statement from the permittee that the new owner, if not the same as the permittee, has been notified of the final stabilization requirements; and

11. The following certification: "I certify under penalty of law that I have read and understand this notice of termination and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

D. The notice of termination shall be signed in accordance with Part III K of [9VAC25-880-70](#).

E. Termination by the department. The department may terminate coverage under this general permit during its term and require application for an individual permit or deny a general permit renewal application on its own initiative in accordance with the Virginia Erosion and Stormwater Management Act (Article 2.3 (§ [62.1-44.15:24](#) et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia), this chapter, and the Virginia Erosion and Stormwater Management Regulation, [9VAC25-875](#).

9VAC25-880-70. General permit

Any operator whose registration statement is accepted by the department will receive the following general permit and shall comply with the requirements contained in this general permit and be subject to all requirements of [9VAC25-875](#).

Any operator with a stormwater discharge associated with a small construction activity of a single-family detached residential structure, within or outside a common plan of development or sale, is authorized to discharge under the following general permit and shall comply with the requirements contained in this general permit and be subject to all requirements of [9VAC25-875](#).

General Permit No.: VAR10

Effective Date: July 1, 2024

Expiration Date: June 30, 2029

GENERAL VPDES PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES
AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA EROSION AND STORMWATER
MANAGEMENT PROGRAM AND THE VIRGINIA EROSION AND STORMWATER MANAGEMENT ACT

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the Virginia Erosion and Stormwater Management Act and regulations adopted pursuant thereto, operators of construction activities are authorized to discharge to surface waters within the boundaries of the Commonwealth of

Virginia, except those specifically named in State Water Control Board regulations that prohibit such discharges.

The authorized discharge shall be in accordance with the registration statement filed with the Department of Environmental Quality, this cover page, Part I - Discharge Authorization and Special Conditions, Part II - Stormwater Pollution Prevention Plan, and Part III - Conditions Applicable to All VPDES Permits as set forth in this general permit.

For stormwater discharge associated with a small construction activity of a single-family detached residential structure, within or outside a common plan of development or sale, the authorized discharge shall be in accordance with this cover page, Part I - Discharge Authorization and Special Conditions, Part II - Stormwater Pollution Prevention Plan, and Part III - Conditions Applicable to All VPDES Permits as set forth in this general permit.

Part I DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS

A. Coverage under this general permit.

1. During the period beginning with the date of coverage under this general permit and lasting until the general permit's expiration date, the operator is authorized to discharge stormwater from construction activities.
2. This general permit also authorizes stormwater discharges from construction support activities located on-site or off-site provided that:
 - a. The support activity is directly related to the construction site that is required to have general permit coverage for discharges;
 - b. The support activity is neither a commercial operation nor serves multiple unrelated construction sites;
 - c. The support activity does not operate beyond the completion of the last construction activity it supports;
 - d. The support activity is identified in the registration statement at the time of general permit coverage or reported in a modified registration statement once the need for the support activity is known;
 - e. Appropriate control measures are identified in a stormwater pollution prevention plan and implemented to address the discharges from the support activity; and
 - f. All applicable state, federal, and local approvals are obtained for the support activity.

B. Limitations on coverage.

1. Post-construction discharges. This general permit does not authorize stormwater discharges that originate from the construction site after construction activities have been completed and the construction site, including any construction support activity covered under the general permit registration, has undergone final stabilization. Post-construction industrial stormwater discharges may need to be covered by a separate VPDES permit.
2. Discharges mixed with nonstormwater. This general permit does not authorize discharges that are mixed with sources of nonstormwater, other than those discharges that are identified in Part I E (Authorized nonstormwater discharges) and are in compliance with this general permit.
3. Discharges covered by another permit. This general permit does not authorize discharges of stormwater from construction activities that are covered under an individual permit or required to obtain coverage under an alternative general permit.

4. Impaired waters and total maximum daily load (TMDL) limitation.

a. Nutrient and sediment impaired waters. Discharges of stormwater from construction activities to surface waters identified as impaired in the 2022 § 305(b)/303(d) Water Quality Assessment Integrated Report for Benthic Macroinvertebrates Bioassessments or for which a TMDL wasteload allocation has been established and approved prior to the term of this general permit for (i) sediment or a sediment-related parameter (i.e., total suspended solids or turbidity) or (ii) nutrients (i.e., nitrogen or phosphorus), including all surface waters within the Chesapeake Bay Watershed, are not eligible for coverage under this general permit unless the operator develops, implements, and maintains a stormwater pollution prevention plan (SWPPP) in accordance with Part II B 5 of this permit that minimizes the pollutants of concern and, when applicable, is consistent with the assumptions and requirements of the approved TMDL wasteload allocations and implements an inspection frequency consistent with Part II G 2 a.

b. Polychlorinated biphenyl (PCB) impaired waters. Discharges of stormwater from construction activities that include the demolition of any structure with at least 10,000 square feet of floor space built or renovated before January 1, 1980, to surface waters identified as impaired in the 2022 § 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL wasteload allocation has been established and approved prior to the term of this general permit for PCB are not eligible for coverage under this general permit unless the operator develops, implements, and maintains a SWPPP in accordance with Part II B 6 of this permit that minimizes the pollutants of concern and, when applicable, is consistent with the assumptions and requirements of the approved TMDL wasteload allocations and implements an inspection frequency consistent with Part II G 2 a.

5. Exceptional waters limitation. Discharges of stormwater from construction activities not previously covered under the general permit effective on July 1, 2019, to exceptional waters identified in [9VAC25-260-30 A 3 c](#) are not eligible for coverage under this general permit unless the operator develops, implements, and maintains a SWPPP in accordance with Part II B 7 of this permit and implements an inspection frequency consistent with Part II G 2 a.

6. There shall be no discharge of floating solids or visible foam in other than trace amounts.

C. Commingled discharges. Discharges authorized by this general permit may be commingled with other sources of stormwater that are not required to be covered under a permit, so long as the commingled discharge is in compliance with this general permit. Discharges authorized by a separate state or VPDES permit may be commingled with discharges authorized by this general permit so long as all such discharges comply with all applicable state and VPDES permit requirements.

D. Prohibition of nonstormwater discharges. Except as provided in Part I A 2, C, and E, all discharges covered by this general permit shall be composed entirely of stormwater associated with construction activities. All other discharges, including the following, are prohibited:

1. Wastewater from washout of concrete;
2. Wastewater from the washout or 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;
4. Oils, toxic substances, or hazardous substances from spills or other releases; and
5. Soaps, solvents, or detergents used in equipment and vehicle washing.

E. Authorized nonstormwater discharges. The following nonstormwater discharges from construction activities are authorized by this general permit:

1. Discharges from emergency firefighting activities;
2. Fire hydrant flushings, managed to avoid an instream impact;
3. Waters used to wash vehicles or equipment, provided no soaps, solvents, or detergents are used and the wash water is filtered, settled, or similarly treated prior to discharge;

4. Water used to control dust that is filtered, settled, or similarly treated prior to discharge;
5. Potable water, including uncontaminated waterline flushings, managed in a manner to avoid an instream impact;
6. Routine external building wash down provided no soaps, solvents or detergents are used, external building surfaces do not contain hazardous substances, and the wash water is filtered, settled, or similarly treated prior to discharge;
7. Pavement wash waters, provided spills or leaks of toxic or hazardous materials have not occurred, unless all spilled or leaked material has been removed prior to washing; soaps, solvents, or detergents are not used; and where the wash water is filtered, settled, or similarly treated prior to discharge;
8. Uncontaminated air conditioning or compressor condensate;
9. Uncontaminated ground water or spring water;
10. Foundation or footing drains, provided flows are not contaminated with process materials such as solvents or contaminated groundwater;
11. Uncontaminated excavation dewatering, including dewatering of trenches and excavations that are filtered, settled, or similarly treated prior to discharge; and
12. Landscape irrigation.

F. Termination of general permit coverage.

1. The operator of the construction activity shall submit a notice of termination in accordance with [9VAC25-880-60](#), unless a registration statement was not required to be submitted in accordance with [9VAC25-880-50](#) A 1 c or A 2 b for single-family detached residential structures, to the Virginia Erosion and Stormwater Management (VESMP) authority after one or more of the following conditions have been met:
 - a. Necessary permanent control measures included in the SWPPP for the construction site are in place and functioning effectively and final stabilization has been achieved on all portions of the construction site for which the operator has operational control. When applicable, long-term responsibility and maintenance requirements for permanent control measures shall be recorded in the local land records prior to the submission of a complete and accurate notice of termination and the construction record drawing prepared;
 - b. Another operator has assumed control over all areas of the construction site that have not been finally stabilized and obtained coverage for the ongoing discharge;
 - c. Coverage under an alternative VPDES permit or other applicable permit has been obtained; or
 - d. For individual lots in residential construction only, final stabilization as defined in [9VAC25-880-1](#) has been completed, including providing written notification to the homeowner and incorporating a copy of the notification and signed certification statement into the SWPPP, and the residence has been transferred to the homeowner.
2. The notice of termination shall be submitted no later than 30 days after one of the conditions in subdivision 1 of this subsection is met.
3. Termination of authorization to discharge shall be effective upon notification from the department that the provisions of subdivision 1 of this subsection have been met or 90 days after submittal of a complete and accurate notice of termination in accordance with [9VAC25-880-60](#) C, whichever occurs first, unless otherwise notified by the VESMP or the department.
4. The notice of termination shall be signed in accordance with Part III K 1 and include the required certification in accordance with Part III K 4 of this general permit.

G. Water quality protection.

1. The operator shall select, install, implement, and maintain control measures as identified in the SWPPP at the construction site that minimize pollutants in the discharge as necessary to ensure that the operator's discharge does not cause or contribute to an excursion above any applicable water quality standard.
2. If it is determined by the department that the operator's discharges are causing, have reasonable potential to cause, or are contributing to an excursion above any applicable water quality standard, the department, in consultation with the VESMP authority, may take appropriate enforcement action and require the operator to:
 - a. Modify or implement additional control measures in accordance with Part II C to adequately address the identified water quality concerns;
 - b. Submit valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining water quality standards; or
 - c. Submit an individual permit application in accordance with [9VAC25-875-980](#) B 3.

H. All written responses required under this general permit shall include a signed certification consistent with Part III K.

Part II STORMWATER POLLUTION PREVENTION PLAN

A. Stormwater pollution prevention plan.

1. A stormwater pollution prevention plan (SWPPP) shall be developed prior to the submission of a registration statement and implemented for the construction activity, including any construction support activity, covered by this general permit. For a small construction activity of a single-family detached residential structure, within or outside a common plan of development or sale, a SWPPP shall be developed and implemented prior to the initiation of the construction activity, including any construction support activity covered by this general permit.
2. SWPPPs shall be prepared in accordance with good engineering practices. Construction activities that are part of a larger common plan of development or sale and disturb less than one acre may utilize a SWPPP template provided by the department and need not provide a separate stormwater management plan if one has been prepared and implemented for the larger common plan of development or sale.
3. The SWPPP requirements of this general permit may be fulfilled by incorporating by reference other plans such as a spill prevention control and countermeasure (SPCC) plan developed for the construction site under § 311 of the federal Clean Water Act or best management practices (BMP) programs otherwise required for the construction site provided that the incorporated plan meets or exceeds the SWPPP requirements of Part II B. All plans incorporated by reference into the SWPPP become enforceable under this general permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP, the operator shall develop the missing elements and include them in the SWPPP.
4. Any operator that was authorized to discharge under the general permit effective July 1, 2019, and that intends to continue coverage under this general permit shall update its stormwater pollution prevention plan to comply with the requirements of this general permit no later than 60 days after the date of coverage under this general permit.

B. Contents. The SWPPP shall include the following items:

1. General information.

- a. A signed copy of the registration statement, if required, for coverage under this general permit;
- b. Upon receipt, a copy of the notice of coverage under this general permit (i.e., notice of coverage letter);
- c. Upon receipt, a copy of the general VPDES permit for discharges of stormwater from construction activities;
- d. A narrative description of the nature of the construction activity, including the function of the project (e.g., low density residential, shopping mall, highway);
- e. A legible map of the construction site identifying:
 - (1) Existing and proposed drainage patterns on the construction site and approximate slopes before and after major grading activities;
 - (2) Limits of clearing and grading (i.e., land disturbance), including steep slopes and natural buffers around surface waters that will remain undisturbed;
 - (3) Locations of major structural and nonstructural control measures, including sediment basins and traps, perimeter dikes and diversions, sediment barriers, and other measures intended to filter, settle, or similarly treat sediment that will be installed between disturbed areas and the undisturbed vegetated areas in order to increase sediment removal and maximize stormwater infiltration;
 - (4) Locations of surface waters;
 - (5) Locations where concentrated stormwater is discharged;
 - (6) Locations of any construction support activities, including (i) areas where equipment and vehicle washing, wheel wash water, and other wash water is to occur; (ii) storage areas for chemicals such as acids, fuels, fertilizers, and other lawn care chemicals; (iii) concrete wash out areas; (iv) vehicle fueling and maintenance areas; (v) sanitary waste facilities, including those temporarily placed on the construction site; (vi) construction waste storage; and (vii) areas where polymers, flocculants, or other stormwater treatment chemicals will be used or stored; and
 - (7) When applicable, the location of the on-site rain gauge or the methodology established in consultation with the VESMP authority used to identify measurable storm events for inspection as allowed by Part II G 2 a (1) (ii) or 2 b (2).

2. Erosion and sediment control plan for the construction activity authorized by this general permit.

- a. An erosion and sediment control plan designed and approved in accordance with the Virginia Erosion and Stormwater Management Regulations ([9VAC25-875](#)), an "agreement in lieu of a plan" as defined in [9VAC25-875-20](#), or an erosion and sediment control plan prepared in accordance with department-approved standards and specifications.
- b. All erosion and sediment control plans shall include a statement describing the maintenance responsibilities required for the erosion and sediment controls used.
- c. An approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved standards and specifications shall be implemented to:
 - (1) Control the volume and velocity of stormwater runoff within the construction site to minimize soil erosion;
 - (2) Control stormwater discharges, including 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 the construction activity;

(4) Minimize the disturbance of steep slopes;

(5) Minimize sediment discharges from the construction site in a manner that addresses (i) the amount, frequency, intensity, and duration of precipitation; (ii) the nature of resulting stormwater runoff; and (iii) soil characteristics, including the range of soil particle sizes present on the construction site;

(6) Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal, and maximize stormwater infiltration, unless infiltration would be inadvisable due to the underlying geology (e.g., karst topography) and groundwater contamination concerns or infeasible due to site conditions;

(7) Minimize soil compaction. Minimizing soil compaction is not required where the intended function of a specific area of the construction site dictates that it be compacted;

(8) Unless infeasible, preserve topsoil. Preserving topsoil is not required where the intended function of a specific area of the construction site dictates that the topsoil be disturbed or removed;

(9) Ensure the initiation of stabilization activities of disturbed areas occurs immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the construction site, or temporarily ceased on any portion of the construction site and will not resume for a period exceeding 14 days; and

(10) Utilize outlet structures that withdraw stormwater from the surface (i.e., above the permanent pool or wet storage water surface elevation), unless infeasible, when discharging from sediment basins or sediment traps.

3. Stormwater management plan for the construction activity authorized by this general permit.

a. Except for those projects identified in Part II B 3 b, a stormwater management plan approved in accordance with the Virginia Erosion and Stormwater Management Regulation ([9VAC25-875](#)) or an "agreement in lieu of a plan" as defined in [9VAC25-875-20](#) or a stormwater management plan prepared in accordance with department-approved standards and specifications.

b. For any operator meeting the conditions of [9VAC25-875-480](#) B of the Virginia Erosion and Stormwater Management Regulation, an approved stormwater management plan is not required. In lieu of an approved stormwater management plan, the SWPPP shall include a description of and all necessary calculations supporting all post-construction stormwater management measures that will be installed prior to the completion of the construction process to control pollutants in stormwater discharges after construction operations have been completed. Structural measures should be placed on upland soils to the degree possible. Such measures must be designed and installed in accordance with applicable VESCP authority, VESMP authority, state, and federal requirements, and any necessary permits must be obtained.

4. Pollution prevention plan for the construction activity authorized by this general permit. A pollution prevention plan that addresses potential pollutant-generating activities that may reasonably be expected to affect the quality of stormwater discharges from the construction activity, including any support activity. The pollution prevention plan shall:

a. Identify the potential pollutant-generating activities and the pollutant that is expected to be exposed to stormwater;

b. Describe the location where the potential pollutant-generating activities will occur, or if identified on the site plan, reference the site plan;

c. Identify all nonstormwater discharges, as authorized in Part I E of this general permit, that are or will be commingled with stormwater discharges from the construction activity, including any applicable support activity;

d. Identify the person responsible for implementing the pollution prevention practices for each pollutant-generating activity (if other than the person listed as the qualified personnel);

e. Describe the pollution prevention practices and procedures that will be implemented to:

(1) Prevent and respond to leaks, spills, and other releases, including (i) procedures for expeditiously stopping, containing, and cleaning up spills, leaks, and other releases; and (ii) procedures for reporting leaks, spills, and other releases in accordance with Part III G;

(2) Prevent the discharge of spilled and leaked fuels and chemicals from vehicle fueling and maintenance activities (e.g., providing secondary containment such as spill berms, decks, spill containment pallets, providing cover where appropriate, and having spill kits readily available);

(3) Prevent the discharge of soaps, solvents, detergents, and wash water from construction materials, including the clean-up of stucco, paint, form release oils, and curing compounds (e.g., providing (i) cover (e.g., plastic sheeting or temporary roofs) to prevent contact with stormwater; (ii) collection and proper disposal in a manner to prevent contact with stormwater; and (iii) a similarly effective means designed to prevent discharge of these pollutants);

(4) Minimize the discharge of pollutants from vehicle and equipment washing, wheel wash water, and other types of washing (e.g., locating activities away from surface waters and storm drain inlets and constructed or natural site drainage features and directing wash waters to sediment basins or traps, using filtration devices such as filter bags or sand filters, or using similarly effective controls);

(5) Direct concrete wash water into a leak-proof container or leak-proof settling basin designed so that no overflows can occur due to inadequate sizing or precipitation. Hardened concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wastes. Liquid concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wash waters and shall not be discharged to surface waters, disposed of through infiltration, or otherwise disposed of on the ground;

(6) Minimize the discharge of pollutants from storage, handling, and disposal of construction products, materials, and wastes, including (i) building products such as asphalt sealants, copper flashing, roofing materials, adhesives, and concrete admixtures; (ii) pesticides, herbicides, insecticides, fertilizers, and landscape materials; and (iii) construction and domestic wastes such as packaging materials, scrap construction materials, masonry products, timber, pipe and electrical cuttings, plastics, Styrofoam, concrete, and other trash or building materials;

(7) Prevent the discharge of fuels, oils, and other petroleum products, hazardous or toxic wastes, waste concrete, and sanitary wastes;

(8) Address any other discharge from the potential pollutant-generating activities not addressed in this subdivision 4; and

(9) Minimize the exposure of waste materials to precipitation by closing or covering waste containers during precipitation events and at the end of the business day or implementing other similarly effective practices. Minimization of exposure is not required in cases where the exposure to precipitation will not result in a discharge of pollutants; and

f. Describe procedures for providing pollution prevention awareness of all applicable wastes, including any wash water, disposal practices, and applicable disposal locations of such wastes, to personnel in order to comply with the conditions of this general permit. The operator shall implement the procedures described in the SWPPP.

5. SWPPP requirements for discharges to nutrient and sediment impaired waters. For discharges to surface waters (i) identified as impaired in the 2022 § 305(b)/303(d) Water Quality Assessment Integrated Report for Benthic Macroinvertebrates Bioassessments or (ii) with an applicable TMDL wasteload allocation established and approved prior to the term of this general permit for sediment or a sediment-related parameter (i.e., total suspended solids or turbidity) or nutrients (i.e., nitrogen or phosphorus), including all surface waters within the Chesapeake Bay Watershed, the operator shall:

a. Identify the impaired waters, approved TMDLs, and pollutants of concern in the SWPPP; and

b. Provide documentation in the SWPPP that:

- (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 construction site;
- (2) Nutrients shall be applied in accordance with manufacturer's recommendations or an approved nutrient management plan and shall not be applied during rainfall events; and
- (3) A modified inspection schedule shall be implemented in accordance with Part II G 2 a.

6. SWPPP requirements for discharges to polychlorinated biphenyl (PCB) impaired waters. For discharges from construction activities that include the demolition of any structure with at least 10,000 square feet of floor space built or renovated before January 1, 1980, to surface waters (i) identified as impaired in the 2022 § 305(b)/303(d) Water Quality Assessment Integrated Report or (ii) with an applicable TMDL wasteload allocation established and approved prior to the term of this general permit for PCB, the operator shall:

- a. Identify the impaired waters, approved TMDLs, and pollutant of concern in the SWPPP;
- b. Implement the approved erosion and sediment control plan in accordance with Part II B 2;
- c. Dispose of waste materials in compliance with applicable state, federal, and local requirements; and
- d. Implement a modified inspection schedule in accordance with Part II G 2 a.

7. SWPPP requirements for discharges to exceptional waters. For discharges to surface waters identified in [9VAC25-260-30](#) A 3 c as an exceptional water, the operator shall:

- a. Identify the exceptional surface waters in the SWPPP; and
- b. Provide documentation in the SWPPP that:
 - (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 construction site;
 - (2) Nutrients shall be applied in accordance with manufacturer's recommendations or an approved nutrient management plan and shall not be applied during rainfall events; and
 - (3) A modified inspection schedule shall be implemented in accordance with Part II G 2 a.

8. SWPPP requirements for construction dewatering discharges to sediment impaired waters or exceptional waters. Dewatering discharges of uncontaminated stormwater or groundwater from footers or foundations of a single-family detached residential structure are exempt from the requirements of this subdivision 8, provided that such discharges are not discharged directly to surface waters. For construction dewatering discharges to surface waters (i) identified as impaired in the 2022 § 305(b)/303(d) Water Quality Assessment Integrated Report for Benthic Macroinvertebrates Bioassessments; (ii) with an applicable TMDL wasteload allocation established and approved prior to the term of this general permit for sediment or a sediment-related parameter (i.e., total suspended solids or turbidity), including all surface waters within the Chesapeake Bay Watershed; or (iii) identified in [9VAC25-260-30](#) A 3 c as an exceptional water, the operator shall undertake one of the following methods for controlling and documenting construction dewatering discharges:

a. Turbidity benchmark option 1:

- (1) Identify the location of all construction dewatering discharges in the SWPPP;
- (2) Select, install, implement, and maintain control measures at each dewatering location that minimize pollutants, including suspended solids, in construction dewatering discharges prior to discharging into a stormwater conveyance system or surface water; and
- (3) Provide documentation in the SWPPP that:
 - (a) Sample frequency. At least one grab sample shall be collected from each construction dewatering discharge when the first discharge at that location occurs, daily thereafter until the

- dewatering discharge stops, and after any installation of new controls or routine maintenance activity of existing controls. An upstream grab sample shall be collected from the receiving stream;
- (b) Sample timing. Grab samples of the construction dewatering discharge shall be collected during the first 15 minutes of the construction dewatering discharge and daily thereafter until the dewatering discharge stops. Upstream grab samples of the receiving stream shall be collected within 15 minutes of the corresponding construction dewatering discharge sample;
- (c) Sample location. Grab samples shall be collected after the construction dewatering water has been filtered, settled, or similarly treated and prior to its discharge into a stormwater conveyance system or surface water;
- (d) Test methods. Grab samples taken as required by this subdivision 8 shall be measured using a turbidity meter that reports results in nephelometric turbidity units (NTUs) or formazin turbidity units (FTUs), and a turbidity meter calibration verification shall be conducted prior to each day's use, consistent with manufacturer recommendations;
- (e) Visual monitoring. All dewatering discharges shall be visually monitored for changes in the characterization of effluent discharge;
- (f) Corrective action. If (i) any turbidity measurement of the construction dewatering discharge exceeds the upstream grab sample of the receiving stream by more than 50 NTUs/FTUs or (ii) visual monitoring indicates a change in the characterization of effluent discharge, corrective action shall be taken in accordance with Part II H 2 of this general permit; and
- (g) Recordkeeping. Turbidity monitoring information (i.e., location, date, sample collection time, and turbidity measurement) and any necessary corrective actions taken shall be recorded in the SWPPP; or
- b. Turbidity benchmark option 2:
- (1) Identify the location of all construction dewatering discharges in the SWPPP;
- (2) Select, install, implement, and maintain control measures at each dewatering location that minimize pollutants, including suspended solids, in construction dewatering discharges prior to discharging into a stormwater conveyance system or surface water; and
- (3) Provide documentation in the SWPPP that:
- (a) Sample frequency. At least one grab sample shall be collected from each construction dewatering discharge when the first discharge at that location occurs, daily thereafter until the dewatering discharge stops, and after any installation of new controls or routine maintenance activity of existing controls. Grab samples shall be tested to confirm a turbidity measurement of equal to or less than 150 NTUs/FTUs from the construction dewatering discharge;
- (b) Sample timing. Grab samples of the construction dewatering discharge shall be collected during the first 15 minutes of the construction dewatering discharge and daily thereafter until the dewatering discharge stops;
- (c) Sample location. Grab samples shall be collected after the construction dewatering water has been filtered, settled, or similarly treated and prior to its discharge into a stormwater conveyance system or surface water;
- (d) Test methods. Grab samples taken as required by this subdivision 8 shall be measured using a turbidity meter that reports results in nephelometric turbidity units (NTUs) or formazin turbidity unit (FTUs), and a turbidity meter calibration verification shall be conducted prior to each day's use, consistent with manufacturer recommendations;
- (e) Visual monitoring. All dewatering discharges shall be visually monitored for changes in the characterization of effluent discharge;

(f) Corrective action. If (i) any turbidity measurement of the construction dewatering discharge exceeds 150 NTUs/FTUs or (ii) visual monitoring indicates a change in the characterization of effluent discharge, corrective action shall be taken in accordance with Part II H 2 of this general permit; and

(g) Recordkeeping. Turbidity monitoring information (i.e., location, date, sample collection time, and turbidity measurement) and any necessary corrective actions taken shall be recorded in the SWPPP ; or

c. Turbidity benchmark option 3:

(1) Identify the location of all construction dewatering discharges in the SWPPP;

(2) Select, install, implement, and maintain control measures at each dewatering location that minimize pollutants, including suspended solids, in construction dewatering discharges prior to discharging into a stormwater conveyance system or surface water; and

(3) Provide documentation in the SWPPP that:

(a) Sample frequency. At least one grab sample shall be collected from each construction dewatering discharge when the first discharge at that location occurs, daily thereafter until the dewatering discharge stops, and after any installation of new controls or routine maintenance activity of existing controls. Grab samples shall be tested to confirm a turbidity measurement of equal to or less than 50 NTUs/FTUs, based on a weekly average, from the construction dewatering discharge;

(b) Sample timing. Grab samples of the construction dewatering discharge shall be collected during the first 15 minutes of the construction dewatering discharge and daily thereafter until the dewatering discharge stops:

(c) Sample location. Grab samples shall be collected after the construction dewatering water has been filtered, settled, or similarly treated and prior to its discharge into a stormwater conveyance system or surface water;

(d) Test methods. Grab samples taken as required by this subdivision 8 shall be measured using a turbidity meter that reports results in NTUs or FTUs, and a turbidity meter calibration verification shall be conducted prior to each day's use, consistent with manufacturer recommendations;

(e) Visual monitoring. All dewatering discharges shall be visually monitored for changes in the characterization of effluent discharge;

(f) Corrective action. If (i) the weekly average of the turbidity measurements of the construction dewatering discharge exceeds 50 NTUs/FTUs or (ii) visual monitoring indicates a change in the characterization of effluent discharge, corrective action shall be taken in accordance with Part II H 2. The weekly average is the sum of all turbidity samples taken during a monitoring week (starting on Monday and ending on Sunday) divided by the number of samples measures during that week; and

(g) Recordkeeping. Turbidity monitoring information (i.e., location, date, sample collection time, and turbidity measurement) and any necessary corrective actions taken shall be recorded in the SWPPP.

d. Request for alternative benchmark threshold:

(1) At any time prior to or during coverage under this permit, a request may be submitted to the department to approve a benchmark that is higher than turbidity benchmark options 1, 2, and 3 if information is available demonstrating the higher number is the same as the receiving water's water quality standard for turbidity. To request approval of an alternate benchmark, the operator must submit the following to the department:

(a) The current turbidity water quality standard that applies to the receiving water; and

(b) Information on the natural or background turbidity level to determine the specific standard for the receiving water, including available data that can be used to establish the natural turbidity levels of the receiving water.

(2) The department will notify the operator of its decision on whether to approve the requested alternate benchmark within 30 days. Until the department approves an alternate benchmark, the operator is required to use the option 1, option 2, or option 3 turbidity benchmark and take any required corrective actions if an exceedance occurs.

9. Identification of qualified personnel. The name, telephone number, and qualifications of the qualified personnel conducting inspections required by this general permit.

10. Duly authorized representatives. The SWPPP shall include the names of individuals or positions duly authorized to sign inspection reports or modify the SWPPP on behalf of the operator. Any authorization shall be signed and dated in accordance with Part III K 2 and shall include the required certification in accordance with Part III K 4.

11. SWPPP signature and certification. The SWPPP shall be signed and dated in accordance with Part III K 2 of this general permit and shall include the required certification in accordance with Part III K 4 of this general permit.

C. SWPPP amendments, modification, and updates.

1. The operator shall amend the SWPPP whenever there is a change in the design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that has not been previously addressed in the SWPPP.

2. The SWPPP shall be amended if during inspections or investigations by the operator's qualified personnel or by local, state, or federal officials, it is determined that the existing control measures are ineffective in minimizing pollutants in discharges from the construction activity. Revisions to the SWPPP shall include additional or modified control measures designed and implemented to correct problems identified. If approval by the VESCP authority, VESMP authority, or department is necessary for the control measure, revisions to the SWPPP shall be completed no later than five business days following approval. Implementation of these additional or modified control measures shall be accomplished as described in Part II H.

3. The SWPPP shall clearly identify the contractors that will implement and maintain each control measure identified in the SWPPP. The SWPPP shall be amended to identify any new contractor that will implement and maintain a control measure.

4. The operator shall update the SWPPP as soon as possible but no later than five business days following any modification to its implementation. All modifications or updates to the SWPPP shall be noted and shall include the following items:

a. A record of dates when:

(1) Major grading activities occur;

(2) Construction activities temporarily or permanently cease on a portion of the construction site; and

(3) Stabilization measures are initiated;

b. Documentation of replaced or modified controls where periodic inspections or other information have indicated that the controls have been used inappropriately or incorrectly and were modified;

c. Areas that have reached final stabilization and where no further SWPPP or inspection requirements apply;

d. All properties that are no longer under the legal control of the operator and the dates on which the operator no longer had legal control over each property;

e. The date of any prohibited discharges, the discharge volume released, and what actions were taken to minimize the impact of the release;

f. Measures taken to prevent the reoccurrence of any prohibited discharge; and

g. Measures taken to address any evidence identified as a result of an inspection required under Part II G.

5. Amendments, modifications, or updates to the SWPPP shall be signed in accordance with Part III K 2 and shall include the required certification in accordance with Part III K 4.

D. Public notification. Upon commencement of construction activities, the operator shall post a copy of the notice of coverage letter at a publicly accessible location near the main entrance of the construction site. For linear projects, the operator shall post a copy of the notice of coverage letter at a publicly accessible location near an active part of the construction site (e.g., where a pipeline crosses a public road). The copy of the notice of coverage letter shall be visible such that it can be readily viewed from a public right-of-way. The operator shall maintain the posted information until termination of general permit coverage as specified in Part I F.

E. SWPPP availability.

1. Operators with day-to-day operational control over SWPPP implementation shall have a copy of the SWPPP available at a central location on-site for use by those identified as having responsibilities under the SWPPP whenever they are on the construction site.

2. The operator shall make the SWPPP and all amendments, modifications, and updates available upon request to the department, the VESMP authority, the EPA, the VESCP authority, local government officials, or the operator of a municipal separate storm sewer system receiving discharges from the construction activity. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the SWPPP's location shall be posted near the main entrance of the construction site.

3. The operator shall make the SWPPP available for public review in an electronic format or in hard copy. Information for public access to the SWPPP shall be posted and maintained in accordance with Part II D. If not provided electronically, public access to the SWPPP may be arranged upon request at a time and at a publicly accessible location convenient to the operator or the operator's designee but shall be no less than once per month and shall be during normal business hours. Information not required to be contained within the SWPPP by this general permit is not required to be released.

F. SWPPP implementation. The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F.

1. All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications.

2. If a site inspection required by Part II G identifies a control measure that is not operating effectively or needs routine maintenance, corrective actions or routine maintenance shall be completed as soon as practicable, but no later than five business days after discovery or a longer period as established by the VESMP authority, to maintain the continued effectiveness of the control measures.

3. If the operator must make the same repairs more than two times to the same control at the same location, even if the fix can be completed by the close of the next business day, the operator shall either:

a. Complete work to fix any subsequent repeat occurrences of this same problem under the corrective action procedures in Part II H, including keeping any records of the condition and how it was corrected under Part II C; or

b. Document in the inspection report under Part II G why the specific reoccurrence of this same problem should still be addressed as a routine maintenance fix.

4. If site inspections required by Part II G identify an existing control measure that needs to be modified or if an additional or alternative control measure is necessary for any reason, implementation shall be completed prior to the next anticipated measurable storm event. If implementation prior to the next anticipated measurable storm event is impracticable, then additional or alternative control measures

shall be implemented as soon as practicable, but no later than five business days after discovery or a longer period as established by the VESMP authority.

G. SWPPP Inspections.

1. Personnel responsible for on-site and off-site inspections. Inspections required by this general permit shall be conducted by the qualified personnel identified by the operator in the SWPPP. The operator is responsible for ensuring that the qualified personnel conduct the inspection. Qualified personnel may be a person on the operator's staff or a third party hired to conduct such inspections.

2. Inspection schedule.

a. For construction activities that discharge to a surface water identified in Part II B 5 and B 6 as impaired or having an approved TMDL or Part II B 7 as exceptional, the following inspection schedule requirements apply:

(1) Inspections shall be conducted at a frequency of (i) at least once every four business days or (ii) at least once every five business days and no later than 24 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 24 hours between business days, the inspection shall be conducted on the next business day; and

(2) Representative inspections as authorized in Part II G 2 d shall not be allowed.

b. Except as specified in Part II G 2 a, inspections shall be conducted at a frequency of:

(1) At least once every five business days; or

(2) At least once every 10 business days and no later than 24 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 24 hours between business days, the inspection shall be conducted on the next business day.

(a) A storm event that produces 0.25 inches or more of rain within a 24-hour period on the first day of the storm and continues to produce 0.25 inches or more of rain on subsequent days. The operator is required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the last day of the storm that produces 0.25 inches or more of rain.

(b) A discharge caused by snowmelt from a snow event producing 3.25 inches or more of snow within a 24-hour period. The operator is required to conduct one inspection once the discharge of snowmelt occurs. Additional inspections are only required if, following the discharge from the first snowmelt, there is a discharge from a separate storm event.

c. Where areas have been temporarily stabilized or construction activities will be suspended due to continuous frozen ground conditions and stormwater discharges are unlikely, the inspection frequency described in Part II G 2 a and 2 b may be reduced to once per month. If weather conditions (such as above freezing temperatures or rain or snow events) make discharges likely, the operator shall immediately resume the regular inspection frequency.

d. Except as prohibited in Part II G 2 a (2), representative inspections may be utilized for utility line installation, pipeline construction, or other similar linear construction activities provided that:

(1) Temporary or permanent soil stabilization has been installed and vehicle access may compromise the temporary or permanent soil stabilization and potentially cause additional land disturbance increasing the potential for erosion;

(2) Inspections occur on the same frequency as other construction activities;

(3) Control measures are inspected along the construction site 0.25 miles above and below each access point (i.e., where a roadway, undisturbed right-of-way, or other similar feature intersects the construction activity and access does not compromise temporary or permanent soil stabilization); and

(4) Inspection locations are provided in the inspection report required by Part II G.

e. If adverse weather causes the safety of the inspection personnel to be in jeopardy, the inspection may be delayed until the next business day on which it is safe to perform the inspection. Any time inspections are delayed due to adverse weather conditions, evidence of the adverse weather conditions shall be included in the SWPPP with the dates of occurrence.

3. Inspection requirements. As part of the inspection, the qualified personnel shall at a minimum:

- a. Record the date and time of the inspection and, when applicable, the date and rainfall or snowfall amount of the last measurable storm event;
- b. Record the information and a description of any discharges occurring at the time of the inspection or evidence of discharges occurring prior to the inspection;
- c. Record any construction activities that have occurred outside of the approved erosion and sediment control plan;
- d. Inspect all stormwater discharge locations at the construction site. If a stormwater discharge is occurring during the inspection, observe and document the visual quality and characteristics of the discharge, including color; odor; floating, settled, or suspended solids; foam; oil sheen; and other indicators of stormwater pollutants;
- e. Inspect all construction dewatering discharge locations at the construction site, if applicable. If a construction dewatering discharge is occurring during the inspection, observe and document the visual quality and the characteristics of the discharge, including color; odor; floating, settled, or suspended solids; foam; oil sheen; and other indicators of pollutants;
- f. Inspect the following for installation in accordance with the approved erosion and sediment control plan, identification of any maintenance needs, and evaluation of effectiveness in minimizing sediment discharge, including whether the control has been inappropriately or incorrectly used:
 - (1) All perimeter erosion and sediment controls, such as silt fence;
 - (2) Soil stockpiles, when applicable, and borrow areas for stabilization or sediment trapping measures;
 - (3) Completed earthen structures, such as dams, dikes, ditches, and diversions for stabilization and effective impoundment or flow control;
 - (4) Cut and fill slopes;
 - (5) Sediment basins and traps, sediment barriers, and other measures installed to control sediment discharge from stormwater;
 - (6) Temporary or permanent channels, flumes, or other slope drain structures installed to convey concentrated runoff down cut and fill slopes;
 - (7) Storm inlets that have been made operational to ensure that sediment laden stormwater does not enter without first being filtered or similarly treated; and
 - (8) Construction vehicle access routes that intersect or access paved or public roads for minimizing sediment tracking;
- g. Inspect areas that have reached final grade or that will remain dormant for more than 14 days to ensure:
 - (1) Initiation of stabilization activities have occurred immediately, as defined in [9VAC25-880-1](#); and
 - (2) Stabilization activities have been completed within seven days of reaching grade or stopping work;

h. Inspect for evidence that the approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved standards and specifications has not been properly implemented. This includes:

- (1) Concentrated flows of stormwater in conveyances such as rills, rivulets, or channels that have not been filtered, settled, or similarly treated prior to discharge, or evidence thereof;
 - (2) Sediment laden or turbid flows of stormwater that have not been filtered or settled to remove sediments prior to discharge;
 - (3) Sediment deposition in areas that drain to unprotected stormwater inlets or catch basins that discharge to surface waters. Inlets and catch basins with failing sediment controls due to improper installation, lack of maintenance, or inadequate design are considered unprotected;
 - (4) Sediment deposition on any property (including public and private streets) outside of the construction activity covered by this general permit;
 - (5) Required stabilization has not been initiated or completed or is not effective on portions of the construction site;
 - (6) Sediment basins without adequate wet or dry storage volume or sediment basins that allow the discharge of stormwater from below the surface of the wet storage portion of the basin;
 - (7) Sediment traps without adequate wet or dry storage or sediment traps that allow the discharge of stormwater from below the surface of the wet storage portion of the trap; and
 - (8) Land disturbance or sediment deposition outside of the approved area to be disturbed;
- i. Inspect pollutant generating activities identified in the pollution prevention plan for the proper implementation, maintenance, and effectiveness of the procedures and practices;
- j. Identify and report any pollutant generating activities not identified in the pollution prevention plan; and
- k. Identify and document the presence of any evidence of the discharge of pollutants prohibited by this general permit.

4. Inspection report. Each inspection report shall include the following items:

- a. The date and time of the inspection and, when applicable, the date and rainfall or snowfall amount of the last measurable storm event;
- b. Summarized findings of the inspection;
- c. The locations, visual quality, and characteristics of all stormwater discharges, when occurring;
- d. The locations, visual quality, and characteristics of all construction dewatering discharges, if applicable;
- e. The locations of prohibited discharges;
- f. The locations of control measures that require routine maintenance;
- g. The locations of control measures that failed to operate as designed or proved inadequate or inappropriate for a particular location;
- h. The locations where any evidence identified under Part II G 3 h exists;
- i. The locations where any additional control measure is needed;
- j. A list of corrective actions required (including any changes to the SWPPP that are necessary) as a result of the inspection or to maintain permit compliance;
- k. Documentation of any corrective actions required from a previous inspection that have not been implemented;

l. Any incidents of noncompliance. If none, the report shall contain a certification that the construction activity is in compliance with the SWPPP and this general permit;

m. The required certification in accordance with Part III K 4 of this general permit; and

n. The date and signature of the qualified personnel and the operator or its duly authorized representative in accordance with Part III K 2 of this general permit.

5. The inspection report shall be included into the SWPPP no later than four business days after the inspection is complete.

6. The inspection report and any actions taken in accordance with Part II shall be retained by the operator as part of the SWPPP for at least three years from the date that general permit coverage expires or is terminated.

H. Corrective actions.

1. Except as required in Part II H 2, the operator shall implement the corrective actions identified as a result of an inspection as soon as practicable but no later than five business days after discovery or a longer period as approved by the VESMP authority. If approval of a corrective action by a regulatory authority (e.g., VESMP authority, VESCP authority, or the department) is necessary, additional control measures shall be implemented to minimize pollutants in stormwater discharges until such approvals can be obtained.

2. When any turbidity measurement of the construction dewatering discharge exceeds the selected benchmark option or visual monitoring indicates a change in the characteristics of effluent discharge, as outlined in Part II B 8, the operator shall :

a. Immediately cease the construction dewatering discharge at the location that exceeds the turbidity benchmark or where visual monitoring indicates a change in the characterization of effluent discharge;

b. Determine whether the construction dewatering controls are operating effectively or need routine maintenance or if an additional or alternate control measure is necessary; and

c. Make any necessary adjustments, additions, repairs, or replacements to the construction dewatering controls.

Once these corrective action steps are completed and any necessary adjustments, additions, repairs, or replacements are made, the operator may resume its construction dewatering discharge and shall sample for turbidity within 15 minutes of the construction dewatering discharge commencing. No additional corrective action items are required beyond recording the results in the SWPPP.

3. The operator may be required to remove accumulated sediment deposits located outside of the construction site covered by this general permit as soon as practicable in order to minimize environmental impacts.

4. The operator shall notify the VESMP authority and the department as well as obtain all applicable federal, state, and local authorizations, approvals, and permits prior to the removal of sediments accumulated in surface waters, including wetlands.

Part III CONDITIONS APPLICABLE TO ALL VPDES PERMITS

Discharge monitoring is not required for this general permit. If the operator chooses to monitor stormwater discharges or control measures, the operator shall comply with the requirements of Part III A, B, and C, as appropriate.

A. Monitoring.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitoring activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this general permit. Analyses performed according to test procedures approved under 40 CFR Part 136 shall be performed by an environmental laboratory certified under regulations adopted by the Department of General Services ([1VAC30-45](#) or [1VAC30-46](#)).

3. The operator shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

1. Monitoring records and reports shall include:

- a. The date, exact place, and time of sampling or measurements;
- b. The individuals who performed the sampling or measurements;
- c. The dates and times analyses were performed;
- d. The individuals who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

2. The operator shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this general permit, and records of all data used to complete the registration statement for this general permit, for a period of at least three years from the date of the sample, measurement, report, or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the operator, or as requested by the department.

C. Reporting monitoring results.

1. The operator shall update the SWPPP to include the results of the monitoring as may be performed in accordance with this general permit, unless another reporting schedule is specified elsewhere in this general permit.

2. Monitoring results shall be reported on a discharge monitoring report (DMR); on forms provided, approved, or specified by the department; or in any format provided that the date, location, parameter, method, and result of the monitoring activity are included.

3. If the operator monitors any pollutant specifically addressed by this general permit more frequently than required by this general permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this general permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this general permit.

D. Duty to provide information. The operator shall furnish, within a reasonable time, any information that the department may request to determine whether cause exists for terminating this general permit coverage or to determine compliance with this general permit. The department, EPA, or VESMP authority may require the operator to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from the operator's discharge on the quality of surface waters, or such other information as may be necessary to accomplish the purposes of the Clean Water Act and the Virginia Erosion and Stormwater Management Act. The operator shall also furnish to the department, EPA, or VESMP authority, upon request, copies of records required to be kept by this general permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this general permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized stormwater discharges. Pursuant to § [62.1-44.5](#) of the Code of Virginia, except in compliance with a permit issued by the department, it shall be unlawful to cause a stormwater discharge from a construction activity.

G. Reports of unauthorized discharges. Any operator who discharges or causes or allows a discharge of sewage, industrial waste, other wastes, any noxious or deleterious substance, a hazardous substance, or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, 40 CFR Part 302, or § [62.1-44.34:19](#) of the Code of Virginia that occurs during a 24-hour period into or upon surface waters or that discharges or causes or allows a discharge that may reasonably be expected to enter surface waters shall notify the department and the VESMP authority of the discharge immediately upon discovery of the discharge, but in no case later than within 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department and the VESMP authority within five calendar days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharges not authorized by this general permit.

Discharges reportable to the department and the VESMP authority under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge, including a "bypass" or "upset," as defined in this general permit, should occur from a construction site and the discharge enters or could be expected to enter surface waters, the operator shall promptly notify, in no case later than within 24 hours, the department and the VESMP authority after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The operator shall reduce the report to writing and shall submit it to the department and the VESMP authority within five calendar days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service of some or all of the facilities; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The operator shall report any noncompliance that may adversely affect state waters or may endanger public health.

1. A report to the department and the VESMP authority shall be provided within 24 hours from the time the operator becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this subsection:

- a. Any unanticipated bypass; and
- b. Any upset that causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The department may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral report has been received within 24 hours and no adverse impact on surface waters has been reported.

3. The operator shall report all instances of noncompliance not reported under Part III I 1 or 2 in writing as part of the SWPPP. The reports shall contain the information listed in Part III I 2.

4. The immediate (within 24 hours) reports required in Part III G, H, and I may be made to the department and the VESMP authority. Reports may be made by telephone, email, or online at <https://www.deq.virginia.gov/our-programs/pollution-response>. For reports outside normal working hours, leaving a recorded message shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

5. Where the operator becomes aware of a failure to submit any relevant facts, or submittal of incorrect information in any report, including a registration statement, to the department or the VESMP authority, the operator shall promptly submit such facts or correct information.

J. Notice of planned changes.

1. The operator shall give notice to the department and the VESMP authority as soon as possible of any planned physical alterations or additions to the permitted facility or activity. Notice is required only when:

- a. The operator plans an alteration or addition to any building, structure, facility, or installation that may meet one of the criteria for determining whether a facility is a new source in [9VAC25-875-990](#); or
- b. The operator plans an alteration or addition that would significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this general permit.

2. The operator shall give advance notice to the department and VESMP authority of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

3. The operator may continue construction activities based on the information provided in the original registration statement and SWPPP but must wait until the review period has ended before commencing or continuing construction activities on any portion of the construction site that would be affected by any of the planned changes or modifications. Any operator that chooses to proceed with unapproved construction activities while plans are being reviewed is proceeding at its own risk and subject to compliance actions if the plan is determined to be inadequate.

K. Signatory requirements.

1. Registration statement and notice of termination. All registration statements and notices of termination shall be signed as follows:

- a. For a corporation: by a responsible corporate officer. For the purpose of this chapter, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation; or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the

explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this chapter, a principal executive officer of a public agency includes (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports and other information. All reports required by this general permit, including SWPPPs, and other information requested by the department shall be signed by a person described in Part III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part III K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the operator. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

c. The signed and dated written authorization is included in the SWPPP. A copy shall be provided to the department and VESMP authority, if requested.

3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the construction activity, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the VESMP authority as the administering entity for the department prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part III K 1 or 2 shall make the following certification:

"I certify under penalty of law that I have read and understand this document and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The operator shall comply with all conditions of this general permit. Any noncompliance with this general permit constitutes a violation of the Virginia Erosion and Stormwater Management Act and the Clean Water Act, except that noncompliance with certain provisions of this general permit may constitute a violation of the Virginia Erosion and Stormwater Management Act but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit coverage, termination, revocation, and reissuance, or modification of permit coverage; or denial of a permit renewal application.

The operator shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this general permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the operator wishes to continue an activity regulated by this general permit after the expiration date of this general permit, the operator shall submit a new registration statement at least 90 days

before the expiration date of the existing general permit, unless permission for a later date has been granted by the department. The department shall not grant permission for registration statements to be submitted later than the expiration date of the existing general permit.

N. Effect of a permit. This general permit neither conveys any property rights in either real or personal property or any exclusive privileges nor authorizes any injury to private property or invasion of personal rights, or any infringement of federal, state, or local law or regulations.

O. State law. Nothing in this general permit shall be construed to preclude the institution of any legal action under or relieve the operator from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in general permit conditions on bypassing under Part III U and upset under Part III V, nothing in this general permit shall be construed to relieve the operator from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this general permit shall be construed to preclude the institution of any legal action or relieve the operator from any responsibilities, liabilities, or penalties to which the operator is or may be subject under §§ [62.1-44.34:14](#) through [62.1-44.34:23](#) of the State Water Control Law or § 311 of the Clean Water Act.

Q. Proper operation and maintenance. The operator shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances), which are installed or used by the operator to achieve compliance with the conditions of this general permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, which are installed by the operator only when the operation is necessary to achieve compliance with the conditions of this general permit.

R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering surface waters and in compliance with all applicable state and federal laws and regulations.

S. Duty to mitigate. The operator shall take all steps to minimize or prevent any discharge in violation of this general permit that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for an operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this general permit.

U. Bypass.

1. "Bypass," as defined in [9VAC25-875-850](#), means the intentional diversion of waste streams from any portion of a treatment facility. The operator may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Part III U 2 and U 3.

2. Notice.

a. Anticipated bypass. If the operator knows in advance of the need for a bypass, the operator shall submit prior notice to the department, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The operator shall submit notice of an unanticipated bypass as required in Part III I.

3. Prohibition of bypass.

a. Except as provided in Part III U 1, bypass is prohibited, and the department may take enforcement action against an operator for bypass unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage. Severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural

resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The operator submitted notices as required under Part III U 2.

b. The department may approve an anticipated bypass, after considering its adverse effects, if the department determines that it will meet the three conditions listed in Part III U 3 a.

V. Upset.

1. An "upset," as defined in [9VAC25-875-850](#), means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

2. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part III V 3 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

3. An operator who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that:

- a. An upset occurred and that the operator can identify the cause of the upset;
- b. The permitted facility was at the time being properly operated;
- c. The operator submitted notice of the upset as required in Part III I; and
- d. The operator complied with any remedial measures required under Part III S.

4. In any enforcement proceeding, the operator seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The operator shall allow the department, the VESMP authority, EPA, or an authorized representative of either entity (including an authorized contractor), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the operator's premises where a regulated facility or activity is located or conducted or where records shall be kept under the conditions of this general permit;
2. Have access to and copy, at reasonable times, any records that shall be kept under the conditions of this general permit;
3. Inspect and photograph at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this general permit; and
4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the Clean Water Act or the Virginia Erosion and Stormwater Management Act, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours and whenever the facility is discharging. Nothing contained in this general permit shall make an inspection unreasonable during an emergency.

X. Permit actions. Permit coverage may be modified, revoked and reissued, or terminated for cause. The filing of a request by the operator for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permit coverage.

1. Permits are not transferable to any person except after notice to the department. Except as provided in Part III Y 2, a permit may be transferred by the operator to a new operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new operator and incorporate such other requirements as may be necessary under the Virginia Erosion and Stormwater Management Act and the Clean Water Act.

2. As an alternative to transfers under Part III Y 1, this permit may be automatically transferred to a new operator if:

- a. The current operator notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new operators containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The department does not notify the existing operator and the proposed new operator of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2 b.

3. For ongoing construction activity involving a change of operator, the new operator shall accept and maintain the existing SWPPP, or prepare and implement a new SWPPP prior to taking over operations at the construction site.

Z. Severability. The provisions of this general permit are severable, and if any provision of this general permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances and the remainder of this general permit shall not be affected thereby.