

ORDINANCE NO. 14-17()

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

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

Chapter 17

Water Protection

Article I. General

Sec. 17-100 Short title.

This chapter shall be known and may be cited as the “Water Protection Ordinance.”

Sec. 17-101 Authority.

Articles I through IX of this chapter are adopted pursuant to the authority conferred by the Virginia Stormwater Management Act (Virginia Code § 62.1-44.15:24 *et seq.*), as authorized by Virginia Code § 62.1-44.15:27, the Erosion and Sediment Control Law (Virginia Code § 62.1-44.15:51 *et seq.*), as authorized by Virginia Code § 62.1-44.15:54, the regulations implementing the Virginia Stormwater Management Act and the Erosion and Sediment Control Law in 9VAC25-830 through 9VAC25-890, as applicable, including the general Virginia Pollutant Discharge Elimination System permit for discharges from the County’s small municipal separate storm sewer system, and Virginia Code § 62.1-44.15:73, which is a part of the Chesapeake Bay Preservation Act (Virginia Code § 62.1-44.15:67 *et seq.*).

State law reference – Va. Code §§ 62.1-44.15:27, 62.1-44.15:54, 62.1-44.15:73; 9VAC25-830 through 9VAC25-890.

Sec. 17-102 Purposes.

The purposes of this chapter are to:

- A. *Protect public health, safety and welfare.* Protect the health, safety and general welfare of the citizens of the County and the Commonwealth of Virginia.
- B. *Protect quality and quantity of State waters from unmanaged stormwater.* Protect the quality and quantity of State waters from the potential harm of unmanaged stormwater and to effectively control soil erosion, sediment deposition and nonagricultural runoff by requiring control measures that will maintain, protect and improve the water quality and quantity of receiving State waters.
- C. *Protect property and natural resources.* Prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources.
- D. *Reduce pollution and illicit discharges to protect water quality.* Establish a comprehensive program to manage sources of stormwater. Runoff from lands modified by human activities can harm surface water resources by, among other things, changing natural hydrologic patterns, increasing runoff velocity, and by elevating pollutant concentrations and loadings. Runoff may

contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances, and floatables.

- E. *Sustainability of groundwater resources.* Promote the long-term sustainability of groundwater resources.
- F. *Implement State laws.* Implement the applicable parts of the State Water Control Law (Virginia Code § 62.1-44.3 *et seq.*), including the Virginia Stormwater Management Act (Virginia Code § 62.1-44.15:24 *et seq.*), as required by Virginia Code § 62.1-44.15:27, and the Erosion and Sediment Control Law (Virginia Code § 62.1-44.15:51 *et seq.*), as required by Virginia Code § 62.1-44.15:54, and the regulations implementing the Virginia Stormwater Management Act and the Erosion and Sediment Control Law in 9VAC25-830 through 9VAC25-890, as applicable, and as required thereby, including the general Virginia Pollutant Discharge Elimination System permit for discharges from the County's small municipal separate storm sewer system, and to provide for the proper administration and enforcement of this chapter.

State law reference – Va. Code §§ 62.1-44.15:25, 62.1-44.15:52; 9VAC 25-870-40, 9VAC 25-870-46, 9VAC 25-870-400.

Sec. 17-103 Applicability.

This chapter, or the applicable parts thereof, shall apply to:

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

State law reference – Va. Code §§ 62.1-44.15:27, 62.1-44.15:33, 62.1-44.15:34, 62.1-44.15:54, 62.1-44.15:55, 62.1-44.15:73; 9VAC25-890-40.

Sec. 17-104 Land disturbing activity prohibited without approved plans; responsibility.

No owner shall engage in land disturbing activity subject to the requirements of this chapter, or allow land disturbing activity to occur, on his property, until:

- A. *Erosion and sediment control plan approved under the VESCP.* The owner has submitted to the administrator an erosion and sediment control plan for the land disturbing activity and the plan

has been reviewed and approved by the administrator, and all other prerequisites to engaging in land disturbing activity have been satisfied, as provided in section 17-400 *et seq.*; and

- B. *Permit approved under the VSMP.* The owner has submitted to the administrator an application for a VSMP permit to conduct land disturbing activity and the permit has been reviewed and approved by the administrator, and all other prerequisites to engaging in land disturbing activity have been satisfied, as provided in section 17-400 *et seq.*

State law reference – Va. Code §§ 62.1-44.15:27, 62.1-44.15:34, 62.1-44.15:55; 9VAC25-890-40.

Sec. 17-105 Assumptions.

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

State law reference – 9VAC25-870-400.

Sec. 17-106 Integration with other programs.

The requirements of this chapter shall be integrated and implemented in conjunction with any project requiring compliance prior to any land disturbing activity, including subdivisions, site plans, and any other plans of development, those projects within the flood hazard overlay district established in the Zoning Ordinance, and any dam break inundation zone that has been mapped as provided in Virginia Code § 10.1-606.3.

State law reference – Va. Code §§ 62.1-44.15:27, 62.1-44.15:54.

Sec. 17-107 Obligation to comply with all State laws.

Neither any provision in this chapter, nor any omission from this chapter of a self-executing requirement of State law, shall relieve any owner from any responsibilities, liabilities, or penalties established under applicable State law nor preclude the institution of any legal action by the County, the Virginia Department of Environmental Quality, or any other public entity with enforcement powers under State law.

State law reference – 9VAC25-880-70.

Sec. 17-108 Saving provision.

The adoption of this chapter, which shall be effective July 1, 2014, shall not abate any pending action, liability, or penalty of any person accruing or about to accrue, nor waive any right of the County under chapter 17 in effect prior to July 1, 2014, unless expressly provided for in this chapter. Any erosion and sediment control plan, stormwater management plan, mitigation plan and, to the extent they pertain to stormwater management, any final site plan or subdivision plat, approved prior to July 1, 2014, shall remain in full force and effect, and all rights and remedies of the County in enforcing those plans, permits and plats are hereby preserved.

Article II. Administration

Sec. 17-200 Designation of program authority.

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

- A. *Agreements.* The County may enter into agreements with soil and water conservation districts, adjacent localities, or other public or private entities to assist with administering and implementing the VЕСP and the VSMP.
- B. *Cooperation with State and Federal agencies.* The County may cooperate and enter into agreements with any State or Federal agency in connection with the requirements for erosion and sediment control with respect to land disturbing activities or for land disturbing activities for stormwater management.

State law reference – Va. Code §§ 62.1-44.15:27, 62.1-44.15:50, 62.1-44.15:54, 62.1-44.15:58, 62.1-44.15:61.

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

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

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

State law reference – Va. Code §§ 62.1-44.15:27, 62.1-44.15:54.

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

The administrator, any person reviewing VЕСP or VSMP plans, and each person conducting project inspections under either the VЕСP or the VSMP, shall hold a valid certificate of competence for the classification of the task to be performed, or its equivalent, as provided in 9VAC25-850-10 *et seq.* The administrator and any other person may hold certificates for more than one classified task.

For purposes of program compliance reviews and evaluations by the State Water Control Board, the enrollment of persons in certification programs shall be deemed to meet the certification requirements as provided in 9VAC25-850-55.

State law reference – Va. Code §§ 62.1-44.15:30, 62.1-44.15:54; 9VAC25-850-10 *et seq.*

Sec. 17-203 Rules of construction.

This chapter protects paramount public interests and shall be liberally construed to effectuate its several purposes. In addition to the rules of construction set forth in Albemarle County Code § 1-101, the following rules of construction apply to the construction of this chapter, unless the application would be contrary to the purposes of this chapter or the context clearly indicates otherwise:

- A. All references to any statute, regulation, guideline, handbook, manual or standard are to that statute, regulation, guideline, handbook, manual or standard as it exists on the date of adoption of this chapter, and includes any amendment thereafter or reissue in a subsequent edition.
- B. All references to the “administrator” include, in the appropriate context, a certified plan reviewer, certified inspector, or any other person designated to act under this chapter.
- C. All references to the “owner” include, in the appropriate context, the applicant, the permittee, the operator.
- D. All references to the “County,” when referring to physical territory in articles I through IX of this chapter, include the physical territory of both the County of Albemarle and the Town of Scottsville.
- E. All references to “this chapter,” when used in articles I through IX, are referring to articles I through IX.
- F. The word “days” means calendar days, unless otherwise expressly provided.
- G. All distances and areas shall be measured in a horizontal plane unless otherwise expressly provided.
- H. The word “current” means the point in time at which a matter is under consideration and shall not mean the date of adoption of the most recent amendment to this chapter.
- I. The word “maintain” or “maintenance” also includes, repair, replace and reconstruct.
- J. All provisions requiring that improvements be designed or constructed to prescribed standards, or otherwise comply with delineated standards, refer to the minimum standard and nothing in this chapter shall prohibit an improvement from exceeding the standard.
- K. Any word or phrase used in this chapter that is not defined in section 17-204 shall be defined as it is in the Virginia Stormwater Management Act (Virginia Code § 62.1-44.15:24 *et seq.*), the Erosion and Sediment Control Law (Virginia Code § 62.1-44.15:51 *et seq.*), and in the applicable regulations in 9VAC25-830 through 9VAC25-890. If the word or phrase is not defined therein, the meaning of the word or phrase shall be defined as it is in other chapters of this Code and if it is not defined therein, by resort to other sources determined to be appropriate.

State law reference – Va. Code §§ 62.1-44.15:27, 62.1-44.15:54.

Sec. 17-204 Definitions.

The following definitions shall apply in the administration of this chapter:

Administrator. The term “administrator” means the County engineer.

Adequate channel. The term “adequate channel” means a watercourse that will convey the designated frequency storm event without overtopping its banks or causing erosive damage to the bed, banks and overbank sections of the same.

Agreement in lieu of a plan. The term “agreement in lieu of a plan” means an agreement between the County and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence, in lieu of an erosion and sediment control plan.

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

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

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

Applicant. The term “applicant” means any person submitting an application for a permit or plan approval under this chapter.

Application. The term “application,” as used in Article IV, means an application for approval of an erosion and sediment control plan, for land disturbing activity for which a VSMP permit is not required, or an application for approval of a VSMP permit.

Best management practice (BMP). The term “best management practice” or “BMP” means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems, and includes both structural and nonstructural practices described as follows:

- A. *Structural best management practice.* Structural best management practices include storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as biofilters, grassed swales, sand filters and filter strips; infiltration practices such as infiltration basins and infiltration trenches; and any post-construction BMP listed in the Virginia Stormwater BMP Clearinghouse Website (<http://vwrrc.vt.edu/swc/PostConstructionBMPs.html>).
- B. *Nonstructural best management practice.* Nonstructural best management practices are preventative actions that involve management and source controls such as: (i) policies and regulations that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space

(including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; (ii) policies or regulations that encourage infill development in higher density urban areas, and areas with existing infrastructure; (iii) education programs for developers and the public about project designs and maintenance activities that minimize water quality impacts; and (iv) measures such as minimizing the percentage of impervious area after development and minimizing directly connected impervious areas.

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

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

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

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

Channel. The term “channel” means a natural stream or manmade waterway.

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

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

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

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

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

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

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

Department of community development. The term “department of community development” means the County department of community development.

Department of general services. The term “department of general services” means the County department of general services.

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

Development. The term “development” means: (i) for the purposes of the VESCP, a parcel of land or a site developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units; and (ii) for purposes of the VSMP, land disturbing activity 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.

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

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

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

Discharge of a pollutant. The term “discharge of a pollutant” means any addition of any pollutant or combination of pollutants to State waters from any point source, and includes additions of pollutants into surface waters from surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by the State, the County, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works; provided that this definition does not include an addition of pollutants by any indirect discharger.

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

Erosion and sediment control plan. The term “erosion and sediment control plan” means a plan which meets the requirements of section 17-402 containing material for the conservation of soil and water resources of a unit or group of units of land, and: (i) 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; and (ii) 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. An erosion and sediment control plan may be a component of a VSMP permit or a stand-alone plan if the land disturbing activity is not subject to the VSMP.

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

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

Floodplain. The term “floodplain” means the area adjacent to a channel, river, stream, or other water body that is susceptible to being inundated by water normally associated with the one hundred (100) year flood or storm event, and includes, but is not limited to, the floodplain designated by the Federal Emergency Management Agency on a Flood Insurance Rate Map.

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

Illicit discharge. The term “illicit discharge” means any discharge to a municipal separate storm sewer or State waters that is not composed entirely of stormwater, except discharges pursuant to a separate VPDES or State permit (other than the State permit for discharges from the municipal separate storm sewer), discharges exempted under section 17-801(A), and discharges identified by and in compliance with 9VAC25-870-400(D)(2)(c)(3).

Inspection. The term “inspection” means an onsite review of a project’s compliance with an approved erosion and sediment control plan, an approved VSMP permit, the State permit, the VESCP, the VSMP, and any applicable design criteria, or an onsite review to obtain information or conduct surveys or investigations necessary for the implementation or enforcement of this chapter.

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

Land disturbance or land disturbing activity. The term “land disturbance” or “land disturbing activity” means: (i) for purposes of the VESCP, any man-made change to the land surface that may result in soil erosion from water or wind and the movement of sediments into State waters or onto lands in the State, including, but not limited to, clearing, grading, excavating, transporting, and filling of land, but does not include those land disturbing activities exempt under section 17-301; and (2) for purposes of the VSMP, a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, but does not include those land disturbing activities that are exempt under section 17-303.

Large construction activity. The term “large construction activity” means construction activity, including clearing, grading and excavation resulting in the disturbance of five (5) acres or more of total land area; provided that the disturbance of less than five (5) acres of total land area is a large construction activity if it is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five (5) acres or more. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

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

Linear development project. The term “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; provided that private subdivision roads or streets are not linear development projects.

Major modification. The term “major modification” means, for the purposes of this chapter, the modification or amendment of an existing State permit before its expiration that is not a minor modification.

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

Maximum extent practicable (MEP). The term “maximum extent practicable” or “MEP” means the technology-based discharge standard for municipal separate storm sewer systems established by CWA § 402(p) and which 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).

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

Minor modification. The term “minor modification” means a minor modification or amendment of an existing State permit before its expiration for the reasons listed in 40 CFR 122.63 and as specified in 9VAC25-870-640, and other modifications and amendments not requiring extensive review and evaluation including, but not limited to, changes in United States Environmental Protection Agency-promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor State permit modification or amendment does not substantially alter State 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.

Mitigation plan. The term “mitigation plan” means a plan which meets the requirements of section 17-406 that describes how encroachments into a stream buffer will be mitigated through runoff treatment, revegetation, the addition of extra buffer areas, or other appropriate best management practices. A mitigation plan may be a component of a VSMP permit, or an erosion and sediment control plan if the land disturbing activity is subject solely to the VESCP.

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

Municipal separate storm sewer system (MS4). The term “municipal separate storm sewer system” or “MS4” means all separate storm sewers that are defined as “large” or “medium” or “small” municipal separate storm sewer systems or designated under 9VAC25-870-380(A)(1).

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

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

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

Nontidal wetlands. The term “nontidal wetlands” means wetlands other than tidal wetlands that are inundated or saturated by surface or groundwater at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the United States Environmental Protection Agency pursuant to section 404 of the Clean Water Act and its implementing regulations.

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

Operator. The term “operator” means the owner or operator of any facility or activity subject to regulation under this Ordinance.

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

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

Owner. The term “owner” 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, corporation, limited liability company, partnership, trustee or any other person or form of entity in control of a property, and includes, in the appropriate context, an applicant, a permittee, and an operator.

Peak flow rate. The term “peak flow rate” means the maximum instantaneous flow from a prescribed design storm at a particular location.

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

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

Person. The term “person” means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including a Federal, State, or local entity as applicable, any interstate body or any other legal entity.

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

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

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

Point source. The term “point source” means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged; provided that this term does not include return flows from irrigated agriculture or agricultural runoff.

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

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

Pollution. The term “pollution” means the alteration of the physical, chemical or biological properties of any State waters as will or is likely to create a nuisance or render the waters:(i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (a) an alteration of the physical, chemical, or biological property of State waters, or a discharge or deposit of sewage, industrial wastes or other wastes to State waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to State waters by other owners, is sufficient to cause pollution; (b) the discharge of untreated sewage by any

owner into State waters; and (c) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are “pollution” for the purposes of this chapter.

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

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

Predevelopment. The term “predevelopment” means: (i) the conditions that exist at the time that plans for the land development of a tract of land are submitted to the County for the purpose of establishing regulatory values or minimums, for pollutant loadings and discharge characteristics; or (ii) where phased development or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities), the conditions that exist at the time prior to the first item being submitted shall establish predevelopment conditions; provided that the administrator may determine that the predevelopment conditions are those that existed at some time other than as provided in (i) or (ii) depending on recent exempt or non-exempt land disturbing activities on the site which affected runoff, and further provided that downstream characteristics may necessitate additional protections. Nothing in this definition shall affect any applicable assumptions or calculations required by this chapter.

Program. The term “program” means the Virginia Erosion and Sediment Control Program or the Virginia Stormwater Program or, in the appropriate context, both.

Regulations. The term “regulations,” when referring to State regulations, means those regulations implementing the Virginia Stormwater Management Act and the Erosion and Sediment Control Law in 9VAC25-830 through 9VAC25-890.

Reinspection. The term “reinspection” means any inspection necessary to determine whether any deficiency or violation in a notice of violation or a stop work order has been corrected.

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

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

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

Sediment basin. The term “sediment basin” means a temporary impoundment built to retain sediment and debris with a controlled stormwater release structure.

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

Site. The term “site” means the land or water area composed of one or more parcels where any facility or land disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land disturbing activity.

Small construction activity. The term “small construction activity” means: (i) construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than ten thousand (10,000) square feet, and less than five (5) acres, or a land disturbance of less than ten thousand (10,000) square feet that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than ten thousand (10,000) square feet and less than five (5) acres; provided that the term does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility; or (ii) any other construction activity designated by either the State Water Control Board or the United States Environmental Protection Agency’s regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

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

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

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

State permit. The term “State permit” means, unless the context indicates otherwise, the State permit titled “General Permit for Discharges of Stormwater from Construction Activities” found in 9VAC25-880 authorizing a category of discharges under the Clean Water Act and the Virginia Stormwater Management Act within the geographical area of the State.

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

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

Stormwater conveyance system. The term “stormwater conveyance system” means a combination of drainage components that are used to convey stormwater discharge, either within or downstream of the land disturbing activity, and includes a man-made, natural, or restored stormwater conveyance system described as follows:

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

channel design concepts, and they include the main channel and the flood-prone area adjacent to the main channel.

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

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

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

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

Stormwater pollution prevention plan (SWPPP). The term “stormwater pollution prevention plan” or “SWPPP” means a plan which meets the requirements of section 17-405 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 stormwater pollution prevention plan is a component of a VSMP permit.

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

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

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

Surface waters. The term “surface waters” means: (i) all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide; (ii) all interstate waters, including interstate wetlands; (iii) all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters that are or could be used by interstate or foreign travelers for recreational or other purposes; from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or that are used or could be used for industrial purposes by industries in interstate commerce; (iv) all impoundments of waters otherwise defined as surface waters under this definition; (v) tributaries of waters identified in

subdivisions (i) through (iv) of this definition; and (vi) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions (i) through (v) of this definition; provided that waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act and the law, are not surface waters, and surface waters do not include prior converted cropland as determined by the United States Environmental Protection Agency.

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

Total maximum daily load (TMDL). The term “total maximum daily load” or “TMDL” means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading and a margin of safety, and which can be expressed in terms of either mass per time, toxicity, or other appropriate measure.

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

Two-year storm. The term “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 (2) years, and which also may be expressed as an exceedance probability with a fifty (50) percent chance of being equaled or exceeded in any given year.

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

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

Virginia Erosion and Sediment Control Program (VESCP). The term “Virginia Erosion and Sediment Control Program” or “VESCP” means the program established by this chapter and approved by the State Water Control Board 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 include this chapter and all other applicable rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, and evaluation consistent with the requirements of the Erosion and Sediment Control Law and related regulations.

Virginia Stormwater BMP Clearinghouse Website. The term “Virginia Stormwater BMP Clearinghouse Website” means a website that contains the authorized detailed design standards and specifications for control measures that may be used in the State to comply with the requirements of the Virginia Stormwater Management Act and related State regulations, and whose ISP address as of July 1, 2014 is <http://vwrrc.vt.edu/swc/PostConstructionBMPs.html>.

Virginia Stormwater Management Program (VSMP). The term “Virginia Stormwater Management Program” or “VSMP” means the program established by this chapter and approved by the State Water

Quality Control Board to manage the quality and quantity of runoff resulting from land disturbing activities and includes this chapter and all other applicable rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, and evaluation consistent with the requirements of the Virginia Stormwater Management Act and related regulations.

VSMP permit. The term “VSMP permit” means a permit issued by the administrator under the County’s Virginia Stormwater Management Program to conduct a land disturbing activity in accordance with this chapter and which is composed of the following, as applicable: (i) a complete and accurate registration statement; (ii) an approved erosion and sediment control plan; (iii) an approved stormwater management plan; (iv) an approved pollution prevention plan; (v) an approved stormwater pollution prevention plan; (vi) a mitigation plan, if applicable; (vii) construction record drawings; and (viii) inspection reports.

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

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

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

Wasteload allocation (WLA). The term “wasteload allocation” or “WLA” means the portion of a receiving surface water’s loading or assimilative capacity allocated to one of its existing or future point sources of pollution, and is a type of water quality-based effluent limitation.

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

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

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

State law reference – Va. Code §§ 62.1-44.15:24, 62.1-44.15:51; 9VAC25-840-10, 9VAC25-870-10.

Sec. 17-205 Records; disclosure and exemptions.

Any records required by the administrator to be submitted by the owner or in the possession of the administrator are subject to disclosure to the public as follows:

- A. *Records not exempt from disclosure.* The following records are not exempt from disclosure: (i) personal information, to the extent as may be authorized under the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 *et seq.*); (ii) 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; (iii) the name and address of any State permit applicant or permittee; (iv) State permit applications, State permits, and effluent data; and (v) information required by State permit application forms provided by the Virginia Department of Environmental Quality, including information submitted on the forms themselves and any attachments used to supply information required by the forms.

- B. *Records exempt from disclosure.* The following records are exempt from disclosure to the public: (i) any records relating to active Federal environmental enforcement actions that are considered confidential under Federal law; and any records relating to enforcement strategies, including proposed sanctions for enforcement actions; provided that, upon request, the records are subject to disclosure after a proposed sanction resulting from the investigation has been determined by the State Water Control Board, the Virginia Department of Environmental Quality, or the administrator; and (ii) any secret formula, secret processes, or secret methods other than effluent data submitted to the Virginia Department of Environmental Quality pursuant to State law may be claimed as confidential by the submitter in accordance with 40 CFR 122.7 .

- C. *Freedom of Information Act.* Except as expressly provided in subsection (B), any other public record of the County pertaining to this chapter and any record submitted by an owner under this chapter shall be subject to disclosure, or may be exempt from disclosure, as provided under the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 *et seq.*).

State law reference – Va. Code §§ 62.1-44.15:40; 9VAC25-870-340.

Sec. 17-206 Fees for land disturbing activity subject solely to the VESCP.

The following fees are for any land disturbing activity subject solely to the VESCP and shall apply to the services provided by the County under this chapter. Any required fee shall be paid upon submittal of an application and prior to each reinspection. Neither the County nor the County school board shall be required to pay any fee if it is the applicant:

Land disturbing activity pertaining to single family dwelling unit	
Agreement in lieu of a plan if single family dwelling unit located in a residential development	\$150
Agreement in lieu of a plan if single family dwelling unit not located in a residential development	\$150
Plan review for a single family dwelling unit	\$150
Permit and first year inspection fees for a single family dwelling unit	\$150
Annual permit renewal and inspection fees for a single family dwelling unit, starting with second year	\$150
Each reinspection	\$150

Land disturbing activity pertaining to non-exempt agricultural land	
Plan review	\$150 per review
Permit and first year inspection fees	\$150
Each reinspection	\$150
Annual permit renewal and inspection fees, starting with second year	\$150
All other land disturbing activity	
Plan review, disturbed area less than one acre	\$150 per review
Permit and first year inspection fees, disturbed area less than one acre	\$200
Annual permit renewal and inspection fee, disturbed area less than one acre	\$200
Plan review, disturbed area one acre or larger	\$300 per review
Permit and first year inspection fees, disturbed area one acre or larger	\$100 per disturbed acre
Annual permit renewal and inspection fee, disturbed area one acre or larger, starting with second year	\$100 per disturbed acre
Each reinspection	\$250
Each request for partial or full release of surety	\$250
Amendment to approved plan	\$200 per plan review
Other services	
Review of mitigation plan pertaining to a land disturbing activity in a stream buffer	\$150
Variances	\$150 per request

State law reference – Va. Code § 62.1-44.15:54; 9VAC25-840-30.

Sec. 17-207 Fees for land disturbing activity under VSMP.

Each owner seeking coverage under the State permit, each owner requesting a transfer or modification of its existing registration statement for coverage under the State permit, each owner requesting a major modification to a State permit, and each owner covered under the State permit required to maintain permit coverage shall pay a fee upon submittal of the VSMP permit application or, for the permit maintenance fee, annually, in the amounts according to the following schedule:

Fee Type	Permit Issuance Fee ¹	State Portion of Permit Issuance Fee ²	Transfer or Modification Fee Amount ³	Permit Maintenance Fee ⁴
Small construction activity/land clearing (less than 1 acre)*	\$290	\$81	\$20	\$140
Small construction activity/land clearing (equal to or greater than 1 acre and less than 5 acres)*	\$2,700	\$756	\$200	\$1,350
Large construction activity/land clearing (equal to or greater than 5 acres and less than 10 acres)*	\$3,400	\$952	\$250	\$1,700
Large construction activity/land clearing (equal to or greater than 10 acres and less than 50 acres)*	\$4,500	\$1,260	\$300	\$2,250
Large construction activity/land clearing (equal to or greater than 50 acres and less than 100 acres)*	\$6,100	\$1,708	\$450	\$3,050
Large construction activity/land	\$9,600	\$2,688	\$700	\$4,800

clearing (equal to or greater than 100 acres)*				
Other services				Fee
Each reinspection				\$250
Bond agreement with surety; establish, amend or replace				\$250
Each request for partial or full release of surety				\$250
Amendment to approved plan				\$200 per plan review
Review of mitigation plan pertaining to a land disturbing activity in a stream buffer				\$150
Exceptions				\$240 per request
Construction record drawing; review				\$300

1. The fees imposed by this column are the total fees to be paid by the owner to cover the County's costs to review a stormwater management and other required plans, VSMP registration statement review, VSMP permit issuance, State permit coverage verification, inspections, reporting and compliance associated with a land disturbing activity. Any land disturbing activity subject to the fees in this section is not subject to the separate fees under section 17-206. Any site that has been purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to the applicable fees required by this column.
2. The amounts in this column are not a separate fee but reflect the portion of the fee required by column 1 that must be paid by the County to the Virginia Department of Environmental Quality pursuant to Virginia Code § 62.1-44.15:28(A)(5)(a). These amounts are twenty-eight (28) percent of the fee required by column 1.
3. The fees imposed by this column are intended to cover the County's costs to review a request to modify or transfer registration statements from the State permit and major modifications to the State permit that result in changes to stormwater management plans that require additional review by the County. The applicable fee shall be based on the total disturbed acreage of the site. In addition to the State permit modification fee, any modification resulting in an increase in total disturbed acreage shall pay the difference in the fee imposed by column 1 that was initially paid and the permit fee imposed by column 1 that would have applied for the modified total disturbed acreage. No fee shall be required for a minor modification.
4. The fees imposed by this column are an annual permit maintenance fee, and include fees imposed on expired permits that have been administratively continued. The fee, which shall be prorated in the first year, shall be paid at the time provided in section 17-208(B). With respect to the State permit, these fees shall apply until the State permit coverage is terminated.

State law reference – Va. Code §§ 62.1-44.15:28, 62.1-44.15:31, 62.1-44.15:36; 9VAC25-870-730, 9VAC25-870-820, 9VAC25-870-825, 9VAC25-870-830.

Sec. 17-208 Fees; payment.

Each owner shall pay the fees imposed by sections 17-206 and 17-207 as follows:

- A. *Form.* Each fee shall be in the form of cash or a check payable to the "County of Albemarle."
- B. *When payment to be made.* Payments shall be made as follows:
 1. *VESCP.* Each owner seeking approval of an erosion and sediment control plan shall pay all applicable fees upon submittal of the application.
 2. *VSMP; permit issuance.* Each owner required to pay the permit issuance fee shall pay one-half of the applicable total fee required by column 1 of the table in section 17-207 upon submittal of the application, and the remaining one-half shall be paid prior to issuance of coverage under the State permit.
 3. *VSMP; transfer or modification.* Each owner required to pay the transfer or modification fee required by column 3 of the table in section 17-207 shall pay the fee upon submittal of the application to transfer or modify.

3. *VSMP; annual maintenance fee.* Each owner required to pay the State permit coverage maintenance fee required by column 4 of the table in section 17-207 shall pay the fee annually to the County until a notice of termination is effective. The maintenance fee shall be due by April 1 of each year. On the first April 1 after the land disturbing activity has begun, this fee shall be prorated on a monthly basis, and the full fee shall be paid by April 1 of each year thereafter. No fee shall be refunded for land disturbing activity that is completed in months other than April.
- C. *Required information to be included with VSMP permit application payments.* Each owner shall submit the following information with the fee payment, or submit a completed Virginia Department of Environmental Quality permit application fee form:
1. Applicant name, address and daytime phone number.
 2. Applicant Federal Identification Number (FIN), if applicable.
 3. The name of the facility or activity and its location.
 4. The type of State permit applied for.
 5. Whether the application is for a new State permit issuance, State permit reissuance, State permit maintenance, or State permit modification.
 6. The amount of fee submitted.
 7. The existing State permit number, if applicable.
 8. Other information as required by the administrator.
- D. *Use of fees.* The County's portion of the fees imposed under sections 17-206 and 17-207 shall be used solely to carry out the County's responsibilities under the Virginia Stormwater Management Act, the Erosion and Sediment Control Law, the applicable regulations in 9VAC25-830 through 9VAC25-890, this chapter and any other applicable standards and specifications.

State law reference – Va. Code §§ 62.1-44.15:36, 62.1-44.15:54; 9VAC25-840-30, 9 VAC25-870-700, 9VAC25-870-750, 9VAC25-870-760, 9VAC25-870-780, 9VAC25-870-820.

Sec. 17-209 Fees; incomplete and late payments

Incomplete and late payments of fees required by sections 17-206 and 17-207 shall be subject to the following:

- A. *Incomplete payments.* The failure of an owner to pay the fee due as required by this chapter for the application or service shall be deemed to be a nonpayment of the fee and: (i) the application shall not be processed; and (ii) no service shall be provided by the County. The administrator shall provide written notice to the owner of any incomplete payment within ten (10) days after the determination that the payment is incomplete.
- B. *Late payments.* Any late payment shall be subject to interest at the underpayment rate provided in Virginia Code § 58.1-15 and shall be calculated on a monthly basis at the applicable periodic rate. A ten (10) percent late payment fee shall be charged to any account more than ninety (90) days

past due.

- C. *Remedies.* The County may pursue any remedies provided by State law to collect any past due amount. In addition, the County or the administrator may pursue the remedies provided in section 17-900 *et seq.*, including revocation of any approval.

State law reference – 9VAC25-870-770.

Sec. 17-210 Review of administrator’s action by the board of supervisors; judicial review.

Any person aggrieved by an action or inaction of the administrator may demand that the board of supervisors review the action or inaction and may thereafter request judicial review of the board of supervisor’s final decision, as provided herein:

- A. *Actions that may be reviewed.* Any of the following actions by the administrator may be reviewed: (i) the disapproval of an erosion and sediment control plan or VSMP permit; (ii) the approval of an erosion and sediment control plan or VSMP permit with conditions the owner objects to; (iii) the disapproval of a variance or exception; (iv) any determination made under sections 17-300 through 17-306; (v) any State permit decision made by the administrator; (vi) any enforcement decision made by the administrator; (vii) the failure of the administrator to act within the time periods required by this chapter; and (viii) the approval of an erosion and sediment control plan or VSMP permit where the issue is compliance with 9VAC25-840-40(19).
- B. *Standing.* Any owner who is an applicant, permittee, operator or any other person subject to State permit requirements under the VSMP who is aggrieved by any action or inaction under subsection (A)(i) through (vii) has standing to seek review under this section. Any downstream owner who is aggrieved by an action under subsection (A)(viii) has standing to seek review under this section.
- C. *Demand for hearing and time in which to make demand before the board.* Any person who has standing under subsection (B) may demand in writing a formal hearing by the board of supervisors, provided that a petition requesting a hearing is filed with the clerk of the board of supervisors: (i) within thirty (30) days after the date of notice of the action, when review is sought under subsection (A)(i) through (A)(vi); (ii) within thirty (30) days after the date by which the administrator was required to act but failed to do so, when review is sought under subsection (A)(vii); or (iii) within thirty (30) days after the date of the administrator’s approval of the erosion and sediment control plan or VSMP permit, when review is sought under subsection (A)(viii).
- D. *Conduct of hearing before the board.* The hearing before the board of supervisors under this section shall be held at a regular or special meeting of the board, subject to the following:
1. *Verbatim record.* A verbatim record of the hearing shall be taken and filed with the State Water Control Board.
 2. *Depositions.* Depositions may be taken and read as in actions at law.
 3. *Subpoenas.* The board has the power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the board in

the manner prescribed in Virginia Code § 2.2-4022. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions.

- E. *Decision by the board.* The board shall make a final decision within forty five (45) days after the hearing is concluded. The board may affirm, reverse, or modify the action of the administrator, or it may take any action the administrator failed to take. The decision shall be in writing and state the date of the decision and the reasons for the decision. Notice of the board's decision shall be provided to the owner and to any downstream owner who is aggrieved.
- F. *Time in which request judicial review.* A final decision by the board of supervisors under this section may be subject to judicial review, provided that an appeal is filed by the person aggrieved in the circuit court within thirty (30) days after the date of the board's written decision.

State law reference – Va. Code §§ 62.1-44.15:26, 62.1-44.15:44, 62.1-44.15:45, 62.1-44.15:46, 62.1-44.15:62; 9VAC25-870-118.

Article III. Applicability of the VESCP and the VSMP to a Land Disturbing Activity or a Site Condition

Sec. 17-300 Land disturbing activities and site conditions subject to the VESCP.

The following land disturbing activities and site conditions are subject to the VESCP, and the owner shall comply with all applicable requirements of the VESCP in this chapter and under State law:

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

State law reference – Va. Code § 62.1-44.15:51; 9VAC25-890-40.

Sec. 17-301 Land disturbing activities exempt from the VESCP.

The following land disturbing activities are exempt from the VESCP:

- A. *Minor residential-related activities.* Minor residential-related land disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work.
- B. *Connections.* Individual service connections.
- C. *Public utility lines.* Installing, maintaining, or repairing any underground public utility lines when the activity occurs on an existing hard surfaced road, street, or sidewalk, provided that the land disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced.
- D. *Conventional onsite sewage systems.* Septic tank lines or drainage fields for a conventional onsite sewage system unless they are included in an overall plan for land disturbing activity related to constructing the building to be served by the system.
- E. *Mining, oil and gas operations and projects.* Permitted surface or deep mining operations and projects, and oil and gas operations and projects conducted pursuant to Title 45.1 of the Virginia Code.
- F. *Agricultural, horticultural, and forestal activities.* Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, the construction of agricultural roads unless and until a plan of development is submitted and the road is no longer exempt as provided in section 17-300(D), or as additionally set forth by the State Water Control Board in regulations; provided that this exemption shall not apply to the harvesting of forest crops unless the area on which the harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (Virginia Code § 10.1-1100 *et seq.*) of Title 10.1 of the Virginia Code or is converted to bona fide agricultural or improved pasture use as described in Virginia Code § 10.1-1163(B).
- G. *Agricultural engineering operations.* Agricultural engineering operations including, but not limited to, constructing terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (Virginia Code § 10.1-604 *et seq.*), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation.
- H. *Railroad improvements.* Repairing or rebuilding the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.
- I. *Posts and poles.* Installing fence and sign posts or telephone and electric poles and other kinds of posts or poles.
- J. *Emergency work.* Emergency work to protect life, limb, or property, and emergency repairs; provided that if the land disturbing activity would have required an approved erosion and sediment control plan if the activity was not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the County.

State law reference – Va. Code § 62.1-44.15:51.

Sec. 17-302 Land disturbing activities subject to the VSMP.

The following land disturbing activities are subject to the VSMP, and the owner shall comply with all applicable requirements of the VSMP in this chapter and under State law:

- A. *Land disturbance of 10,000 square feet or more.* Any land disturbing activities that disturb ten thousand (10,000) square feet or more, including the harvesting of forest crops, unless the activity is exempt under section 17-303.
- B. *Land disturbance of less than 10,000 square feet; common plan of development or sale.* Any land disturbing activities that disturb less than ten thousand (10,000) square feet if the disturbance is part of a common plan of development or sale whose total land disturbance will exceed ten thousand (10,000) square feet, unless the activity is exempt under section 17-303.

State law reference – Va. Code §§ 62.1-44.15:24, 62.1-44.15:34; 9VAC25-890-40.

Sec. 17-303 Land disturbing activities exempt from the VSMP.

The following land disturbing activities are exempt from the VSMP requirements of this chapter, unless otherwise required by federal law:

- A. *Mining, oil and gas operations and projects.* Permitted surface or deep mining operations and projects, and oil and gas operations and projects conducted pursuant to Title 45.1 of the Virginia Code.
- B. *Agricultural, horticultural, and forestal activities.* Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the State Water Control Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; 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 (Virginia Code § 10.1-1100 *et seq.*) of Title 10.1 of the Virginia Code or is converted to bona fide agricultural or improved pasture use as described in Virginia Code § 10.1-1163(B).
- C. *Single-family residences.* Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures.
- D. *Land disturbance of less than 10,000 square feet.* Land disturbing activities that disturb less than ten thousand (10,000) square feet of land area except for land disturbing activities that are part of a larger common plan of development or sale that is ten thousand (10,000) square feet or greater of disturbance
- E. *Discharges.* Discharges to a sanitary sewer or a combined sewer system.
- F. *Reclamation of abandoned property.* Activities under a State or Federal reclamation program to return an abandoned property to an agricultural or open land use.

- G. *Project maintenance.* 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.
- G. *Emergencies.* Conducting land disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In a public emergency, the owner shall advise the administrator of the disturbance within seven (7) days after commencing the land disturbing activity, and compliance with the administrative requirements of this chapter to obtain approval of a VSMP permit is required within thirty (30) days after commencing the land disturbing activity.
- H. *State and Federal agencies.* State and Federal agencies eligible to operate a VSMP consistent with the Virginia Stormwater Management Act and the Virginia Department of Environmental Quality's approved annual standards and specifications as provided in Virginia Code §§ 62.1-44.15:27 and 62.1-44.15:56.
- I. *Linear development projects, utilities and railroads.* Linear development projects subject to annual State standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to Virginia Code § 15.2-5102 eligible to operate a VSMP consistent with the Virginia Stormwater Management Act and the Virginia Department of Environmental Quality's approved annual standards and specifications as provided in Virginia Code §§ 62.1-44.15:27 and 62.1-44.15:56.

State law reference – Va. Code §§ 62.1-44.15:24, 62.1-44.15:34.

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

The administrator shall determine:

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

and agreement for the offsite land disturbing activity before further land disturbing activity occurs, or in the case of a proposed plan, prior to further review or approval.

State law reference – Va. Code §§ 62.1-15.44:27, 62.1-15.44:54, 62.1-15.44:55; 9VAC25-840-80.

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

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

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

State law reference – Va. Code §§ 62.1-15.44:27, 62.1-15.44:54.

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

Upon receipt of the notice provided by the administrator under section 17-305, the owner shall be obligated to act as follows:

- A. *Determination that land disturbing activity is subject to the VESCP or the VSMP, or both.* If the administrator determines that a land disturbing activity is subject to the VESCP, the VSMP, or both, under section 17-305(A) or (C), the owner shall immediately comply with the applicable requirements of this chapter and the applicable requirements of this chapter shall be immediately enforced.
- B. *Determination that an erosion impact area exists.* If the administrator determines that an erosion impact area exists under section 17-305(B), the owner shall: (i) not permit any portion of that land to remain in a condition so that soil erosion and sedimentation causes reasonably avoidable damage or harm to adjacent or downstream property, roads, streams, lakes, or ponds; and (ii) immediately comply with the applicable requirements of the notice and this chapter. If good cause is shown, the administrator may grant to an owner an extension of time to comply with the requirements of this subsection and this chapter.

State law reference – Va. Code §§ 62.1-15.44:27, 62.1-15.44:54, 62.1-15.44:55; 9VAC25-840-80.

**Article IV. Procedure for Submitting, Reviewing and Acting on Applications;
Post-Approval Rights and Obligations**

Division 1. Application Requirements

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

The procedures in this article, and all related requirements of this chapter, apply to any land disturbing activity subject to the VESCP and the VSMP, as well as any land disturbing activity subject to the VESCP but not the VSMP. Any land disturbing activity subject only to the VESCP shall be subject only to the requirements of this chapter applicable under the VESCP. An application shall be submitted as follows:

- A. *Responsibility of the owner.* Each owner is responsible for preparing, submitting, and obtaining approval of an application prior to engaging in land disturbing activity subject to this chapter. When the land disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and obtaining approval of the plan shall be the responsibility of the owner.
- B. *Submittal of application to the administrator.* Subject to subsection (C), each application shall be submitted to the administrator as provided in this chapter.
- C. *Multi-jurisdictional developments.* If a proposed land disturbing activity involves lands under the jurisdiction of the County's program and another public entity's program, in lieu of the owner submitting separate applications to each program, either:
 - 1. *Request that State review plan.* The administrator or the other program, or both, may request that the application be submitted to the Virginia Department of Environmental Quality for review and action; or
 - 2. *Agreement that single program administer the project.* The administrator may enter into an agreement on behalf of the County with the other program regarding the administration of the project, whereby the program containing the greater portion of the project shall be responsible for all or part of ensuring that the applicable program requirements are satisfied. The greater portion of the project shall include all anticipated future phases and development of the project, as determined by the administrator.

State law reference – Va. Code §§ 62.1-44.15:34, 62.1-44.15:55; 9VAC25-890-40.

Sec. 17-401 VSMP permit application; form and content.

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

- A. *Application form.* A completed application on an application form provided by the administrator, signed by the owner.
- B. *Fees.* All applicable fees required by section 17-207 and the applicable fee form.
- C. *Registration statement.* A complete and accurate registration statement from the operator on the official form provided by the Virginia Department of Environmental Quality in order to apply for State permit coverage. The registration statement shall be signed by the owner in accordance with 9VAC25-870-370 and 9VAC25-880-70.

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

State law reference – Va. Code § 62.1-44.15:34; 9VAC25-870-59, 9VAC25-870-370, 9VAC25-880-70.

Sec. 17-402 Erosion and sediment control plans, and agreements in lieu of a plan; form and content.

Any owner whose proposed land disturbing activity is subject to the VSMP, or is subject solely to the VESCP, shall submit an erosion and sediment control plan for review that includes the following, in the form required by the administrator:

- A. *Application form.* A completed application on an application form provided by the administrator, if the land disturbing activity is subject only to the VESCP and a VSMP permit is not required.
- B. *Fee.* The fee required by section 17-206, if the land disturbing activity is subject only to the VESCP, and a VSMP permit is not required.
- C. *Elements of plan.* Except as provided in subsection (D), an erosion and sediment control plan that contains all of the following elements:
 - 1. *Temporary and permanent controls.* The specifications for temporary and permanent controls of soil erosion and sedimentation in such detail as the administrator deems to be reasonably adequate, considering the nature and extent of the proposed land disturbing activity, implementing appropriate erosion and sediment control best management practices and satisfying the requirements of 9VAC25-880-70, Part II(A)(2). All control measures required by the plan shall be designed and installed in accordance with good engineering practices.
 - 2. *Maintenance responsibilities.* A statement describing the maintenance responsibilities of the owner to ensure that the land disturbing activity will satisfy the purposes and requirements of this chapter.
 - 3. *Technical criteria.* The technical criteria required by section 17-500.

4. *Identification of land disturber.* Identify the person holding a certificate of competence required by Virginia Code § 62.1-44.15:54, who shall be in charge of and responsible for carrying out the land disturbing activity.
 5. *Additional information.* Additional information required by the administrator as determined to be necessary for a complete review of the plan.
 6. *Certification.* A certification on a form provided by the administrator and signed by the owner stating that all requirements of the approved plan will be complied with.
- D. *Agreement in lieu of a plan.* Notwithstanding subsection (C), if the land disturbing activity is for the purpose of establishing or modifying a single family dwelling unit, the administrator may allow an agreement in lieu of a plan for the land disturbing activity required for constructing the dwelling; provided:
1. *Eligibility.* The single family dwelling unit is on an individual lot of one (1) acre or less which is not subject to an active erosion and sediment control plan or is not part of a common plan of development or sale.
 2. *Other factors to be considered by administrator.* In determining whether to allow an agreement in lieu of a plan under this section, the administrator shall consider the potential threat to water quality and to adjacent land resulting from the land disturbing activity, and whether the land disturbing activity is within the mountain overlay district identified in the Comprehensive Plan.
 3. *Contents and form of the agreement in lieu of a plan.* The contents of any agreement in lieu of a plan shall be established by the administrator, and they shall: (i) be sufficient to ensure that the purposes and requirements of the VESCP, including the requirements of 9VAC25-880-70, Part II(A)(2) are satisfied; and (ii) identify the person in charge of and responsible for carrying out the land disturbing activity and holding a valid certificate of competence for that task. The form of the agreement shall be subject to review and approval by the County attorney.
 4. *Effect of agreement in administration of the VESCP.* Except as provided in subsection (C) and section 17-500 pertaining to the content and technical criteria applicable to erosion and sediment control plans, all other references in this chapter to an erosion and sediment control plan shall include an agreement in lieu of a plan, and the County and the owner shall have all of the rights, responsibilities and remedies set forth in this chapter as though the agreement in lieu of a plan was an erosion and sediment control plan.

State law reference – Va. Code § 62.1-44.15:55; 9VAC25-840-60, 9VAC25-870-400, 9VAC25-880-70, 9VAC25-890-40.

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

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

- A. *Elements of plan.* A stormwater management plan for the entire common plan of development or sale, where applicable, which shall be considered to be a single land disturbing activity even when there are individual parcels in a residential, commercial, or industrial common plan of

development or sale. The plan shall contain all of the following elements:

1. *Stormwater discharges and features.* The plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff, and shall include information on the type of and location of stormwater discharges, information on the features to which stormwater is being discharged including surface waters, and predevelopment and postdevelopment drainage areas.
2. *Contact information.* Contact information including the name, address, telephone number, and email address of the owner and the tax reference number and parcel number of the property or properties affected.
3. *Details pertaining to, or narrative of, current and final site conditions.* Either sufficient plan information provided and documented during the review process that addresses the current and final site conditions, or a narrative that includes a description of current site conditions and final site conditions or
4. *Description of proposed stormwater management facilities.* A detailed plan of the proposed stormwater management facilities, including all best management practices, that will satisfy the requirements of this chapter and a description of all facilities and best management practices that will prevent or minimize water quality impacts for any new development or redevelopment project that will result in land disturbing activity of ten thousand (10,000) square feet or more.
5. *Description of long-term operation and maintenance.* A description of the mechanism through which the facilities, including all best management practices, will be operated and maintained after construction is complete, provided that this description is satisfied if the stormwater management facility will be subject to the agreement required by section 17-415.
6. *Information about proposed stormwater management facilities.* The following information about the proposed stormwater management facilities, including: (i) the type of facilities; (ii) the location, including geographic coordinates; (iii) acres treated; (iv) the surface waters into which the facility will discharge; and (v) any other information required by the administrator in order to comply with any requirements of the County's MS4 permit.
7. *Documentation demonstrating compliance.* Documentation and calculations, including all hydrologic and hydraulic computations and runoff characteristics, verifying compliance with the water quality and quantity requirements of the technical criteria in section 17-501.
8. *Maps.* One or more maps of the site depicting the topography of the site and: (i) all contributing drainage areas; (ii) existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains; (iii) soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas; (iv) current land use including existing structures, roads, and locations of known utilities and easements; (v) sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels; (vi) the limits of clearing and grading, and the proposed drainage patterns on the site; (vii) proposed buildings, roads, parking areas, utilities, and stormwater management facilities; (viii) proposed land uses, with tabulation of the

percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements; and (ix) other site information deemed necessary by the administrator.

9. *Offsite compliance options.* If an owner intends to meet the requirements established in section 17-502, which implements 9VAC25-870-63 and 9VAC25-870-66, through the use of off-site compliance options, where applicable, a letter of availability from the off-site provider.
 10. *Additional information.* Additional information deemed necessary by the administrator for a complete review of the plan.
- B. *Seals and signatures.* Any elements of the stormwater management plan that include activities regulated under Virginia Code § 54.1-400 *et seq.* shall be appropriately sealed and signed by a professional registered in the State pursuant to Virginia Code § 54.1-400 *et seq.* Any stormwater management plan requiring an appropriate seal and signature shall be deemed to be incomplete under section 17-409 if it is not sealed and signed as required by this section.

State law reference – 9VAC25-870-55, 9VAC25-870-108, 9VAC25-870-400, 9VAC25-890-40.

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

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

- A. *Elements of plan.* A pollution prevention plan containing all of the following elements:
1. *Sources of pollutants.* Identify potential pollutant generating activities and the pollutant that is expected to be exposed to stormwater.
 2. *Location of pollutant generating activities.* Describe the location where the potential pollutant generating activities will occur, or if identified on a site plan, refer to the site plan.
 3. *Non-stormwater discharges.* Identify all non-stormwater discharges as provided in 9VAC25-880-70, Part I(E), that are or will be commingled with stormwater discharges from the construction activity, including any support activity.
 4. *Person responsible.* Identify the person responsible for implementing the pollution prevention practices for each pollutant generating activity, if different from the person listed as the qualified personnel in the stormwater pollution prevention plan.
 5. *Practices and procedures.* Describe the pollution prevention practices and procedures that will be implemented to respond to the categories of leaks, spills and discharges in 9VAC25-880-70, Part II(A)(4)(e).
 6. *Pollution prevention awareness.* Describe the procedures for providing pollution prevention awareness of all applicable wastes, including any wash water, disposal practices and applicable disposal locations of these wastes to personnel in order to comply with the State.

- B. *Details of measures to minimize the discharge of pollutants.* The pollution prevention plan shall detail the design, installation, implementation, and maintenance of effective pollution prevention measures in accordance with 40 CFR 450.21(d) to minimize the discharge of pollutants. The following are the minimum requirements for minimizing the discharge of pollutants:
1. *Minimum control measures.* At a minimum, the control measures shall be designed, installed, implemented, and maintained to address the following:
 - a. *Wash waters.* Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge.
 - b. *Minimization of exposure to precipitation and stormwater.* Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater.
 - c. *Minimize discharges from spills and leaks.* Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.
 2. *Best management practices.* The pollution prevention plan shall provide effective best management practices to prohibit the following discharges in accordance with 40 CFR 450.21(e):
 - a. *Washout of concrete.* Wastewater from the washout of concrete.
 - b. *Washout of stucco and other materials.* Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials.
 - c. *Vehicle and equipment maintenance and operation.* Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance.
 - d. *Vehicle and equipment washing.* Soaps, solvents or detergents used in vehicle and equipment washing.
 3. *Discharges from dewatering activities prohibited.* Discharges from dewatering activities, including discharges from dewatering trenches and excavations, are prohibited unless managed by appropriate controls in accordance with 40 CFR 450.21(c).
 4. *Control of waste.* The pollution prevention plan shall include measures for controlling waste such as discarded building materials, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality.

State law reference – 9VAC25-870-54, 9VAC25-870-56, 9VAC25-870-400, 9VAC25-880-70, 9VAC25-890-40.

Sec. 17-405 Stormwater pollution prevention plan; form and content.

Any owner whose proposed land disturbing activity is subject to the VSMP shall submit a stormwater

pollution prevention plan for review that includes the following, in the form required by the administrator:

- A. *Elements of plan.* A stormwater pollution prevention plan containing all of the following elements:
1. *Registration statement.* A signed copy of the registration statement for coverage under the State permit.
 2. *Notice of State permit coverage.* Upon receipt, a copy of the notice of coverage under the State permit.
 3. *State permit.* A copy of the State permit.
 4. *Nature of activity.* A narrative description of the nature of the construction activity, including the function of the project (*e.g.*, low density residential, shopping mall, highway).
 5. *Plan of the site.* A plan of the site, satisfying the form and style for such a plan as provided in the Design Standards Manual, identifying:
 - a. *Direction of stormwater flow.* Directions of stormwater flow and approximate slopes anticipated after major grading activities.
 - b. *Limits of land disturbance.* Limits of land disturbance including steep slopes and natural buffers around surface waters that will not be disturbed.
 - c. *Major structural and nonstructural control measures.* Locations of major structural and nonstructural control measures including sediment basins and traps, perimeter dikes, sediment barriers, and other measures intended to filter, settle, or similarly treat sediment that will be installed between disturbed areas and the undisturbed vegetated areas, in order to increase sediment removal and maximize stormwater infiltration;
 - d. *Surface waters.* Locations of surface waters.
 - e. *Concentrated stormwater.* Locations where concentrated stormwater is discharged.
 - f. *Support activities.* Locations of support activities, when applicable and when required by the administrator, including but not limited to: (i) areas where equipment and vehicle washing, wheel wash water, and other wash water is to occur; (ii) storage areas for chemicals such as acids, fuels, fertilizers and other lawn care chemicals; (iii) concrete wash out areas; (iv) vehicle fueling and maintenance areas; (v) sanitary waste facilities, including those temporarily placed on the construction site; and (vi) construction waste storage.
 6. *Requirements of 40 CFR 450.21.* The plan must address the following requirements as specified in 40 CFR 450.21, to the extent not otherwise addressed in the erosion and sediment control plan submitted for the site:
 - a. *Runoff volume and velocity.* Control runoff volume and velocity within the site to

- minimize soil erosion.
 - b. *Stormwater discharges.* Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion.
 - c. *Minimize soil exposure.* Minimize the amount of soil exposed during construction activity.
 - d. *Minimize disturbance of steep slopes.* Minimize the disturbance of slopes of twenty-five (25) percent or greater.
 - e. *Minimize sediment discharges.* Minimize sediment discharges from the site by designing, installing and maintaining erosion and sediment controls that address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site.
 - f. *Buffers.* Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible.
 - g. *Soil compaction.* Minimize soil compaction and, unless infeasible, preserve topsoil.
 - h. *Stabilize disturbed areas.* Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding fourteen (14) calendar days. Stabilization must be completed within the period of time determined by the administrator. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the administrator.
 - i. *Outlet structures.* Use outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.
7. *Discharges to impaired waters, surface waters within an applicable TMDL wasteload allocation, and exceptional waters.* Discharges to impaired waters, surface waters within an applicable TMDL wasteload allocation established and approved prior to July 1, 2014, and exceptional waters shall include the information required by 9VAC25-880-70, Part II(A)(5).
- B. *Qualified personnel.* The name, telephone number, and qualifications of the qualified personnel conducting inspections.
- C. *Delegation of authority.* The persons or positions with authority to sign inspection reports or to modify the stormwater pollution prevention plan.

- D. *Additional elements of an approved plan.* In addition to the elements in subsection (A), an approved stormwater pollution prevention plan is composed of, once they are approved, the approved erosion and sediment control plan, including the elements of that plan addressing the requirements of 9VAC25-870-54(F), the approved stormwater management plan, and the pollution prevention plan for the land disturbing activity to which the stormwater pollution prevention plan applies.
- E. *Signature.* The plan shall be signed by a person authorized under 9VAC25-880-70, Part III(K).

State law reference – 9VAC25-870-54, 9VAC25-880-70, 9VAC25-890-40.

Sec. 17-406 Mitigation plan if development allowed in stream buffer; form and content.

Each owner who seeks to develop in a stream buffer pursuant to section 17-604 shall submit a mitigation plan that includes the following in the form required by the administrator:

- A. *Elements of plan.* Except as provided in subsection (B), each mitigation plan shall contain all of the following:
1. *Identify impacts and specify mitigation measures.* Identify the impacts of the proposed development on water quality and lands within the stream buffer, and specify the mitigation measures that will address water quality and stream buffer impacts.
 2. *Disturbance to land and vegetation minimized.* Ensure that, where development takes place within a stream buffer: (i) the proposed development, including the alignment and design of any stream crossing, shall be located on those portions of a site and in a manner that will be least disruptive to the natural functions of the stream buffer; (ii) no more land shall be disturbed than is necessary to allow a development that is permitted in the underlying zoning district under the applicable regulations of the Zoning Ordinance; and (iii) native vegetation shall be preserved to the fullest extent possible, consistent with the proposed development.
 3. *Multiple stream crossings; demonstrate environmental advantage over single stream crossing.* If an owner seeks to establish more than one stream crossing as provided in section 17-604(C)(7), demonstrate that the environmental impacts from the entire road, street or driveway necessitated by a single stream crossing would be greater than the environmental impacts caused by an additional crossing and its associated road, street or driveway. For the purposes of this subsection, the environmental impacts considered by the administrator include, but are not limited to, impacts to soil, soil erosion, stormwater quantity, water quality, loss of vegetated stream buffer, impacts to stream beds and stream banks, the creation of impervious surfaces, and the disturbance of slopes of twenty-five (25) percent or greater.
 4. *Additional information.* Additional information deemed necessary by the administrator for a complete review of the plan.
- B. *Building permit in lieu of satisfying requirements of subsection (A).* For any mitigation plan pertaining to the development of one single-family detached dwelling, the administrator may, in his discretion, accept the building permit for the dwelling in lieu of satisfying the requirements of subsection (A).

(§ 19.3-46, 2-11-98; § 19.2-8, 6-19-91, § 8; § 19.1-13, 6-19-91, § 13; Code 1988, §§ 19.1-13, 19.2-8, 19.3-46; Ord. 98-A(1), 8-5-98; Ord. 08-17(2), 5-7-08; Ord. 11-17(1), 10-5-11)

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

Sec. 17-407 Variances from requirements of the VESCP.

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

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

State law reference – 9VAC25-840-50.

Sec. 17-408 Exceptions from the requirements of the VSMP.

The administrator may grant exceptions from the requirements of the VSMP as follows:

- A. *When exception may be requested.* At the time the VSMP permit application is submitted and while it is under review, an owner may request an exception from any technical criteria in 9VAC25-870-62 through 9VAC25-870-92 or in 9VAC25-870-93 through 9VAC25-870-99.
- B. *Factors to be considered.* The administrator may grant an exception if: (i) the exception is the minimum necessary to afford relief; (ii) reasonable and appropriate conditions are imposed as necessary to ensure that the intent of the Virginia Stormwater Management Act and this chapter are preserved; (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances; and (iv) the exception request is not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not a sufficient reason to grant an exception.
- C. *Certain exceptions expressly prohibited.* The following exceptions are expressly prohibited:
 - 1. *Requirement for State permit.* Any exception to the requirement that the land-disturbing activity obtain any required State permits
 - 2. *Using unapproved BMP.* Any exception to allow using a best management practice that is not found on the Virginia Stormwater BMP Clearinghouse Website (<http://vwrrc.vt.edu/swc/PostConstructionBMPs.html>), except where allowed under 9VAC25-870-93 *et seq.*, or is not found in the Design Standards Manual

3. *Phosphorous reductions.* Any exception to allow phosphorous reductions, unless offsite options available through 9VAC25-870-69 have been considered and found not available.
4. *Postdevelopment nonpoint nutrient runoff compliance.* Any exception from postdevelopment nonpoint nutrient runoff compliance requirements, unless offsite options have been considered and found not available.

State law reference – Va. Code § 62.1-44.15:35; 9VAC25-870-57, 9VAC25-870-122.

Division 2. Submittal, Review and Action

Sec. 17-409 Submittal of application; determination of completeness.

The administrator shall determine whether a submitted application is complete as follows:

- A. *Date of official submittal.* An application shall be deemed to be officially submitted on the date of the next application deadline established by the administrator after the application has been submitted and the administrator has determined that the application is complete.
- B. *Timing of review to determine completeness.* The administrator’s review to determine whether an application is complete shall be made within ten (10) days after he receives the application.
- C. *Effect of failure to make timely determination of completeness.* If a determination of completeness is not made and timely communicated to the applicant, the permit application shall be deemed to be complete on the date the application was submitted.
- D. *Determination that application is incomplete; notice.* An application omitting any information required by sections 17-401 through 17-408 shall be deemed to be incomplete and shall not be accepted for official submittal by the administrator. The administrator shall inform the owner in writing of the reasons the plan is incomplete, with citation to the applicable section of this chapter or other law, and what corrections or modifications must be made for the application to be complete. The administrator shall inform the owner or his or her agent of the determination by written notice.
- E. *Resubmittal.* Within fifteen (15) days after the date the written notice under subsection (D) was mailed or delivered by the administrator, the owner may resubmit the application. If the owner fails to resubmit the application within the fifteen (15) day period, the application shall be deemed to be disapproved and a new application and fee shall be required to resubmit.

State law reference – Va. Code § 62.1-44.15:55; 9VAC25-870-108.

Sec. 17-410 Review and action on application.

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

- A. *Review.* The administrator shall ensure that the plan is reviewed by a certified plan reviewer (but referred to herein as the “administrator”) who shall review the plan for compliance with the technical requirements for an application in sections 17-400 through 17-408 and other applicable laws. This review shall be completed within forty-five (45) days after the application was deemed to be complete under section 17-409.

- B. *Identification of required changes.* Upon completion of review, the administrator shall identify all applicable requirements of this chapter that must be addressed in order for the application to be approved.
- C. *Revisions required.* The owner shall revise the application to address all of the required changes before the application may be approved.
- D. *Time for action.* The administrator shall act on the application within sixty (60) days after the date the application was deemed to be complete, provided:
 - 1. *Time for action if changes required; notice of required changes.* If the administrator requires or recommends changes to the application, he shall issue within forty-five (45) days after the application was deemed to be complete a written notice to the owner identifying the required changes that must be made and the recommended changes that may, in the owner's discretion, be made.
 - 2. *Suspension of running of time for action.* The running of the time by which the administrator must act on an application shall be suspended: (i) from the date the appeal of the disapproval of a variance or exception is submitted until the date the board of supervisors acts on the appeal under section 17-210; (ii) from the date of the written notice to the owner until the date the revised application addressing the required changes is submitted; (iii) from the date of the owner's request for a deferral of review under section 17-411(A); (iv) during any extension granted under section 17-411(C); and (v) for any multi-jurisdictional land disturbing activity, from the date either Virginia Department of Environmental Quality review was requested or a multi-jurisdictional agreement was identified as necessary until the date the Virginia Department of Environmental Quality informs the administrator in writing that it will accept review or the date of the multi-jurisdictional agreement.
- E. *Action to approve and notice of approval.* If the administrator determines that the application complies with all applicable requirements, he shall approve the application and promptly either indicate by stamp or signature on every plan that it is approved or issue a written notice to the owner informing him of the approval.
- F. *Action to disapprove and notice of disapproval.* If the administrator determines that the application does not satisfy all applicable requirements, he shall disapprove the application and promptly issue a written notice to the owner stating the reasons for disapproval by identifying the application's deficiencies and citing the applicable sections of this chapter or other applicable laws, and what modifications, terms and conditions will permit approval of the application.
- G. *Failure to timely act.* If the administrator fails to act on an application within the time specified in subsection (D), the application shall be deemed approved, subject to compliance with the requirements of sections 17-414 through 17-422.

State law reference – Va. Code §§ 62.1-44.15:34, 62.1-44.15:53, 62.1-44.15:55; 9VAC25-870-108.

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

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

- A. *Request to defer by owner.* An owner may request that review or action on the application be deferred for a specified period up to six (6) months. If during the deferral period the owner does not request the administrator to take action on the application as provided in section 17-408 within six (6) months after the date the deferral was requested, the application shall be deemed to have been voluntarily withdrawn.
- B. *Failure to submit revised application.* If an owner fails to submit a revised application to address all of the requirements within six (6) months after the date of the written notice as provided in section 17-410(D)(1), the application shall be deemed to have been voluntarily withdrawn by the owner.
- C. *Extension of deferral period or period to submit revised plan.* Before the deferral period in subsection (A) expires, the owner may request that the administrator extend the period before the application is deemed to have been voluntarily withdrawn. The request must be received by the administrator before the deferral period expires. The administrator may grant one extension for a period not to exceed three (3) months, taking into consideration the size or nature of the proposed development, the complexity of the review, and the laws in effect at the time the extension request is made.

State law reference – Va. Code §§ 62.1-44.15:34, 62.1-44.15:54.

Sec. 17-412 Coordination of review of erosion and sediment control plans with the review of subdivision plats and site plans.

The review and action on any application shall be coordinated with the review of a subdivision plat or site plan, to the extent authorized by law.

- A. *Site plans.* An application may be approved for early (or mass) grading upon approval of an initial site plan under section 18-32.4.2.8, provided that the developer has satisfied any conditions of approval identified by the agent in the letter required by section 18-32.4.2.5(c). An application for land disturbing activity within a planned development district may be approved prior to approval of an initial site plan as provided in section 18-8.5.5.4(b). However, no grading permit, building or other permit shall be issued and no land disturbing activity may begin until the developer satisfies the requirements of sections 17-414 through 17-417; provided that land disturbing activity may occur prior to approval of a stormwater management plan if the activity was previously covered under the State permit issued July 1, 2009.
- B. *Subdivision plats.* An application may be approved for early (or mass) grading upon approval of a preliminary plat for a subdivision within a planned development district under Albemarle County Code § 14-225, provided that the subdivider has satisfied any conditions of approval identified by the agent in the letter required by section 14-222(C), and further provided that an application for land disturbing activity within a planned development district may be approved prior to approval of a preliminary plat as provided in section 18-8.5.5.4(b). However, no grading, building or other permit shall be issued and no land disturbing activity may begin until the subdivider satisfies the requirements of sections 17-414 through 17-417; provided that land disturbing activity may occur prior to approval of a stormwater management plan if the activity was previously covered under the State permit issued July 1, 2009.
- C. *Other circumstances.* The administrator may approve an erosion and sediment control plan prior to approval of an initial site plan or a preliminary plat in the following circumstances:

1. *Correct existing condition.* To correct erosion or excessive sedimentation which is occasioned by any violation of this chapter or by accident, act of God or other cause beyond the control of the owner; provided that the activity proposed shall be strictly limited to correcting the condition.
2. *Install underground utility improvements.* To install underground public utility mains, interceptors, transmission lines and trunk lines for which plans have been previously approved by the operating utility and approved by the County as being substantially in accord with the comprehensive plan, if necessary.
3. *Borrow, fill or waste areas.* To establish borrow, fill or waste areas in accordance with sections 18-5.1.28 and 18-10.2.1.18.

State law reference – Va. Code §§ 62.1-44.15:27, 62.1-44.15:55; 9VAC25-870-54, 9VAC25-890-40.

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

Any decision of the administrator under section 17-411 may be appealed by the owner as provided in section 17-210.

State law reference – Va. Code §§ 62.1-44.15:26, 62.1-44.15:44, 62.1-44.15:45, 62.1-44.15:46, 62.1-44.15:62; 9VAC25-870-118.

Division 3. Required Agreements as Prerequisites to Approval: Surety and Maintenance

Sec. 17-414 Agreement with surety.

Any agreement with surety required by this chapter shall be provided by the owner as a prerequisite to approval of the application, as follows:

- A. *Purpose for agreement.* The owner shall enter into an agreement with the County to take all appropriate measures required by the approved plan or a condition of the VSMP permit (collectively, the “conservation actions”).
- B. *Form of the agreement.* The agreement accompanying the surety shall be on a form prepared by the County attorney and any proposed amendment to the agreement shall be subject to review and approval by the County attorney.
- C. *Purpose for surety; type of surety permitted amount.* The owner shall provide a surety to guarantee that the conservation actions will be taken and satisfied. The applicant shall furnish to the administrator a cash escrow, certified check, official check, bond with surety, letter of credit, or collaterally assign funds in a manner satisfactory to the County attorney (collectively, the “surety instrument”), in an amount sufficient for and conditioned upon the satisfactory performance of all conservation actions. Any proposed surety instrument shall be subject to being acceptable to the administrator, shall be in a form and have the substance approved by the County attorney, and shall be subject to review and approval by the County attorney.
- D. *Estimate.* The owner shall submit a request for an estimate of the surety amount to the administrator. The administrator shall prepare an estimate of the total estimated cost to initiate and maintain appropriate all conservation actions based on the unit price for new public or private sector construction in the County and a reasonable allowance for estimated administrative costs and inflation, which shall not exceed twenty-five (25) percent of the estimated cost of the conservation actions.

- E. *Use of surety.* The County may make use of monies guaranteed by the surety instrument if either: (i) the owner fails to timely renew the bond with surety, letter of credit, or the collaterally assigned funds; or (ii) the administrator, in his discretion, determines that the owner, after written notice, failed within the time specified in the notice to initiate, maintain or complete appropriate conservation actions required by the approved plan or by a condition of the permit.
- F. *Right to collect shortfall.* If the County takes a conservation action because the owner failed to do so, the County may collect from the owner the difference if the amount of the reasonable cost of the conservation action exceeds the amount of the security held.
- G. *Release of surety.* The surety shall be released as provided in section 17-423.

State law reference – Va. Code §§ 62.1-44.15:34, 62.1-44.15:57; 9VAC25-870-104.

Sec. 17-415 Stormwater management maintenance agreement.

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

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

State law reference – 9VAC25-840-60, 9VAC25-870-58, 9VAC25-870-112, 9VAC25-880-70.

Division 4. Post-Approval Rights and Obligations

Sec. 17-416 Effect of approvals.

The effect of an approval of an erosion and sediment control plan for any land disturbing activity subject solely to the VESCP, or a VSMP permit, is as follows:

- A. *Erosion and sediment control plan.* When an erosion and sediment control plan is approved for any land disturbing activity subject solely to the VESCP, the owner may engage in the land disturbing activity as provided in the erosion and sediment control plan and the mitigation plan, if applicable, subject to any applicable requirements of this chapter, including, but not limited to, sections 17-417 through 17-424, and the affirmative duties in sections 17-800 and 17-801, and State and Federal law. Any land disturbing activity shall be conducted only as it was approved under the erosion and sediment control plan and the erosion and sediment control plan shall be implemented only as it was approved.
- B. *VSMP permit.* When a VSMP permit is approved, the permit is a consolidated permit authorizing the owner to engage in land disturbing activity as provided by the approved erosion and sediment control plan, the approved stormwater management plan, the pollution prevention plan, the stormwater pollution prevention plan, and the mitigation plan, if applicable, and the State permit, subject to any applicable requirements of this chapter including, but not limited to, sections 17-417 through 17-424, and sections 17-800 through 17-807, and State and Federal law. The consolidated permit shall include a copy of, or a reference to, the State permit coverage to discharge stormwater. Any land disturbing activity shall be conducted only as it was approved under the VSMP permit. Any plan approved in conjunction with a VSMP permit shall be implemented only as it was approved.

State law reference – 9VAC25-840-90, 9VAC25-890-40.

Sec. 17-417 Prerequisites to land disturbing activity.

Upon the approval of an erosion and sediment control plan for any land disturbing activity subject solely to the VESCP, or a VSMP permit, no land disturbing activity shown on the approved erosion and sediment control plan or stormwater management plan shall occur until all of the following are satisfied:

- A. *Land disturbing activity subject only to the VESCP.* If the land disturbing activity is subject solely to the VESCP, no land disturbing activity shall occur and no County department or office or any other public entity authorized under any other law to issue grading, building, or other permits for activities involving land disturbing activities regulated under this chapter shall issue any such permit unless: (i) the owner submits with his application the approved erosion and sediment control plan and certification that the plan will be followed; (ii) the person responsible for carrying out the plan provides to the administrator the name of the person holding a certificate of competence who will be in charge of and responsible for carrying out the land disturbing activity; and (iii) an agreement with surety is provided as required by section 17-414.
- B. *Land disturbing activity subject to the VSMP.* If the land disturbing activity requires a VSMP permit, no land disturbing activity shall occur and no County department or office or any other public entity authorized under any other law to issue grading, building, or other permits for activities involving land disturbing activities regulated under this chapter shall issue any such permit unless: (i) the owner submits with his application the approved VSMP permit, including

the approved erosion and sediment control plan and the approved stormwater management plan, evidence of State permit coverage to discharge stormwater, and certification that the plans will be followed; (ii) the person responsible for carrying out the plan provides to the administrator the name of the person holding a certificate of competence who will be in charge of and responsible for carrying out the land disturbing activity; and (iii) an agreement with surety is provided as required by section 17-414; provided that land disturbing activity may occur prior to approval of stormwater management plan if the activity was previously covered under the State permit issued July 1, 2009.

- C. *Revocation of approval.* The administrator is authorized to revoke the approval of the plan if the person responsible fails to provide the name of a person holding a certificate of competence prior to engaging in the land disturbing activity and the person responsible for carrying out the plan shall be subject to the penalties provided by State law.

State law reference – Va. Code §§ 62.1-44.15:27, 62.1-44.15:34, 62.1-44.15:55; 9VAC25-870-54, 9VAC25-890-40.

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

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

- A. *Required modifications.* An approved plan shall be modified as follows:
1. *Plan inadequate to satisfy VESCP requirements.* The administrator shall require that an approved plan be modified if, after an inspection of the site, the administrator determines that the approved plan: (i) is inadequate to effectively control soil erosion, sediment deposition, and runoff to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources; (ii) is unable to be physically implemented as approved; or (iii) fails to satisfy any other VESCP requirement. If an amendment is required, the administrator may also require the time by which the amendment to the plan shall be submitted and approved.
 2. *Re-evaluation if land disturbing activity not begun within 180 days or ceases for more than 180 days.* If land disturbing activity is not begun within one hundred eighty (180) days after the plan was approved, or if land disturbing activity ceases for more than one hundred eighty (180) days, the administrator may evaluate the approved plan to determine whether it still satisfies the applicable VESCP requirements of this chapter and other applicable laws and to verify that all design factors are still valid. If the administrator determines that the approved plan is inadequate, no longer satisfies all applicable VESCP requirements, or that the design factors are no longer valid, he shall require the person responsible for carrying out the approved plan to submit and obtain approval of a modified plan before starting or resuming the land disturbing activity.
- B. *Modification by agreement.* The administrator may agree to allow an approved plan to be modified if the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons, the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with all VESCP requirements, are agreed to by the administrator and the person responsible for carrying out the plan. The agreement may be memorialized in a stand-alone agreement or by a note added to the approved plan and signed by the administrator.
- C. *Variances.* The administrator may waive or modify any applicable requirement of the VESCP otherwise applicable to an approved plan that he deems to be inappropriate or too restrictive for

the site conditions, by granting a variance, subject to the following:

1. *When variance may be requested.* During construction, the person responsible for implementing the approved plan may request a variance.
2. *Reason for variance.* The owner shall explain in writing the reasons for requesting any variance.
3. *Factors to be considered.* The administrator shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.
4. *Action on request.* The administrator shall respond to the request in writing by either approving or disapproving the variance. If the administrator does not approve the variance within ten (10) days after receipt of the request, the variance shall be considered to be disapproved. After disapproval, the applicant may resubmit a variance request with additional documentation.
5. *Variance incorporated into approved plan.* Any approved variance shall become part of, and be documented in, the approved plan.

State law reference – Va. Code § 62.1-44.15:55; 9VAC25-840-50, 9VAC25-840-80, 9VAC25-890-40.

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

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

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

State law reference – 9VAC25-870-54, 9VAC25-870-108, 9VAC25-880-70, 9VAC25-890-40.

Sec. 17-420 Amendments to pollution prevention plans.

An owner shall obtain approval of an amendment to a pollution prevention plan whenever:

- A. *Change affects discharge of pollutants.* There is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to State waters which has not previously been addressed in the plan.
- B. *Inadequate control measures, best management practices, or waste control.* As construction proceeds, any control measure, best management practice or waste control measure in the plan fails to achieve the purposes of the plan.

- C. *Pollutants not identified in the plan.* As construction proceeds, new potential sources of pollutants not identified in the plan may reasonably be expected to affect the quality of stormwater discharges from the construction site.

State law reference – 9VAC25-870-56.

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

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

- A. *Change affects discharge of pollutants.* There is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that has not been previously addressed in the plan.
- B. *Correction of ineffective control measures.* During inspections or investigations by the owner's qualified personal, the administrator, or any State or Federal official, it is determined that the existing control measures are ineffective in minimizing pollutants in discharges from construction activity. Any required amendment to the plan shall include additional or modified control measures designed and implemented to correct the problems identified. If approval of the control measure by the administrator is required, the plan revisions shall be completed within seven (7) days after the control measure is approved.
- C. *Discharge, release, or spill from high priority facility.* Whenever deemed necessary by the administrator to accurately reflect any discharge, release, or spill from any high priority facility reported in accordance with 9VAC25-890-40(III)(G). For each such discharge, release, or spill, the amended plan must include the following information: (i) the date of the incident; (ii) the material discharged, released, or spilled; and (iii) the quantity discharged, released or spilled.
- D. *Change in contractor.* Any change in the name and required contact information in the contractor that will implement and maintain any control measure.

State law reference – 9VAC25-870-54, 9VAC25-870-108, 9VAC25-880-70, 9VAC25-890-40.

Sec. 17-422 Construction record drawing; submittal.

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

- A. *Submittal of drawing to the administrator.* Each construction record drawing shall be submitted by the owner to the administrator.
- B. *Fee.* The applicable fee for review and action on the construction record drawing required by section 17-207 shall be paid when the drawing is submitted.
- C. *Form and style.* The construction record drawing shall satisfy the minimum requirements of the form and style of a construction record drawing as provided in the Design Standards Manual.

- D. *Signature and certification.* The construction record drawing shall be appropriately sealed and signed by a professional registered in the State, certifying that the stormwater management facility has been constructed in accordance with the approved plan.
- E. *Required measurements and calculations.* If the construction record drawing shows any changes from the approved plan, including changes to any features of the facility, including, but not limited to, outlet structures, elevations, available volumes, plantings, spillways, and materials, the owner shall also submit all as-built measurements and calculations necessary to demonstrate compliance with all applicable regulations. Any other technical requirements of the construction record drawing shall be as provided in the Design Standards Manual.
- E. *Determination of completeness, review and action.* The procedure for the review and action on a construction record drawing shall be as provided in sections 17-409 and 17-410, as applicable, provided that the failure of the administrator to act within any time provided in those sections shall not be deemed to be approval of the construction record drawing.
- F. *Required amendments.* If the as-built stormwater management facility does not comply with all applicable regulations, the owner shall make all required changes to the facility in order to comply with the regulations and the administrator may require that the approved stormwater management plan be amended as provided in section 17-417(A).

State law reference – 9VAC25-870-55.

Sec. 17-423 Release of surety.

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

- A. *Partial release.* In order for any surety to be partially released:
 - 1. *Request by owner.* The owner shall submit a statement to the administrator on a form provided by the administrator that adequate stabilization of the land disturbing activity has been achieved, and pay the fee for a partial release required by sections 17-206 or 17-207, or both.
 - 2. *Response by administrator.* Within thirty (30) days after receipt of the statement required by subsection (A)(1), the administrator shall provide written notice to the owner that responds to the request in one of the following ways: (i) grant the partial release, if an inspection of the project by a certified inspector confirms that the requirements for partial release are satisfied; or (ii) inform the owner that an inspection of the project by a certified inspector confirms that the requirements for partial release are not satisfied and identify any specified defects, deficiencies or further conservation action required.
 - 3. *Release.* If the administrator grants the partial release as provided in subsection (A)(2), the surety shall be partially release within sixty (60) days after receipt of the request required by subsection (A)(1). The amount of the release shall be based upon the percentage of stabilization accomplished determined by the inspection.
- B. *Full release.* In order for any surety to be fully released:
 - 1. *Request by owner.* The owner shall submit a statement to the administrator on a form provided by the administrator and pay the fee for a full release required by sections 17-

206 or 17-207, or both. For any surety required in conjunction with an erosion and sediment control plan, the owner shall state that adequate permanent stabilization of the land disturbing activity has been achieved. For any surety required in conjunction with a VSMP permit, the owner shall state that the requirements of the permit have been satisfied.

2. *Response by administrator.* Within thirty (30) days after receipt of the statement required by subsection (B)(1), the administrator shall provide written notice to the owner that responds to the request in one of the following ways: (i) grant the full release, if an inspection of the project by a certified inspector confirms that the requirements for full release are satisfied; or (ii) inform the owner that an inspection of the project by a certified inspector confirms that the requirements for full release are not satisfied and identify any specified defects, deficiencies or further conservation action required.
3. *Release.* If the administrator grants the full release as provided in subsection (B)(2), the surety shall be fully released within sixty (60) days after receipt of the request required by subsection (B)(1).

State law reference – Va. Code §§ 62.1-44.15:34; 62.1-44.15:57.

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

An approved erosion and sediment control plan, if the land disturbing activity is subject solely to the VESCP, or the VSMP permit, shall be void if the owner fails to obtain a grading, building or other permit for activities involving land disturbing activities to implement the plan within one year (1) year after the date of its approval; provided that any plan or permit associated with a subdivision plat or site plan whose period of validity is extended by Virginia Code § 15.2-2209.1(A) shall likewise be extended for the same time period.

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

Article V. Technical Criteria

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

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

- A. *Erosion and sediment control minimum standards.* The criteria, techniques and methods provided in 9VAC25-840-40.
- B. *Annual standards and specifications.* Any applicable annual standards and specifications approved by the Virginia Department of Environmental Quality.
- C. *Stormwater pollution prevention.* If the land disturbing activity also requires a VSMP permit, the requirements in 9VAC25-870-54(F) and as specified in 40 CFR 450.21.
- D. *Stream buffers.* The procedures and requirements for land disturbing activity and development in stream buffers, as provided in section 17-600 *et seq.*
- E. *County design standards.* The technical criteria, including County notes and details, as provided in the Design Standards Manual.

State law reference – Va. Code §§ 62.1-44.15:52, 62.1-44.15:73; 9VAC25-840-40, 9VAC25-870-54, 9VAC25-890-40.

Sec. 17-501 VSMP permit application; applicable technical criteria.

Each VSMP permit application shall satisfy the criteria, techniques and methods provided as follows:

- A. *Land disturbing activity that obtained State permit coverage prior to July 1, 2014.* Subject to subsection (B), any land disturbing activity that obtained State permit coverage or commenced land disturbing activity prior to July 1, 2014 shall be subject to the technical criteria in 9VAC25-870-93 through 9VAC25-870-99. These projects shall remain subject to the technical criteria in 9VAC25-870-93 through 9VAC25-870-99 for an additional two State permit cycles. After that time, the portions of the project not under construction shall become subject to any new technical criteria adopted by the State Water Control Board. Any land disturbing activity under this subsection also shall comply with the requirements for stream buffers in section 17-600 *et seq.*
- B. *Land disturbing activity related to certain development approvals prior to July 1, 2012.* Any land disturbing activity for which a valid preliminary or final subdivision plat, or an initial or final site plan (collectively, the “plat or plan”), was approved by the County prior to July 1, 2012 shall be subject to the technical criteria in 9VAC25-870-93 through 9VAC25-870-99, provided all of the following apply:
1. *Plat or plan not modified.* The plat or plan has not been modified in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge or the volume or rate of runoff.
 2. *No coverage under the State permit.* The plat or plan did not obtain coverage under the State permit prior to July 1, 2014.
 3. *Compliance with technical criteria.* The administrator finds that the plat or plan: (i) provides a layout as defined in 9VAC25-870-10; and (ii) the resulting land disturbing activity complies with the technical criteria in 9VAC25-870-93 through 9VAC25-870-99.
 4. *Stream buffers.* Any land disturbing activity under this subsection also shall comply with the requirements for stream buffers in section 17-600 *et seq.*
 5. *Construction deadline.* Construction related to any land disturbing activity shall be completed by June 30, 2019. Any portions of the project not yet under construction by that date shall become subject to any new technical criteria adopted by the State Water Control Board.
- C. *Land disturbing activity that receives State permit coverage on or after July 1, 2014.* Any land disturbing activity that obtains State permit coverage on or after July 1, 2014 shall be subject to the technical criteria in 9VAC25-870-62 through 9VAC25-870-92. These projects shall remain subject to the technical criteria in 9VAC25-870-62 through 9VAC25-870-92 for an additional two State permit cycles, except as provided in 9VAC25-870-48(D). After that time, the portions of the project not under construction shall become subject to any new technical criteria adopted by the State Water Control Board. Any land disturbing activity under this subsection also shall comply with the requirements for stream buffers in section 17-600 *et seq.*

- D. *Land disturbing activity related to County, State or Federal funded projects.* For any County, State or Federal projects for which there has been an obligation of County, State, or Federal funding, in whole or in part, prior to July 1, 2012, or the Virginia Department of Environmental Quality has approved a stormwater management plan prior to July 1, 2012, the project shall be subject to the technical criteria in 9VAC25-870-93 through 9VAC25-870-99. Construction related to any land disturbing activity shall be completed by June 30, 2019. Any portions of the project not yet under construction by that date shall become subject to any new technical criteria adopted by the State Water Control Board. Any land disturbing activity related to a County project shall comply with the requirements for stream buffers in section 17-600 *et seq.*
- E. *Land disturbing activity related where government bonds or other instruments of public debt financing issued.* For any project for which government bonds or other instruments of public debt financing have been issued, the project shall be subject to the technical criteria in 9VAC25-870-93 through 9VAC25-870-99. Any land disturbing activity under this subsection also shall comply with the requirements for stream buffers in section 17-600 *et seq.*
- F. *TMDLs.* The Chesapeake Bay TMDL as provided in 9VAC25-890-40 and any other local TMDLs applicable to a regulated land disturbing activity.
- G. *Pre-existing County requirements.* Any criterion more stringent than the technical criteria set forth in subsections (A) through (F) existing prior to January 1, 2005 that is set forth in this chapter or in the Design Standards Manual.
- H. *Technical criteria applicable to entire common plan of development or sale.* Any land disturbing activity subject to the technical criteria under this section shall apply the applicable stormwater management technical criteria to the entire common plan of development or sale where applicable. Individual lots in a residential, commercial, or industrial common plan of development or sale shall not be considered to be separate land disturbing activities. Instead, the common plan, as a whole, shall be considered to be a single land disturbing activity. Hydrologic parameters that reflect the ultimate land disturbance shall be used in all engineering calculations.

State law reference – Va. Code §§ 62.1-44.15:33, 62.1-44.15:49; 9VAC25-870-47, 9VAC25-870-48, 9VAC25-870-95, 9VAC25-870-104, 9VAC25-870-400, 9VAC25-890-40.

Sec. 17-502 VSMP permit application; offsite nutrient credits.

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

- A. *Eligibility to use offsite nutrient credits.* An owner is eligible to use offsite nutrient credits if one or more of the following are satisfied:
 - 1. *Less than 5 acres disturbed.* Less than five acres of land will be disturbed.
 - 2. *Pollution control.* The postconstruction pollution control (measured in phosphorous) requirement is less than ten (10) pounds per year.
 - 3. *Most phosphorus nutrient reductions are achieved onsite.* At least seventy-five (75) percent of the required phosphorus nutrient reductions are achieved onsite. If at least seventy-five (75) percent of the required phosphorus nutrient reductions cannot be achieved onsite, and the owner can demonstrate to the satisfaction of the administrator

that: (i) alternative site designs have been considered that may accommodate onsite best management practices; (ii) onsite best management practices have been considered in alternative site designs to the maximum extent practicable; (iii) appropriate onsite best management practices will be implemented; and (iv) full compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably be met onsite, then the required phosphorus nutrient reductions may be achieved, in whole or in part, through the use of offsite compliance options.

- B. *Eligibility to use offsite nutrient credits as a substitute for existing onsite nutrient controls.* An owner satisfying one or more of the criteria in subsection (A) is eligible to use offsite nutrient credits as full or partial substitutes of perpetual nutrient credits for existing onsite nutrient controls when: (i) the nutrient credits will compensate for ten (10) or fewer pounds of the annual phosphorous requirement associated with the original land disturbing activity; or (ii) existing onsite controls are not functioning as anticipated after reasonable attempts to comply with applicable maintenance agreements or requirements and the use of nutrient credits will account for the deficiency. Upon the use of the offsite credits, the party responsible for maintenance shall be released from maintenance obligations related to the onsite controls for which the nutrient credits are substituted.
- C. *Documentation of credits.* The owner shall provide documentation of its acquisition of nutrient credits to the administrator and the Virginia Department of Environmental Quality. The documentation shall be composed of a certification from the credit provider documenting the number of nutrient credits acquired and the associated ratio of nutrient credits at the credit-generating entity.
- D. *Minimum performance requirements.* The use of offsite nutrient credits shall satisfy the following:
1. *Ratio and perpetual credits.* For that portion of a site's compliance with stormwater nonpoint nutrient runoff water quality criteria being obtained through nutrient credits, the owner shall: (i) comply with a 1:1 ratio of the nutrient credits to the site's remaining postdevelopment nonpoint nutrient runoff compliance requirement being met by credit use; and (ii) use credits certified as perpetual credits pursuant to Virginia Code § 62.1-44.19:12 *et seq.*
 2. *Nutrient reductions prior to land disturbing activity.* Any offsite nutrient credit used shall achieve the necessary nutrient reductions prior to the owner starting any land disturbing activity. If a project is phased, the owner may acquire or achieve the offsite nutrient reductions prior to starting each phase of the land disturbing activity in an amount sufficient for each phase.
- E. *Prohibited use of nutrient credits.* Offsite nutrient credits may not be used in the following cases:
1. *Water quantity control requirements.* Offsite nutrient credits may not be used to address water quantity control requirements.
 2. *Water quality based limitations.* Offsite nutrient credits may not be used in contravention of County water quality based limitations at the point of discharge that are: (i) consistent with the determinations made pursuant to Virginia Code § 62.1-44.19:7(B); (ii) contained

in the County's MS4 program plan; or (iii) as otherwise may be established or approved by the State Water Control Board.

- F. *Crediting nutrient reductions.* Nutrient reductions obtained through offsite nutrient credits shall be credited toward compliance with any nutrient allocation assigned to the County's MS4 permit or any applicable TMDL to the location where the activity for which the nutrient credits are used takes place. If the activity for which the nutrient credits are used does not discharge to a municipal separate storm sewer system, the nutrient reductions shall be credited toward compliance with the applicable nutrient allocation.

State law reference – Va. Code § 62.1-44.15:35; 9VAC25-870-69.

Article VI. Stream Buffers

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

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

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

(§ 19.3-41, 2-11-98; § 19.2-8, 6-19-91; Code 1988, §§ 19.2-8, 19.3-41; Ord. 98-A(1), 8-5-98; Ord. 08-17(1), 2-6-08)

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

Sec. 17-601 Management of stream buffer.

Each stream buffer required to be retained or established pursuant to section 17-600 shall be managed as provided herein:

- A. *Target vegetative cover.* The preferred vegetative cover in a stream buffer shall be a native riparian forest with ground cover, shrub, and tree canopy layers.
- B. *Preservation of native vegetation.* When evaluating a development design under subsection (C),

when native vegetation may be disturbed or removed under subsection (D) and sections 17-603 and 17-604, and when stream buffers are maintained under subsection (E), native vegetation shall be preserved to the fullest extent possible.

- C. *Incorporation into development design.* Each stream buffer shall be incorporated into the design of the development by keeping stream buffers in open or natural spaces, and out of residential lots or areas of active use, to the fullest extent possible.
- D. *Retaining native vegetation; disturbance or removal.* In order to maintain the runoff, erosion, nonpoint source pollution control, stream temperature, and ecological values of the stream buffer, no native vegetation within the stream buffer shall be disturbed or removed, regardless of the size of the area affected, except to maintain the stream buffer as provided in subsection (E), provided that native vegetation may be removed to construct, install, operate or maintain any improvement, or engage in any activity, authorized by sections 17-603 and 17-604.
- E. *Maintaining the stream buffer.* Each stream buffer shall be maintained in as natural a condition as possible.

(§ 19.3-42, 2-11-98, § 19.2-8, 6-19-91, § 8; Code 1988, §§ 19.2-8, 19.3-42; Ord. 98-A(1), 8-5-98)

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

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

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

- A. *Utility and transportation improvements.* The construction, installation, operation and maintenance of electric, gas and telephone transmission lines, railroads, and activities of the Virginia Department of Transportation, and their appurtenant structures, which are accomplished in compliance with the Erosion and Sediment Control Law (Virginia Code § 62.1-44.15:51 *et seq.*) or an erosion and sediment control plan approved by the State Water Control Board.
- B. *Public water and sewer improvements.* The construction, installation, and maintenance by public agencies of water and sewer lines, including water and sewer lines constructed by private interests for dedication to public agencies, provided that all of the following are satisfied:
 - 1. *Location.* To the extent practical, as determined by the Albemarle County Service Authority or the Rivanna Water and Sewer Authority, the location of the water or sewer lines shall be outside of all stream buffer areas.
 - 2. *Disturbance minimized.* No more land shall be disturbed than is necessary to construct, install and maintain the water or sewer lines.
 - 3. *Compliance with applicable requirements.* All construction, installation, and maintenance of the water or sewer lines shall comply with all applicable Federal, State and local requirements and permits and be conducted in a manner that protects water quality.
- C. *Silvicultural activities.* Silvicultural activities, provided that they are conducted in compliance with the water quality protection procedures established by the Virginia Department of Forestry

in its “Virginia’s Forestry Best Management Practices for Water Quality.”

- D. *Public airport improvements.* The construction, installation and maintenance of runways, taxiways, and other similar or appurtenant improvements at public airports, including the expansion or extension of those improvements, provided that all applicable Federal, State and local permits are obtained.

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

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

Sec. 17-603 Types of structures, improvements and activities authorized in a stream buffer.

If otherwise authorized by the applicable regulations of the Zoning Ordinance, the following types of structures, control measures and activities shall be allowed in a stream buffer, provided that the requirements of this section are satisfied:

- A. *Pre-existing buildings or structures.* Any building or structure which existed on February 11, 1998 may continue in its location on that date. However, nothing in this section authorizes the continuance, repair, replacement, expansion or enlargement of any such building or structure except as provided in sections 18-6 and 18-30.3.
- B. *Temporary erosion and sediment control measures.* Temporary erosion and sediment control measures, provided that to the extent practical, as determined by the administrator, the control measures shall be located outside of the stream buffer and disturbance impacts are minimized.
- C. *Water-dependent facilities and miscellaneous uses.* Water-dependent facilities; water wells; passive recreation access, such as pedestrian trails and bicycle paths; historic preservation; archaeological activities; provided that all applicable Federal, State and local permits are obtained.

(§ 19.3-44, 2-11-98; § 19.2-7, 6-19-91, § 7; § 19.2-8, 6-19-91, § 8; Code 1988, §§ 19.2-7, 19.2-8, 19.3-44; Ord. 98-A(1), 8-5-98; Ord. 08-17(2), 5-7-08)

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

Sec. 17-604 Types of structures, improvements and activities which may be allowed in stream buffer by program authority.

Structures, improvements and activities may be authorized by the administrator in the circumstances described below, provided that a mitigation plan satisfying the requirements of section 17-406, is submitted to, and approved, by the administrator:

- A. *Within the landward 50 horizontal feet.* On a lot within the fifty (50) horizontal feet of a stream buffer that is the most landward (furthest from the stream), if the structures, improvements or activities either: (i) would be for necessary infrastructure to allow reasonable use of the lot; or (ii) would be on a lot that is within a water supply protection area where the stream buffer protects an intermittent stream and the lot is within a development area. In all cases under this subsection, any new building site and sewage disposal system shall be located outside of the stream buffer.
- B. *Lakes, ponds or restoration projects.* On a lot on which the development in the stream buffer will

consist of a lake, pond, or ecological/wetland restoration project.

- C. *Stream crossings.* Stream crossings of perennial and intermittent streams for roads, streets or driveways, provided they meet the following minimum criteria:
1. *Bridges and culverts.* Bridges and culverts shall satisfy the following:
 - a. *Perennial streams.* For crossings of perennial streams, bridges, arch culverts, or box culverts shall be used for the stream crossing and shall be sized to pass the ten (10) year storm, or the twenty-five (25) year storm if the design standards in either section 14-410 or 18-32.7.2.1 apply, without backing water onto upstream properties. Bridges or arch culverts shall either leave the stream section, consisting of the stream bed and the stream bank, undisturbed or shall allow the stream to return to a natural stabilized cross-section upon completion of installation. The lowest interior elevation (invert) of a box culvert installation shall be a minimum of six (6) inches below the stream bed. Culvert walls and bridge columns should be located outside the stream banks wherever possible.
 - b. *Intermittent streams.* For crossings of intermittent streams, bridges or culverts shall be used for the stream crossing and sized to pass the ten (10) year storm, or the twenty-five (25) year storm if the design standards in either section 14-410 or 18-32.7.2.1 apply, without backing water onto upstream properties.
 2. *Stream stabilization and energy dissipation.* Stream stabilization and energy dissipation measures below each bridge or culvert shall be provided.
 3. *Disturbance minimized.* The stream buffer disturbance shall be the minimum necessary for the lot(s) to be used and developed as permitted in the underlying zoning district and under the applicable regulations of the Subdivision Ordinance. Stream crossings shall not disturb more than thirty (30) linear feet of stream for driveways and sixty (60) linear feet for roads or streets, provided that the administrator may allow additional length of stream disturbance where fill slopes or special conditions necessitate additional length.
 4. *Stream bed and stream bank stabilization.* The stream bed and stream banks shall be stabilized within seven (7) days from the start of backfilling for the bridge or culvert.
 5. *Establishment of buffer vegetation.* For stream crossings where any portion of the pre-construction stream buffer is not fully vegetated as determined by the administrator, and for any portion of a vegetated stream buffer that is disturbed during the installation of the stream crossing, buffer vegetation shall be established and maintained within the stream buffer but outside of the stream crossing at a ratio of two (2) square feet of stream buffer restored for every one (1) square foot of stream buffer that was either not fully vegetated or is disturbed during the installation of the stream crossing. Buffer vegetation shall be established and maintained at the 2:1 ratio to the extent that the stream buffer is fully vegetated outside of the stream crossing, provided that the owner shall not be required to establish vegetation outside of the stream buffer in order to satisfy the 2:1 ratio. The administrator may require that the owner enter into an agreement providing for the ongoing maintenance of the plantings in the stream buffer, and may require a bond with surety or other acceptable instrument as provided in section 17-414. Stream buffer plantings shall be consistent with guidance supplied by the administrator.

6. *Evidence of required permits.* The owner shall provide the administrator with copies of approved State and Federal permits associated with the stream crossing, if applicable.
 7. *Limitation on number of stream crossings; exception.* In order to ensure that the encroachment into or across the stream buffer is minimized, on and after May 7, 2008, it shall be presumed that one stream crossing is adequate to serve the owner's lot(s) existing on that date and all lots created therefrom on and after that date. The administrator shall allow only one stream crossing to serve all lots, provided that it may allow additional crossings under subsection (D).
- D. *Stream crossings not allowed under subsection (C).* On a lot on which the development in the stream buffer will consist of the construction and maintenance of a road, street or driveway that would not satisfy the requirements of subsection (C) and the administrator determines that the stream buffer would prohibit access to the lot necessary for the lot to be used and developed as permitted in the underlying zoning district and under the applicable regulations of the Subdivision Ordinance, or to establish more than one stream crossing.
- E. *Water and sewer facilities or sewage disposal systems on pre-existing lots.* On a lot which was of record prior to February 11, 1998, on which the development in the stream buffer will consist of the construction, installation and maintenance of water and sewer facilities or sewage disposal systems, and the administrator determines that the stream buffer would prohibit the practicable development of those facilities or systems. Any sewage disposal system must comply with all applicable State laws.
- F. *Sole building sites on pre-existing lots.* On a lot which was of record prior to February 11, 1998, if the stream buffer would result in the loss of a building site, and there are no other available building sites outside the stream buffer on the lot, or to allow redevelopment as permitted in the underlying zoning district.

(§ 19.3-45, 2-11-98; § 19.2-8, 6-19-91, § 8; Code 1988, §§ 19.2-8, 19.3-45; Ord. 98-A(1), 8-5-98; Ord. 08-17(1), 2-6-08; Ord. 08-17(2), 5-7-08; Ord. 11-17(1), 10-5-11; Ord. 12-17(1), 5-9-12)

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

Article VII. Illicit Discharges, Illicit Connections, and Prohibited Dumping

Sec. 17-700 Applicability.

This article shall apply to all activities that cause or allow to be caused direct or indirect illicit discharges, illicit connections, and the prohibited dumping of refuse and pollutants, or which negatively impede the flow capacity of the County's MS4 or State waters that: (i) are not covered by other articles of this chapter; and (ii) are not expressly exempt from this article.

(§ 17-500; Ord. 07-17(1), 2-14-07)

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

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

No person shall throw, drain, or otherwise discharge, cause or allow others under their control to throw, drain, or otherwise discharge into the County's MS4 or State waters any pollutants or waters containing

any pollutants, other than stormwater. Commencing, conducting or continuing any illicit discharge to the County's MS4 or State waters is prohibited, subject to the following:

- A. *Conditionally exempt discharges.* The following discharges are not prohibited discharges provided that the administrator determines that the discharge is not adversely impacting State waters:
1. Discharges pursuant to a Virginia Pollutant Discharge Elimination System ("VPDES") or Virginia Storm Management Program ("VSMP") permit (other than a VSMP permit for discharges from the municipal separate storm sewer).
 2. Discharges resulting from fire fighting and other public safety activities.
 3. Discharges associated with the maintenance or repair of public water, sanitary, and storm sewer lines, and public drinking water reservoirs and drinking water treatment or distributions systems conducted in accordance with applicable federal and state regulations and standards.
 4. Discharges associated with any activity by the County, its employees and agents, in the maintenance of any component of a County-maintained stormwater management facility conducted in accordance with applicable State and Federal regulations and standards.
 5. Discharges specified in writing by the administrator as being necessary to protect public health and safety.
 6. Water line flushing.
 7. Irrigation water, landscape irrigation, and lawn watering.
 8. Diverted stream flows.
 9. Rising groundwaters.
 10. Uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20)).
 11. Uncontaminated pumped groundwater.
 12. Discharges from potable water sources.
 13. Foundation drains.
 14. Air conditioning condensation.
 15. Springs.
 16. Water from crawl space pumps.
 17. Footing drains.
 18. Individual residential car washing.

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

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

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

(§ 17-501; Ord. 07-17(1), 2-14-07)

State law reference – Va. Code §§ 62.1-44.15:27, 62.1-44.15:33; 9VAC25-870-400, 9VAC25-890-40.

Sec. 17-702 Illicit connections prohibited.

Constructing, using, maintaining, or allowing the continued existence of an illicit connection to the County's MS4 is prohibited, subject to the following:

- A. *Pre-existing illicit connections.* Any illicit connection authorized prior to February 14, 2007 is in violation of this section unless the administrator expressly extended the date by which to comply beyond December 31, 2007 upon good cause shown by the person requesting the extension, and the date by which compliance is required has not passed.
- B. *Disconnection and redirection.* Any illicit connection shall be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the Albemarle County Service Authority.
- C. *Locating undocumented connections.* Any drain or conveyance that has not been documented in plans, maps, or their equivalent and which appears to be connected to the County's MS4 shall be located by the owner, occupant, lessee, principal, agent, employee or otherwise, of that property within the time period specified in the written notice of violation from the administrator requiring that the connection be located. The notice shall require that: (i) the location of the drain or

conveyance be determined; (ii) the drain or conveyance be identified as a storm sewer, sanitary sewer, or other; and (iii) the outfall location or point of connection to the County's MS4, sanitary sewer system, or other discharge point be identified. The results of these investigations shall be documented and provided to the administrator.

(§ 17-502; Ord. 07-17(1), 2-14-07)

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

Sec. 17-703 Dumping prohibited.

No person, whether the owner, occupant, lessee, principal, agent, employee or otherwise, may dump or discharge, or allow any other person to dump or discharge, refuse, as that term is defined in Albemarle County Code § 13-100, or any other material or pollutant, natural or synthetic, into the County's MS4, State waters, or a natural stream, unless the dumping or discharge is expressly authorized by the Albemarle County Code.

(§ 17-503; Ord. 07-17(1), 2-14-07)

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

Article IX. Compliance

Sec. 17-800 Duty to comply.

Each owner has the following duties to comply:

- A. *Upon a determination that land disturbing activity is subject to this chapter.* Upon the administrator's determination that a land disturbing activity is subject to the VESCP, the VSMP, or both, the owner shall immediately comply with the applicable requirements of this chapter and the applicable requirements of this chapter shall be immediately enforced.
- B. *Upon approval of a VSMP permit or erosion and sediment control plan.* Upon the administrator's approval of any VSMP permit or erosion and sediment control plan required by this chapter, the owner shall comply with all of the terms and conditions of the approved permit or plan at all times the permit or plan is in effect, including when any activities allowed under the permit or plan are being performed.
- C. *All other applicable requirements of this chapter.* The owner is obligated to comply with all other applicable requirements of this chapter not addressed in subsections (A) and (B), including, but not limited to, the express duties in the following sections.

State law reference – Va. Code §§ 62.1-44.15:27, 62.1-44.15:58, 62.1-44.15:73.

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

Each owner has the duty to maintain and repair all structures, systems, facilities and techniques required under the VESCP and the VSMP as follows:

- A. *Erosion and sediment control structures and systems.* Any erosion and sediment control structures and systems shall be maintained and repaired as needed to ensure continued performance of their intended function at their intended level. The owner also shall perform all of

the maintenance responsibilities delineated in the approved erosion and sediment control plan. All control measures required by the plan shall be maintained in accordance with good engineering practices.

- B. *Stormwater management facilities and techniques.* Any permanent stormwater management facility or technique specified in the approved stormwater management plan to manage the quality and quantity of runoff shall be maintained for so long as the stormwater management facility or technique exists, in a manner that meets or exceeds the maintenance standards in the agreement entered into under section 17-415. The owner's obligation to maintain any such permanent stormwater management facility or technique shall continue until all such obligations are the responsibility of the County or another public entity empowered to own and maintain stormwater management facilities and to implement the techniques described in the stormwater management plan.
- C. *Stormwater pollution prevention plan control measures; duty to maintain.* Any control measure in the approved stormwater pollution prevention plan, including any control measure otherwise subject to subsections (A) or (B), shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications.

State law reference – 9VAC25-840-60, 9VAC25-870-58, 9VAC25-870-112, 9VAC25-880-70.

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

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

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

(Ord. 07-17(1), 2-14-07)

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

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

If the land disturbing activity is subject to a VSMP permit, each owner shall maintain the State permit, the State permit coverage letter, the registration statement, and the stormwater pollution prevention plan, at a central location at the construction site. If an onsite location is unavailable to store the documents when no personnel are present, notice of the documents' location must be posted near the main entrance at the construction site.

State law reference – 9VAC25-870-54, 9VAC25-880-70.

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

Each owner shall ensure that any inspections required by the State permit are conducted by the qualified personnel identified in the stormwater pollution prevention plan. Any inspection shall be conducted according to the schedule and satisfy the requirements of 9VAC25-880-70, Part II(F). Any corrective action identified in an inspection shall be completed as follows:

- A. *Control measure not operating effectively.* If an inspection identifies a control measure that is not operating effectively, corrective action shall be completed as soon as practicable, but no later than seven (7) days after discovery or a longer period allowed in writing by the administrator.
- B. *Control measure inadequate.* If an inspection identifies an existing control measure that needs to be modified or if an additional control measure is necessary, implementation shall be completed prior to the next anticipated measureable storm event. If implementation before the next anticipated measureable storm event is impractical, then it shall be implemented no later than seven (7) days after discovery or a longer period allowed in writing by the administrator.

State law reference – 9VAC25-880-70.

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

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

- A. *Effect of discharges and wastes.* Any application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of: (i) the discharge on the quality of State waters, or such other information as may be necessary to accomplish the purposes of the Virginia Stormwater Management Act and this chapter; and (ii) the wastes from the discharge on the quality of State waters, or such other information as may be necessary to accomplish the purposes of the Clean Water Act and the Virginia Stormwater Management Act.
- B. *Determine compliance or other cause to change State permit.* Any information request to determine whether cause exists for modifying, revoking and reissuing, or terminating the State permit or to determine compliance with the State permit.

State law reference – Va. Code § 62.1-44.15:40; 9VAC25-870-340, 9VAC25-880-70.

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

Each owner shall report discharges or noncompliance as follows:

- A. *Discharge of stormwater not authorized by State permit.* Except in compliance with a State permit, any person who discharges, causes, or allows a discharge of stormwater into or upon State waters from the County's MS4 or from a land disturbing activity, or who discharges, causes, or allows a discharge that may reasonably be expected to enter State waters, shall notify the Virginia Department of Environmental Quality and the administrator of the discharge immediately upon discovery of the discharge but in no case later than twenty-four (24) hours after discovery of the discharge. In addition, a written report of the unauthorized discharge shall be submitted by the owner, to the Virginia Department of Environmental Quality and to the administrator within five

(5) days after discovery of the discharge. The contents of the written report shall be as provided in 9VAC25-870-310.

- B. *Discharge of sewage, wastes, noxious, deleterious, or hazardous substances, or oil.* Any owner who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance or a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, 40 CFR Part 302, or Virginia Code § 62.1-44.15:19 that occurs during a twenty-four (24) hour period into or upon State waters or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters, shall notify the Virginia Department of Environmental Quality of the discharge immediately upon discovery of the discharge, but in no case later than within twenty-four (24) hours after the discovery. A written report of the unauthorized discharge shall be submitted to the Virginia Department of Environmental Quality and the administrator within five (5) days after discovery of the discharge. The written report shall satisfy the requirements of 9VAC25-880-70, Part III(G).
- C. *Unusual or extraordinary discharges.* The owner shall promptly notify, in no case later than within twenty-four (24) hours, the Virginia Department of Environmental Quality and the administrator by telephone after the discovery of any unusual or extraordinary discharge, including a “bypass” or “upset,” from a facility and the discharge enters or could be expected to enter State waters. The notification shall include the information required by 9VAC25-880-70, Part III(H).
- D. *Reports of noncompliance.* The owner shall report any noncompliance which may adversely affect State waters or may endanger public health. An oral report shall be provided to the Virginia Department of Environmental Quality within twenty-four (24) hours after discovery of the noncompliance. A written report of the noncompliance shall be submitted to the Virginia Department of Environmental Quality and the administrator within five (5) days after discovery of the noncompliance. The oral and written reports shall include the information required by 9VAC25-880-70, Part III(I).

State law reference – 9VAC25-870-310, 9VAC25-880-70.

Sec. 17-807 Duty to provide records and notice pertaining to State permit.

Each owner operating under a State permit shall provide the following records and notice to the administrator upon request or as required by the State permit:

- A. *Records required to be kept by State permit.* Copies of records required to be kept by the State permit.
- B. *Reports pertaining to compliance schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the State permit, which shall be submitted no later than fourteen (14) days after each schedule date.
- C. *Notice of planned changes.* Notice to the Virginia Department of Environmental Quality and the administrator as soon as possible of any planned physical alterations or additions to the permitted facility or activity, when the alteration or addition requires notice under 9VAC25-880-70(III)(J).

State law reference – 9VAC25-880-70.

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

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

- A. *When permanent vegetation required.* The owner shall install on all denuded areas on the site within nine (9) months after the date the land disturbing activity commenced, except for areas that the administrator determines are necessary parts of the construction that are subject to an active building permit and areas where erosion is prevented by a non-erosive surface, including, but not limited to, the following surfaces: (i) roadways and sidewalks covered by gravel, asphalt pavement, or concrete; (ii) trails or paths covered by gravel, stone dust, or mulch; (iii) buildings and other permanent structures; and such other surfaces that the administrator determines would adequately provide a permanent barrier to erosion.

- B. *Extension.* The time limit for installing permanent vegetation may be extended by either the administrator or the board of supervisors, or both, as follows:
 - 1. *By the administrator.* The administrator may extend the time limit for installing permanent vegetation up to an additional six (6) months, provided the owner submits a written request to the administrator no less than one (1) month prior to the deadline for installing the permanent vegetation. The administrator may grant the extension if it finds that: (i) the additional time is necessary due to factors beyond the control of the owner; (ii) the owner had made good faith efforts to comply with the time limit; and (iii) the owner has effectively controlled erosion and sedimentation on the site during the land disturbing activity. In granting an extension, the administrator may impose reasonable conditions.

 - 2. *By the board of supervisors.* The board of supervisors may extend the time limit for installing permanent vegetation for any duration it determines to be appropriate, provided the owner submits a written request to the clerk of the board of supervisors no less than two (2) months prior to the deadline for installing the permanent vegetation. The administrator shall provide an opinion to the board as to the condition of the site with respect to complying with this chapter and an estimate of the minimum time needed to complete grading and install permanent vegetation for the land disturbing activity covered by the approved erosion and sediment control plan or the VSMP permit. The board may grant the extension if it finds that: (i) the additional time is necessary due to factors beyond the control of the owner; (ii) the owner had made good faith efforts to comply with the time limit; and (iii) the owner has plans to effectively control or has effectively controlled erosion and sedimentation on the site during the land disturbing activity. In granting an extension, the board shall set a time limit and may impose other reasonable conditions.

- C. *Changes to approved plans or permits does not extend time.* An application to modify, vary, or otherwise amend an approved erosion and sediment control plan, or to amend or modify a stormwater management plan or any other plan approved under the approved VSMP permit, for the site, shall not extend the time limit for installing permanent vegetation required by this section.

- D. *Land disturbing activity subject to this section.* The installation of permanent vegetation required by this section shall be required for those land disturbing activities subject to an erosion and sediment control plan approved on or after September 5, 2009, or an erosion and sediment control plan that was approved prior to that date but was renewed on or after September 5, 2009, regardless of whether the land disturbing activity is subject to the VSMP, or is subject solely to the VESCP.

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

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

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

- A. *To obtain information or conduct surveys.* At reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys. If the purpose to enter the site is to conduct an inspection to either administer or enforce this chapter, the administrator or any duly authorized agent of the County shall comply with sections 17-810 or 17-811.
- B. *In accordance with an agreement with surety.* In accordance with an agreement with surety provided by the owner under section 17-414, enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate conservation actions that are required by the approved plan or any condition of the VSMP permit associated with a land disturbing activity when the owner, after proper notice, has failed to take acceptable conservation actions within the time specified.

State law reference – Va. Code §§ 62.1-44.15:39, 62.1-44.15:60.

Sec. 17-810 Inspections by the administrator under the VESCP.

In conjunction with the administration of the VESCP, the administrator shall inspect all land disturbing activity as follows:

- A. *Notice of inspection.* The administrator shall provide either prior written or verbal notice of the inspection to the owner or other person responsible for carrying out the erosion and sediment control plan; provided that notice shall not be required if the owner has consented to the inspection in writing or granted a written right of entry. The administrator may request that an owner consent to inspections on the application form or make owner consent a condition of the erosion and sediment control plan approval.
- B. *Who may conduct inspection.* Any inspection shall be conducted by a person holding a certificate of competence as an inspector; provided that the administrator may waive the certificate of competence requirement for an inspection of land disturbing activity authorized by an agreement in lieu of a plan for the construction of a single-family dwelling.
- C. *Scope of inspection.* The inspection shall be conducted for the purpose of determining the land disturbing activity's compliance with the approved erosion and sediment control plan.
- D. *When inspections conducted.* Unless an alternative inspection program is approved by the State Water Control Board, inspections shall be conducted during or immediately following initial

installation of erosion and sediment controls, at least once in every two-week period, within forty-eight (48) hours after any runoff producing storm event, and at the completion of the project prior to the release of any surety.

State law reference – Va. Code § 62.1-44.15:53, 62.1-44.15:58; 9VAC25-840-60.

Sec. 17-811 Inspections by the administrator under the VSMP.

In conjunction with the administration of the VSMP, the administrator shall inspect all land disturbing activity as follows:

- A. *During construction.* The administrator shall inspect all land disturbing activity during construction as follows:
 - 1. *Notice of inspection.* The administrator shall provide either prior written or verbal notice of the inspection to the owner or other person responsible for carrying out the VSMP permit; provided that notice shall not be required if the owner has consented to the inspection in writing or granted a written right of entry. The administrator may request that an owner consent to inspections on the application form or make owner consent a condition of VSMP permit approval.
 - 2. *Who may conduct inspection.* Any inspection shall be conducted by a person holding a certificate of competence as an inspector
 - 3. *Scope of inspection.* The inspection shall be conducted for the purpose of determining the land disturbing activity's compliance with: (i) the approved erosion and sediment control plan; (ii) compliance with the approved stormwater management plan; (iii) development, updating, and implementation of a pollution prevention plan; and (iv) development and implementation of any additional control measures necessary to address a TMDL.
 - 4. *When inspections conducted.* Unless an alternative inspection program is approved by the State Water Control Board, inspections shall be conducted at least once per month until the adequate stabilization of the land disturbing activity has been achieved, and at the completion of the project prior to the release of any performance bonds.

- B. *Post-construction.* The administrator may inspect all stormwater management facilities, including facilities for which there is no long-term maintenance agreement or those serving an individual residential lot, after the land disturbing activity has ended. If the owner and the County have entered into an agreement as provided in section 17-415, any inspection shall be conducted as provided in that agreement. If the owner and the County have not entered into an agreement under section 17-415, any inspection shall be completed as follows:
 - 1. *Notice of inspection.* The administrator shall provide either prior written or verbal notice of the inspection to the owner; provided that notice shall not be required if the owner has consented to the inspection in writing or granted a written right of entry.
 - 2. *Who may conduct inspection.* Any inspection shall be conducted by a person holding a certificate of competence as an inspector, other than the owner, provided that the administrator may, in his sole discretion, use the inspection report of the owner of the stormwater management facility as part of the facility's inspection program if the inspection is conducted by a person who is: (i) licensed as a professional engineer,

architect, landscape architect, or land surveyor pursuant to Virginia Code § 54.1-400 *et seq.*; (ii) a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or (iii) a person who holds an appropriate certificate of competence.

3. *Scope of inspection.* The inspection shall be conducted for the purpose of determining the condition of the stormwater management facility.
4. *When inspections conducted.* Inspections shall be conducted for each stormwater management facility at least once every five (5) years or more frequently as provided in the County's MS4 permit. For any other stormwater management facility, the timing of the inspection shall be in the discretion of the administrator.

State law reference – Va. Code § 62.1-44.15:37; 9VAC25-870-114.

Sec. 17-812 Inspections by the administrator under the VPDES and of storm drainage channels and natural streams.

The administrator shall inspect, in the manner authorized by law, storm drainage systems and natural streams to determine compliance with an applicable State permit and to detect illicit discharges, illicit connections and dumping. At the written or oral request of the administrator, any owner shall promptly remove any temporary or permanent obstruction to safe and easy access to the permitted facility to be inspected, sampled, or both, and the obstructions shall not be replaced. The costs of removing such obstructions shall be borne by the owner.

(Ord. 07-17(1), 2-14-07)

State law reference – Va. Code §§ 62.1-44.15:27, 62.1-44.15:33, 62.1-44.15:39, 62.1-44.15:40.

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

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

State law reference – Va. Code §§ 62.1-44.15:48, 62.1-44.15:49; 9VAC25-870-116, 9VAC25-870-460.

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

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

from the aggrieved owner, the aggrieved owner may pursue the remedies available under Virginia Code § 62.1-44.15:64.

State law reference – Va. Code § 62.1-44.15:64.

Article IX. Enforcement

Sec. 17-900 Notice to comply.

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

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

State law reference – Va. Code §§ 62.1-44.15:37, 62.1-44.15:58; 9VAC25-870-116.

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

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

- A. *Revocation.* The County or the administrator may revoke any permit issued in conjunction with the land disturbing activity.
- B. *Order to stop work.* The administrator may issue a stop work order as provided in section 17-902.
- C. *Enforcement.* The administrator may pursue enforcement as provided in sections 17-903 and 17-904 as applicable.

State law reference – Va. Code §§ 62.1-44.15:37, 62.1-44.15:58.

Sec. 17-902 Stop work orders; procedure.

The administrator is authorized to issue stop work orders as follows:

- A. *When stop work order may be issued.* A stop work order may be issued after a notice to comply under section 17-901 has been issued when the owner has not timely satisfactorily addressed the noncompliance identified in the notice to comply; provided that:

1. *Emergency stop work order; erosion and sediment control; notice to comply not prerequisite.* A notice to comply is not required before an emergency stop work order may be issued if: (i) the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the State; or (ii) the land disturbing activity commenced without an approved erosion and sediment control plan or any required permits.
 2. *Emergency stop work order; stormwater management; notice to comply not prerequisite.* A notice to comply is not required before an emergency stop work order may be issued if the administrator finds that any violation of the VSMP permit 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 State or otherwise substantially impacting water quality.
- B. *Contents of the stop work order.* The stop work order shall order the owner to stop all land disturbing activity on the site until all of the specified corrective measures have been taken to the satisfaction of the administrator, until any violation of the permit, plan or other applicable requirement of this chapter is determined by the administrator to have abated, or that any required plan or permit be obtained from the administrator, or any combination thereof; provided that any emergency stop work order to be issued under subsection (A)(1) or (A)(2) also shall direct the owner to cease immediately all land disturbing activity on the site and inform the owner of the date, time and location of a hearing before the administrator under subsection (F), at which time the administrator may affirm, modify, amend, or cancel the emergency stop work order.
- C. *How stop work order delivered.* The stop work order shall be delivered as follows:
1. *Noncompliance with VSMP permit or erosion and sediment control plan.* If the alleged violation is the owner's noncompliance with the VSMP permit or the erosion and sediment control plan, the stop work order shall be mailed by certified mail, with confirmation of delivery, to the address specified in the permit application or the plan certification, or by personal delivery at the site of the land disturbing activity or development activity to the agent or employee.
 2. *Land disturbing activity without a VSMP permit or erosion and sediment control plan.* If the alleged violation is the owner engaging in land disturbing activity without either a VSMP permit or an approved erosion and sediment control plan, the stop work order shall be mailed by certified mail, with confirmation of delivery, to the address specified in the land records of the County, and shall be posted on the site where the land disturbing activity is occurring.
- D. *Duration of order.* A stop work order shall remain in effect for the following periods:
1. *Noncompliance with VSMP permit or erosion and sediment control plan.* If the alleged violation is the owner's noncompliance with the VSMP permit or the approved erosion and sediment control plan, the stop work order shall remain in effect for seven (7) days after the date of service pending application by the County or the alleged violator to the circuit court for appropriate relief.
 2. *Land disturbing activity without a VSMP permit or erosion and sediment control plan.* If the alleged violation is the owner engaging in land disturbing activity without either a VSMP permit or an approved erosion and sediment control plan, the stop work order

shall remain in effect until all required permits and plans are obtained from the administrator, subject to the additional procedures and requirements in subsection (E).

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

State law reference – Va. Code §§ 62.1-44.15:37, 62.1-44.15:42, 62.1-44.15:58; 9VAC25-870-116.

Sec. 17-903 Remedies under the VESCP.

The following shall apply to the enforcement of the VESCP:

- A. *Violations subject to this section.* The County may seek the remedies provided in this section against any person who commence land disturbing activity without an approved erosion and sediment control plan or who violates, fails, neglects, or refuses to obey any applicable State statute or regulation or any County regulation pertaining to the VESCP, the approved erosion and sediment control plan for the land disturbing activity or any condition thereof, any permit or

condition issued by the County as a result of the approved erosion and sediment control plan, any stop work order, and any emergency stop work order.

- B. *Civil penalties.* The County may seek civil penalties as follows:
1. *Procedure.* Proceedings seeking civil penalties for any violation delineated in subsection (A) shall commence by filing a civil summons in the general district court.
 2. *Amount of civil penalty.* Any violation shall be subject to a civil penalty of five hundred dollars (\$500.00) for the initial summons, and a civil penalty of one thousand dollars (\$1000.00) for each additional summons arising from the same set of operative facts; provided that if the violation arises from commencing land disturbing activities without an approved plan, the violation shall be subject to a civil penalty of one thousand dollars (\$1,000.00) for the initial and each subsequent summons.
 3. *Maximum aggregate civil penalty.* The total civil penalties from a series of violations arising from the same set of operative facts shall not exceed ten thousand dollars (\$10,000.00).
 4. *Each day a separate offense.* Each day during which a violation is found to exist shall be a separate offense.
 5. *Option to prepay civil penalty and waive trial.* Any person summoned for a violation under this subsection may elect to pay the civil penalty by making an appearance in person or in writing by mail to the County's department of finance prior to the date fixed for trial in court. A person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. A signature to an admission of liability shall have the same force and effect as a judgment of court. However, such an admission shall not be deemed a criminal conviction for any purpose. If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose.
 6. *Civil penalties are in lieu of criminal penalties.* A violation enforced under this subsection shall be in lieu of any criminal penalty.
 7. *Civil penalties; use.* Civil penalties shall be paid into the treasury of the County.
- C. *Civil charges.* In lieu of the civil penalties sought under subsection (B) and with the consent of any person who has committed a violation described in subsection (A), the administrator may provide, in an order he issues against the person, for the payment of civil charges for violations in a specific sum, not to exceed the limits specified in subsections (B)(3) and (B)(4). Civil charges shall be paid into the treasury of the County.
- D. *Injunctive relief.* Any violation, or the threat of any violation, described in subsection (A), may be enforced in a proceeding brought by the County seeking injunctive relief without the necessity of showing that an adequate remedy at law does not exist.
- E. *Other remedy.* Without limiting the remedies that may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy

obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed two thousand dollars (\$2,000.00) for each violation.

- F. *Violation of agreement in lieu of plan; additional information.* If a violation occurs during the land disturbing activity authorized under an agreement in lieu of a plan, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of a person holding a certificate of competence.

State law reference – Va. Code §§ 62.1-44.15:54, 62.1-44.15:55, 62.1-44.15:63.

Sec. 17-904 Remedies under the VSMP.

The following shall apply to the enforcement of the VSMP:

- A. *Violations subject to this section.* The County may seek the remedies provided in this section against any person who: (i) violates or fails, neglects or refuses to obey any applicable State statute or regulation or any County regulation pertaining to the VSMP, including any regulation, standard or condition adopted pursuant to the conditions of the County’s MS4 permit, including discharging stormwater into State waters from the County’s MS4, or from land disturbing activities, except in compliance with a State permit issued by the State Water Control Board pursuant to the Virginia Stormwater Management Act; (ii) engages in or allows any illicit discharge, illicit connection, or dumping; (iii) fails, neglects, or refuses to comply with any order of the administrator, including, but not limited to, any order to maintain a stormwater management facility; (iv) violates, fails, neglects, or refuses to obey any injunction, mandamus, or other remedy obtained pursuant to this section.
- B. *Civil penalties.* The County may seek civil penalties as follows:
1. *Procedure.* Proceedings seeking civil penalties for any violation delineated in subsection (A) shall commence by filing a civil summons in the appropriate court.
 2. *Amount of civil penalty.* Any violation shall be subject to a civil penalty of up to thirty-two thousand five hundred dollars (\$32,500.00) for each violation, in the discretion of the court. The amount of the penalty should reflect the degree of harm caused by the violation and take into account the economic benefit to the violator from noncompliance.
 3. *Each day a separate offense.* Each day during which a violation is found to exist shall be a separate offense.
 4. *Civil penalties; use.* Civil penalties shall be paid into the treasury of the County and are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the County and abating environmental pollution in the County therein in such a manner as the court may, by order, direct.
- C. *Civil charges.* In lieu of the civil penalties sought under subsection (B) and with the consent of any person who has committed a violation described in subsection (A), the administrator may provide, in an order he issues against the person, for the payment of civil charges for violations in a specific sum, not to exceed the limits specified in subsection (B)(2). Civil charges shall be paid into the treasury of the County.

- D. *Criminal penalties.* Any person who willfully and knowingly violates any provision of the VSMP regulations in this chapter is guilty of a Class 1 misdemeanor. Criminal penalties shall not be available as a remedy for a violation of subsection (A)(iii).
- E. *Injunctive relief.* Any violation, or the threat of any violation, described in subsection (A), may be enforced in a proceeding brought by the County seeking injunctive relief without the necessity of showing that an adequate remedy at law does not exist.
- F. *Use of offsite nutrient credits.* To the extent available and with the consent of the applicant, the administrator may include the use of nutrient credits or other offsite measures in resolving enforcement actions to compensate for: (i) nutrient control deficiencies occurring during the period of noncompliance; and (ii) permanent nutrient control deficiencies.

State law reference – Va. Code §§ 62.1-44.15:35, 62.1-44.15:42, 62.1-44.15:48, 62.1-44.15:49; 9VAC25-870-116, 9VAC15-870-310.

Article X. Groundwater Assessments

Sec. 17-1000 Applicability.

This article shall apply to the establishment of land uses that will rely on privately owned wells serving as the primary source of potable water and having not more than two (2) connections (hereinafter, “individual wells”) or central water supplies, as defined in Albemarle County Code § 16-101. The applicable requirements of this article are determined by the development approval sought by the owner and the land uses within the development, as follows:

Development Approval and Timing of Submittal for Required Assessment	Assessment Required
Prior to the issuance of a building permit for a new structure on a lot of record less than twenty-one acres in size existing prior to the effective date of this article that will be served by one or more individual wells	Tier 1
Prior to the issuance of a building permit for a new structure: (1) on a lot of record created after February 8, 2005 that is subject to a Tier 2 or Tier 3 assessment that will be served by one or more individual wells; or (2) associated with a use that is subject to a Tier 3 or Tier 4 assessment that will be served by one or more individual wells	Tier 1
Prior to approval of a preliminary subdivision plat creating lots of less than twenty-one acres that will be served by individual wells	Tier 2
Prior to approval of a preliminary subdivision plat creating four or more lots where at least three lots are five acres or less	Tier 3
Prior to approval of an initial site plan for a new nonresidential or nonagricultural use using less than 2,000 gallons/day (average)	Tier 3
Prior to approval of an initial site plan for a new nonresidential or nonagricultural use using more than 2,000 gallons/day (average)	Tier 4
Prior to approval of any central water supply under chapter 16 of the Albemarle County Code	Tier 4

The administrator may require that development approvals subject to Tier 2 or Tier 3 assessments be subject to Tier 3 or Tier 4 assessments, respectively, as provided in sections 17-1002 and 17-1003.

If an owner submits a final subdivision plat or site plan without first submitting and obtaining approval of a preliminary subdivision plat or an initial site plan, the assessment required by section 17-1002 shall begin upon submittal of the final subdivision plat or site plan, and the assessment required by sections 17-

1003 or 17-1004 shall be submitted by the owner with the final subdivision plat or site plan.

(§ 17-400, Ord. 04-17(1), 12-8-04, effective 2-8-05)

Sec. 17-1001 Tier 1 assessments.

A Tier 1 assessment shall consist of the owner drilling a well on the lot and submitting the following information to the program authority: (i) a Virginia well drilling completion report (form GW-2) for each well drilled; and (ii) the latitude and longitude coordinates of each well's location. The information submitted must be accepted as complete and accurate by the administrator prior to issuance of the building permit.

(§ 17-401, Ord. 04-17(1), 12-8-04, effective 2-8-05)

Sec. 17-1002 Tier 2 assessments.

A Tier 2 assessment shall consist of the program authority reviewing and evaluating the county's well database, available hydrogeologic studies, and information from the Virginia Department of Health and the Virginia Department of Environmental Quality, as provided in the Design Standards Manual. Based on this evaluation, the administrator may require that the owner provide additional groundwater assessment data prior to subdivision plat or site plan approval, or may require that a Tier 3 assessment be submitted.

(§ 17-402, Ord. 04-17(1), 12-8-04, effective 2-8-05; Ord. 07-17(1), 2-14-07)

Sec. 17-1003 Tier 3 assessments.

A Tier 3 assessment shall consist of the following:

- A. *Draft groundwater management plan.* The owner shall submit a draft groundwater management plan with the preliminary plat or the initial site plan. The groundwater management plan shall comply with the requirements for such plans in the Design Standards Manual. If the groundwater management plan identifies special areas of concern, such as an off-site resource of high groundwater sensitivity or a previously unknown source of contamination, then the administrator may require additional groundwater assessment data prior to preliminary subdivision plat or site plan approval.
- B. *Final groundwater management plan.* The owner shall submit a final groundwater management plan that must be approved by the administrator prior to approval of the final plat or site plan.
- C. *Surety.* Any structural best management practices shall be bonded as a subdivision plat or site plan improvement.

The administrator may require that a Tier 4 assessment be submitted instead of a Tier 3 assessment if the special areas of concern identified in subsection (A) have not been adequately addressed by the additional groundwater assessment data.

(§17-403, Ord. 04-17(1), 12-8-04, effective 2-8-05; Ord. 07-17(1), 2-14-07)

Sec. 17-1004 Tier 4 assessments.

A Tier 4 assessment shall consist of the following:

- A. *Draft groundwater management plan; aquifer testing workplan.* The owner shall submit a draft groundwater management plan and an aquifer testing workplan complying with the requirements for these plans in the Design Standards Manual, with the preliminary plat, initial site plan, or the application for a central water supply. The groundwater management plan must demonstrate to the administrator's satisfaction that the site's groundwater conditions have been considered with the subdivision or site plan's layout and design. The aquifer testing workplan must be approved by the program authority before the owner may conduct aquifer testing as required by subsection (B).
- B. *Aquifer testing workplan.* After the program authority approves the aquifer testing workplan, the owner shall conduct aquifer testing as provided in the workplan.
- C. *Final groundwater management plan; groundwater assessment report.* The owner shall submit a final groundwater management plan and a groundwater assessment report complying with the requirements for the report in the Design Standards Manual, based upon the results of the aquifer testing. The final groundwater management plan and the groundwater assessment report must be approved by the administrator prior to final subdivision plat or site plan approval.
- D. *Surety.* Any structural best management practices shall be bonded as a subdivision plat or site plan improvement.

(§17-404, Ord. 04-17(1), 12-8-04, effective 2-8-05; Ord. 07-17(1), 2-14-07)

Sec. 17-1005 Fees.

Each owner seeking approval of a tier assessment required by this article shall pay a fee as provided by Albemarle County Code § 18-35.1 and Albemarle County Code § 14-203, as applicable.

(§17-405, Ord. 04-17(1), 12-8-04, effective 2-8-05)

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