

ADOPTED

MAY 13 2014

Board of Supervisors
James City County, VA

ORDINANCE NO. 85A-21

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 8, EROSION AND SEDIMENT CONTROL, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY CREATING ARTICLE I WITH EXISTING SECTIONS 8-1 THROUGH 8-8, AS EROSION AND SEDIMENT CONTROL; AND BY ADDING ARTICLE II, THE VIRGINIA STORMWATER MANAGEMENT PLAN, BY ADDING SECTION 8-20, TITLE, PURPOSE AND AUTHORITY; SECTION 8-21, DEFINITIONS; SECTION 8-22, STORMWATER PERMIT REQUIREMENT, EXEMPTIONS; SECTION 8-23, STORMWATER MANAGEMENT PROGRAM ESTABLISHED; SUBMISSION AND APPROVAL OF PLANS; PROHIBITIONS; SECTION 8-24, STORMWATER POLLUTION PREVENTION PLAN, CONTENTS OF PLANS; SECTION 8-25, STORMWATER MANAGEMENT PLAN, CONTENTS OF PLANS; SECTION 8-26, POLLUTION PREVENTION PLAN, CONTENTS OF PLANS; SECTION 8-27, REVIEW OF STORMWATER MANAGEMENT PLAN; SECTION 8-28, TECHNICAL CRITERIA FOR REGULATED LAND DISTURBING ACTIVITIES; SECTION 8-29, LONG-TERM MAINTENANCE OF PERMANENT STORWMATER FACILITIES; SECTION 8-30, MONITORING AND INSPECTIONS; SECTION 8-31, HEARINGS; SECTION 8-32, APPEALS; SECTION 8-33, ENFORCEMENT; SECTION 8-34, FEES; AND SECTION 8-35, PERFORMANCE SURETY.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 8, Erosion and Sediment Control, is hereby amended and reordained by creating Article I, Erosion and Sediment Control, with existing Sections 8-1 through 8-8; by adding Article II, The Virginia Stormwater Management Plan, Section 8-20, Title, purpose and authority; Section 8-21, Definitions; Section 8-22, Stormwater permit requirement, Exemptions; Section 8-23, Stormwater management program established; Submission and approval of plans; Prohibitions; Section 8-24, Stormwater pollution prevention plan, Contents of plans; Section 8-25, Stormwater management plan, Contents of plans;

Section 8-26, Pollution prevention plan, Contents of plans; Section 8-27, Review of stormwater management plan; Section 8-28, Technical criteria for regulated land disturbing activities; Section 8-29, Long-term maintenance of permanent stormwater facilities; Section 8-30, Monitoring and inspections; Section 8-31, Hearings; Section 8-32, Appeals; Section 8-33, Enforcement; Section 8-34, Fees; and Section 8-35, Performance surety.

Chapter 8. Erosion and Sediment Control

Article I. Erosion and Sediment Control

Section 8-1. Title, purpose, and authority.

Section 8-2. Definitions.

Section 8-3. Erosion and sediment control program.

Section 8-4. Regulated land-disturbing activities; Submission and approval of plans, contents of plans.

Section 8-5. Permits, fees, bonding, etc.

Section 8-6. Monitoring, reports, and inspections.

Section 8-7. Penalties, injunctions, and other legal actions.

Section 8-8. Appeals and judicial review.

Sections 8-9 – 8-19. Reserved.

Article II. The Virginia Stormwater Management Program

Sec. 8-20. Title, purpose and authority.

(a) This ordinance shall be known and may be cited as “The Virginia Stormwater Management Program Ordinance.”

(b) Pursuant to § 62.1-44.15:27 of the Code of Virginia, this ordinance is adopted to address the mandate to integrate the County stormwater management requirements with the county erosion and sediment control (Chapter 8), flood insurance and floodplain management (Chapter 24, Article VI Overlay Districts, Division 3), Chesapeake Bay Preservation (Chapter 23) and Stormwater Management, Illicit Discharge Detection and Elimination (Chapter 18A) requirements into a unified stormwater program. The unified stormwater program is intended to facilitate the submission and approval of plans,

issuance of permits, payment of fees, and coordination of inspection and enforcement activities into a more convenient and efficient manner for both the county and those responsible for compliance with these programs.

(c) The purpose of this article is to protect the general health, safety, welfare, and property of the citizens of the county and protect the quality and quantity of state waters from the potential harm of unmanaged stormwater including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, waterways and other natural resources, and to establish procedures whereby stormwater management and stormwater pollution prevention requirements related to water quality and quantity shall be administered and enforced.

(d) This article is adopted pursuant to Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of the Code of Virginia and 9VAC25-870 et seq. of the Virginia Administrative Code.

Sec. 8-21. Definitions.

In addition to the definitions set forth in 9VAC25-870-10 et seq. of the Virginia Stormwater Management Program (VSMP) Regulations, 9VAC25-840-10 et seq. of the Virginia Erosion and Sediment Control Regulations, 9VAC25-850-10 et seq. of the Virginia Erosion and Sediment Control and Stormwater Management Certification Regulations, and 9VAC25-830-10 et seq. of the Chesapeake Bay Preservation Area Designation and Management Regulations, which are expressly adopted and incorporated herein by reference, the following words and terms used in this article have the following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence.

Act. The Virginia Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

Administrator. The director of the county division of engineering and resource protection who is responsible for administering the VSMP on behalf of the county and is designated as VSMP authority.

Agreement in lieu of a plan. A contract between the Virginia Erosion and Sediment Control Program (VESCP) or VSMP authority and the owner that specifies conservation measures that shall be implemented in the construction of a single-family residence. This contract may be executed by the VESCP or VSMP authority in lieu of a formal site plan or site erosion and sediment control plan.

Agreement in lieu of a stormwater plan. A contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a single-family residence; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.

Applicant. Any person submitting an application for a permit or requesting issuance of a permit under this article.

Approval Authority. The state water control board or its designee.

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

Board or state board. The state water control board.

Certificates of competence. The issuance of a certificate to persons who have completed state board approved training programs and met any additional eligibility requirements pursuant to 9VAC25-850-10 et seq., as amended of the Virginia Administrative Code in the areas of erosion and sediment control, stormwater management, or a combination of both known as dual certification. Certification can be for program administration, plan review, inspector or combined for either or both erosion and sediment control and stormwater management.

Chesapeake Bay Preservation Act land-disturbing activity. A land-disturbing activity including clearing, grading or excavation that results in a land disturbance equal or greater than 2,500 square feet and less than one acre subject to the Chesapeake Bay Preservation Area Designation and Management Regulation 9VAC25-830 et seq. of the Virginia Administrative Code adopted pursuant to the Chesapeake Bay Preservation Act, Article 2.5 of the Code of Virginia, 1950, as amended (Code of Virginia) § 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

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

Control measure. Any best management practice, stormwater facility, or other method used to minimize the discharge of pollutants to state waters.

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

Department. The Commonwealth of Virginia, Department of Environmental Quality.

Development. Land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures or the clearing of land for non-agricultural or non-silvicultural purposes. The regulation of discharges from development, for purposes of these regulations and chapter, does not include the exemptions found in 9VAC25-870-300 of the Virginia Administrative Code.

Erosion and Sediment Control law, attendant regulations and local ordinance. Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia, the Virginia Erosion and Sediment Control Regulations (9VAC25-840 et seq.) of the Virginia Administrative Code, and this article.

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

General permit. A state permit authorizing a category of discharges under the CWA and the Act within a geographical area.

Land disturbance or land-disturbing activity. A manmade change to the land surface that potentially changes its runoff characteristics including any clearing, grading, excavation, transporting of fill and filling of land except that the term shall not include those exemptions specified in section 8-22(c) of this article.

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

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

Localized flooding. Smaller scale flooding that may occur outside of a stormwater conveyance system. This may include high water, ponding, or standing water from stormwater runoff, which is likely to cause property damage or unsafe conditions. Designation of an area as subject to localized flooding is at the discretion of the administrator or VSMP authority based on factual information which may include documented complaints, reports of problem drainage areas or flooding, county performed studies or drainage analyses, or direct observations of site and drainage conditions during rainfall-runoff conditions.

Minor modification. For the purposes of this article, a minor modification or amendment of an existing state permit before its expiration for the reasons listed at 40CFR122.63 and as specified in 9VAC25-870-640 of the Virginia Administrative Code. Minor modification for the purposes of this article also means other modifications and amendments not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor 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.

Municipal separate storm sewer system or MS4. 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).

National Pollutant Discharge Elimination System or NPDES. The national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing state permits, and imposing and enforcing pretreatment requirements under §§ 307, 402, 318, and 405 of the CWA. The term includes an approved program.

Operator. The owner or operator of any facility or activity subject to the Act and this article. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make

modifications to those plans and specifications; or, (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other state permit or VSMP authority permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from municipal separate storm sewer systems (MS4s), operator means the operator of the regulated MS4 system.

Permit or VSMP authority permit. An approval to conduct a land-disturbing activity issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of general permit coverage has been provided where applicable.

Permittee. The person to whom the state permit or VSMP authority permit is issued, including any owner or operator whose construction site is covered under a state construction general permit.

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

Regulations. The Virginia Stormwater Management Program (VSMP) regulations, 9VAC25-870-10, et seq., as amended.

Resource Protection Area or RPA. That component of a Chesapeake Bay preservation area as defined in Chapter 23 of the county code.

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

Small construction activity. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre, and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan of development will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

State permit. An approval to conduct a land disturbing activity issued by the Approval Authority in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the Approval Authority for stormwater discharges from an MS4. Under these state permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Act, the regulations, and this article. As the mechanism that imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, a state permit for stormwater discharges from an MS4 and after June 30, 2014 a state permit for conducting a land-disturbing activity issued pursuant to the Act are also a type of VPDES Permit. State permit does not include any state permit that has not yet been the subject of final Approval Authority action, such as a draft state permit. Approvals issued pursuant to this article, 9VAC25-880 and 9VAC25-890 of Virginia Administrative Code are not issuances of a permit under §62.1-44.15:01 of the Code of Virginia.

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

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

Steep Slopes. Slopes of 25 percent or greater as defined in section 23-5 of the county code.

Stormwater. Precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

Stormwater Conveyance System. A combination of drainage components that are used to convey stormwater discharge, either within or downstream of, the land-disturbing activity. This includes (i) manmade stormwater conveyance system(s) means a pipe, ditch, vegetated swale, or other stormwater conveyance system(s) constructed by man except for restored stormwater conveyance systems; or, (ii) natural stormwater conveyance system(s) means the main channel of a natural stream and the flood-prone area adjacent to the main channel; or, (iii) restored stormwater conveyance system means a stormwater conveyance system(s) that have been designed and constructed using natural channel system design concepts. Restored stormwater conveyance system(s) include the main channel and the flood-prone area adjacent to the main channel.

Stormwater Discharge Associated with Construction Activity. The discharge of stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, filling, or excavation); construction materials or equipment storage and maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater related to the construction process (e.g., concrete or asphalt batch plants) are located.

Stormwater management facility. A control measure that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, or the period of release or the velocity of flow.

Stormwater management plan. A document containing materials describing methods for complying with the requirements of the VSMP or section 8-25 of this article.

Stormwater pollution prevention plan or SWPPP. A document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control (E&SC) plan, an approved stormwater management (SWM) plan, and an approved pollution prevention plan (PPP).

Subdivision. As defined in §15.2-2201 of Chapter 22 of Title 15.2 of the Code of Virginia and as subject to Chapter 19 of the county code.

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

Virginia Erosion and Sediment Control Handbook. A collection of pertinent information that provides general guidance for compliance with the Erosion and Sediment Control law and associated regulations and is developed by the Department with advice from a stakeholder advisory committee, referring to the 3rd edition, 1992 or most current version of the handbook.

Virginia Erosion and Sediment Control Program or VESCP. A program approved by the board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable such as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan of development review, inspection, enforcement where authorized in the Erosion and Sediment Control Act and its attendant regulations, and evaluation consistent with the requirements of the Erosion and Sediment Control Act and its attendant regulations.

Virginia Erosion and Sediment Control program authority or VESCP authority. An authority approved by the board to operate a Virginia erosion and sediment control program. An authority may include a state entity, including the Department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas and telephone companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia.

VESCP authority permit. A permit issued by the VESCP authority and evidence of approval to initiate and conduct land-disturbing activity if no VSMP authority permit is required in accordance with this article and which may only be issued after evidence of coverage under the general permit for discharges of stormwater from construction activities has been provided.

Virginia Pollutant Discharge Elimination System (VPDES) permit or VPDES permit. A document issued by the state water control board pursuant to the state water control law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

Virginia runoff reduction method or VRRM. The calculation method as documented by reference in 9VAC25-870 and which is used in part to comply with water quality and quantity provisions of the Virginia Stormwater Management Program (VSMP) regulations 9VAC25-870 et seq. and as a specific chapter in the Virginia stormwater management handbook. The method includes compliance spreadsheets for new development and redevelopment scenarios.

Virginia stormwater BMP clearinghouse website. A website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations. The website can be found at <http://www.vwrrc.vt.edu/swc/>

Virginia Stormwater Management Act. Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

Virginia Stormwater Management Handbook. A collection of pertinent information that provides general guidance for compliance with the Act and associated regulations and is developed by the

Department with advice from a stakeholder advisory committee, referring to the 2nd edition, 2013 or most current version of the handbook.

Virginia Stormwater Management Program or VSMP. A program approved by the board after September 13, 2011, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan of development review, inspection, enforcement, where authorized in the Act or associated regulations or this article, and evaluation consistent with the requirements of the Act and associated regulations and this article.

Virginia Stormwater Management Program authority or VSMP authority. An authority approved by the board after September 13, 2011, to operate a Virginia Stormwater Management Program or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or, for linear projects subject to annual standards and specifications in accordance with subsection B of § 62.1-44.2 et seq. of the Code of Virginia, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia. Prior to approval, the board must find that the ordinances adopted by the locality's VSMP authority are consistent with the Act and this article including the General VPDES Permit for Discharges of Stormwater from Construction Activities (VAR-10), 9VAC25-880.

VSMP authority permit. A permit issued by the VSMP authority and evidence of approval to initiate and conduct land-disturbing activity if no VSMP authority permit is required in accordance with this article and which may only be issued after a VESCP authority permit has been issued and evidence of coverage under the general permit for discharges of stormwater from construction activities has been provided.

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

Sec. 8-22. Stormwater permit requirement; exemptions.

(a) Except as provided herein, no person may engage in any land-disturbing activity until a VSMP authority permit has been issued by the administrator in accordance with the provisions of this article. VESCP and VSMP authority permits may be combined into a single consolidated permit that is consistent with the provisions of the Virginia Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq. of the Code of Virginia).

(b) After June 30, 2014, and consistent with 9VAC25-870-51, a Chesapeake Bay preservation area land-disturbing activity shall not require completion of a registration statement or require coverage under the general VPDES permit for discharges of stormwater from construction activities (VAR10) but shall be subject to erosion and sediment control plan requirements consistent with Virginia erosion and sediment control law and regulations, this article, stormwater management plan requirements as outlined under section 8-25, technical criteria and administrative requirements for land-disturbing activities as outlined in section 8-28, and the requirements for control measures for long-term maintenance as outlined in section 8-29.

(c) Notwithstanding any other provisions of this article, the following activities are exempt, upon verification by the administrator, and unless otherwise required by federal law. The administrator is authorized and directed to determine if a particular activity meets or qualifies for a specific exemption. Any appeal of the administrator's decision shall be heard by the board of supervisors.

- (1) Minor residential, business, and community landscaping activities such as tilling, adding soil amendments such as compost, and mulching for small scale features such as vegetable, flower or herb gardens, annual or perennial flower beds, ornamental plantings, wildflower plantings, edge borders, and reasonable turfgrass establishment. Exempted work under this provision cannot be situated in RPA and is normally reserved for aesthetic, beautification or scenic purposes and shall not include clearing, grading, placement of impervious cover, or soil disturbance due to placement of earthen fill or deep depths or quantities of topsoil beyond that expected for landscape purposes;*
- (2) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;*
- (3) 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 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 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163 of Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia;*
- (4) 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. However, localities subject to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) may regulate these single-family residences where land disturbance exceeds 2,500 square feet;*
- (5) Land disturbing activities that disturb less than one acre of land except for land disturbing activity exceeding an area of 2,500 square feet in all areas of the county designated as subject to the Chesapeake Bay preservation area designation and management regulations (9VAC25-830) adopted pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) or activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance; however, the board of supervisors may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exemption shall apply;*
- (6) Discharges to a sanitary sewer or a combined sewer system;*
- (7) Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;*

- (8) *Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the previously approved project, including obligated storm drainage and stormwater management or BMP facility maintenance, provided it is performed to maintain proper stormwater function and structural integrity of previously approved and installed systems, does not result in any type of improvement such new pipes, channels, or the addition of access structures such as inlets or manholes, or results in a change in conveyance method, capacity, slope, size, alignment, material type, area, hydraulic radius, storage volume, or the physical location of any part of the system. 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;*
- (9) *Small scale archaeological and geotechnical or other similar investigative activities, unless the administrator deems that work for access and the investigative activity are of such a scale or magnitude to threaten natural resources or environmental inventory components as outlined in section 23-10 of the county code;*
- (10) *Small scale projects performed by the county pursuant to federal or state grant funds received and of which are solely for educational or demonstration purposes for water quality improvement or nonpoint source pollution control;*
- (11) *Reclamation or stabilization projects in which the county draws on erosion and sediment control, siltation, public improvement, subdivision or other performance surety as secured for a development project in accordance with section 8-35 of this article. Work under this item shall be of sole purpose to immediately stabilize or implement temporary erosion and sediment control measures at a site because of default on the project and to prevent damage or threatening conditions to adjacent or downstream property or water resources. Work under this provision shall be procured, contracted and managed by the VSMP authority or designee in accordance with county and county purchasing department requirements; and*
- (12) *Conducting land-disturbing activities in response to a public emergency, declared or otherwise, where the related work requires immediate authorization to avoid imminent endangerment to property, human health or the environment. In such situations, the administrator shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of subsection (a) is required within 30 days of commencing the land-disturbing activity.*

Sec. 8-23. Stormwater management program established; Submission and approval of plans; Prohibitions.

(a) Pursuant to Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of the Code of Virginia and 9VAC25-870 et seq. of the Virginia Administrative Code, the county hereby establishes a stormwater management program for land disturbing activities and adopts the applicable regulations that specify standards and specifications for VSMPs promulgated by the state board for the purposes set out in section 8-20 of this article. For the purposes of this article, the board of supervisors hereby designates

the director of the county division of engineering and resource protection as the administrator of the VSMP.

(b) For the purposes of this article, an applicant will need to employ a mix of site design, runoff reduction, and pollutant control strategies and practices, including structural and non-structural BMP practices, suitable for application in the coastal plain of Virginia and specific to the climate, rainfall, terrain, topography, slopes, soils, and groundwater tables in the county, in order to comply with the state stormwater standards for water quality and quantity criteria in accordance with the regulations and this article. The standards contained within the VSMP Regulations 9VAC25-870-10 et seq. and the General VPDES Permit for Discharges of Stormwater from Construction Activities (VAR10) 9VAC25-880 et seq. of the Virginia Administrative Code including but not limited to the following, the minimum standards of the Virginia Erosion and Sediment Control Regulations 9VAC25-840-40, the VESCH, the Virginia stormwater BMP clearinghouse website, the Virginia stormwater management handbook, the Virginia Runoff Reduction Method, and any VESCP or VSMP related technical bulletins issued by the Department, are to be used by the applicant when making a submittal under the provisions of this article and in the preparation of a SWPPP or any applicable components required thereof. The VESCP and VSMP authority, in considering the adequacy of a submitted plan shall be guided by these same regulations, standards and guidelines.

(c) No VSMP authority permit shall be issued by the administrator, until the following items have been submitted to and approved by the administrator as prescribed herein:

- (1) A permit application that includes a general permit registration statement, if such statement is required. A registration statement is not required for detached single-family home construction within or outside a common plan of development or sale, but such projects must adhere to the requirements of the general permit;*
- (2) Evidence of general permit coverage;*
- (3) An approved erosion and sediment control plan, in accordance with Virginia erosion and sediment control law and regulations and this article; and*
- (4) A stormwater management plan that meets the requirements of section 8-25 of this article. After July 1, 2014, an executed agreement in lieu of a stormwater management plan may be used for single-family residences if such contract is executed by the VSMP authority in lieu of a stormwater management plan.*

(d) No VSMP authority permit shall be issued until evidence of general permit coverage is obtained.

(e) No VSMP authority permit shall be issued until the fees required to be paid pursuant to section 8-34 are received, and a reasonable performance surety as required pursuant to section 8-35 of this article has been submitted in a satisfactory manner.

(f) No VSMP authority permit shall be issued unless and until the permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development, drainage, stormwater management, and stormwater pollution prevention will be done according to the approved plans and permit.

(g) No VSMP authority permit shall be issued until all wetland permits required by federal, state, and county laws and regulations are obtained and evidence of such provided to the administrator or VSMP authority. For those projects where no wetlands are proposed to be impacted or where the impacts do not require written authorization by wetland permit agencies, documentation shall be submitted to the administrator or the VSMP authority by a qualified wetlands professional attesting that the wetlands permitting process has been completed and no further documentation is necessary from applicable regulatory agencies.

(h) No grading, building, or other local permit shall be issued for a property unless a VSMP authority permit has been issued by the administrator.

Sec. 8-24. Stormwater pollution prevention plan; Contents of plans.

(a) The stormwater pollution prevention plan shall include the content specified by 9VAC25-870-54 of the regulations and must comply with the requirements and general information set forth in 9VAC25-880-70, Part II, stormwater pollution prevention plan, of the General VPDES Permit for Discharge of Stormwater from Construction Activities (VAR10).

(b) A stormwater pollution prevention plan shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, an approved pollution prevention plan for regulated land-disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to subsection E of 9VAC25-870-54 of the Virginia Administrative Code.

(1) A stormwater management plan or an agreement in lieu of a stormwater management plan, as applicable, consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VSMP authority.

(c) The stormwater pollution prevention plan shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing stormwater pollution prevention plan.

(d) The stormwater pollution prevention plan must be maintained at a central location on-site. If an onsite location is unavailable, notice of the stormwater pollution prevention plan location must be posted near the main entrance at the construction site. Operators shall make the stormwater pollution prevention plan available for public review in accordance with Part II of the General VPDES Permit for discharge of stormwater from construction activities (VAR10), either electronically or in hard copy.

(e) The stormwater pollution prevention plan shall adhere to the general performance standards of section 23-9(b) of the county code and 4VAC50-90-130 of the Virginia Administrative Code and, if not otherwise provided for erosion and sediment control plan purposes in accordance with VESCP requirements in accordance with this article and 9VAC25-840, an environmental inventory shall be provided in accordance with section 23-10(2) of the county code.

(f) Rainwater harvesting, as component of a stormwater pollution prevention plan, is encouraged consistent with § 62.1-44.15:28(A)(9) of the Code of Virginia and 9VAC25-870-74 of the regulations.

Sec. 8-25. Stormwater management plan; Contents of plans.

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

- (1) *The stormwater management plan for a land disturbing activity as required in section 8-23 of this article shall apply the stormwater management technical criteria set forth in section 8-28 of this article to the land disturbing activity. Individual lots in new residential, commercial or industrial plans of development shall not be considered to be separate land-disturbing activities; however, shall be subject to agreement in lieu of stormwater management plan requirements, as applicable.*
- (2) *Stormwater management plans for residential, commercial, or industrial subdivisions which are approved govern the development of individual parcels within that plan throughout the development life of the project, even if ownership changes. However, agreement in lieu of a stormwater management plan requirements will apply to these parcels, as applicable.*
- (3) *The stormwater management plan as required in section 8-23 of this article shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.*

(b) *A complete stormwater management plan shall include the following elements:*

- (1) *Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters, and the pre-development and post-development drainage areas;*
- (2) *Identification of the county watershed or subwatershed and hydrologic unit code (HUC) code based on Virginia's 6th order National Watershed Boundary Dataset (NWBD) hydrologic units (VAHU6) for which the project is situated in;*
- (3) *Contact information including the name, address, email, and telephone number of the owner and the tax map reference number and parcel number of the property or properties affected;*
- (4) *A narrative that includes a description of current site conditions and final site conditions, including the amount of disturbed area, the amount of proposed impervious cover, and the percent impervious cover of the site;*
- (5) *A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;*
- (6) *Information on proposed stormwater management facilities, including:*
 - a. *the type of facilities;*

- b. *the location by geographic coordinates, latitude and longitude;*
- c. *drainage area and impervious cover area treated by facilities (in acres);*
- d. *the surface waters into which the facility will discharge;*

(7) Hydrologic and hydraulic computations, including runoff characteristics, presented in a clear and organized format;

(8) Documentation and calculations verifying compliance with the water quality and quantity requirements of section 8-28 of this article, including providing a summary Virginia runoff reduction method compliance spreadsheet or worksheet for the project;

(9) A map or maps of the site that depict the characteristics or features of the site and includes:

- a. *all contributing drainage areas;*
- b. *existing topography and drainage patterns;*
- c. *existing streams, ponds, culverts, storm drainage systems, channels, ditches, wetlands, other water bodies, RPAs, conservation easements, and floodplains;*
- d. *soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;*
- e. *current land use including existing structures, roads, and locations of known utilities and easements;*
- f. *sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these/those parcels;*
- g. *the limits of disturbance (clearing and grading) for the project including proposed access and all onsite and off-site work activities;*
- h. *proposed grading, contours and drainage patterns on the site or project;*
- i. *proposed buildings, roads, parking areas, utilities, and stormwater drainage and management facilities;*
- j. *proposed land use with tabulations of the percentage of surface area to be adapted to various land uses including but not limited to planned locations of impervious cover, turfgrass, utilities, roads, open spaces, and easements, including conserved open spaces; and*
- k. *proposed percent impervious cover of the site or project;*

(10) If an operator intends to meet the water quality and/or quantity requirements set forth in 9VAC25-870-63 or 9VAC25-870-66 and section 8-28 of this article through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity except as otherwise allowed by § 62.1-44.15:35 of the Code of Virginia and 9VAC25-870-69.

(11) If payment of a fee is required for a stormwater management plan submission by the VSMP authority, the fee and the required fee form shall be submitted.

(c) Elements of the stormwater management plan that include activities regulated under Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a

professional registered in the Commonwealth of Virginia pursuant to Article 1 (§54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

(d) A construction record drawing (as-built) and construction certification for permanent stormwater management facilities shall be submitted to the administrator. The construction record drawing and construction certification shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan. Construction record drawing and construction certification submittal requirements shall be established by the administrator or the VSMP authority and in accordance with 9VAC25-870-108 and 9VAC25-870-112. The administrator may elect to not require construction record drawings and construction certifications for stormwater management facilities which maintenance agreements are not required pursuant to section 8-29(b).

(e) A construction record drawing and construction certification for permanent stormwater conveyance system facilities (inlets, pipes, channels, etc.) shall be submitted to the administrator. The construction record drawing and construction certification shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater conveyance system facilities have been constructed in accordance with the approved plan. Construction record drawing and construction certification submittal requirements shall be established by the administrator or the VSMP authority. The administrator may elect to not require construction record drawings and construction certifications for stormwater conveyance system facilities which maintenance agreements are not required pursuant to section 8-29(b).

(f) An internal closed-circuit television (CCTV) post installation inspection, performed by the operator, is required for all stormwater conveyance system pipes, access or inlet structures, and culverts of 15-inch nominal diameter size or greater as part of the construction record and construction certification process. CCTV inspections shall follow standards and specifications developed by the administrator or the VSMP authority.

Sec. 8-26. Pollution prevention plan; Contents of plans.

(a) A pollution prevention plan, required by 9VAC25-870-56 of the regulations, shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

- (1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated prior to discharge into a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;*
- (2) Minimize exposure of all materials on site to precipitation and stormwater. This may include, but is not limited to minimizing the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and*

- (3) *Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.*
- (b) *The pollution prevention plan shall include effective best management practices to prohibit the following discharges:*
 - (1) *Wastewater from washout of concrete, unless managed by an appropriate control;*
 - (2) *Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;*
 - (3) *Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and*
 - (4) *Soaps or solvents used in vehicle and equipment washing.*
- (c) *Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.*
- (d) *A pollution prevention plan as required to be developed and implemented in accordance with subsections a – c above is required for all plans of development, including those site or plot plans required for single family building permit applications, and shall be submitted for review and approval by the administrator or VSMP authority prior to site implementation, modification or update. Pollution prevention plans as developed for implementation under the single-family building permit application process may be accepted and processed by the VSMP authority through the agreement-in-lieu of plan process as established under the county VESCP and VSMP authority programs, including an agreement in lieu of a stormwater management plan for construction of a single-family residence as such contract may be executed by the VSMP authority in lieu of a stormwater management plan.*

Sec. 8-27. Review of stormwater management plan.

- (a) *The administrator or VSMP authority or any duly authorized agent of the administrator thereof, shall review stormwater management plans and shall approve or disapprove a SWM plan according to the following:*
 - (1) *The administrator shall determine the completeness of a plan in accordance with section 8-25 of this article, and shall notify the applicant, in writing, of such determination, within fifteen calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete.*
 - (2) *The administrator shall have an additional 60 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in subsection (1), then plan shall be deemed complete and the administrator shall have 60 calendar days from the date of submission to review the plan.*
 - (3) *The administrator shall review any plan that has been previously disapproved, within 45 calendar days of the date of resubmission.*

(4) *During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this article.*

(5) *If a plan meeting all requirements of this article is submitted and no action is taken within the time provided above in subsection (2) for review, the plan shall be deemed approved.*

(b) *Approved SWM plans may be modified as follows:*

(1) *Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the administrator. The administrator shall have 60 calendar days to respond in writing either approving or disapproving such request.*

(2) *The administrator may require that an approved stormwater management plan be amended, within a time prescribed by the administrator, to address any deficiencies noted during inspection.*

(c) *The administrator shall require the submission of a construction record drawing and construction certification for permanent stormwater management facilities. Construction record drawing and construction certification submittal requirements shall follow standards developed by the administrator or the VSMP authority and in accordance with 9VAC25-870-108 and 9VAC25-870-112. The administrator may elect not to require construction record drawings and construction certifications for stormwater management facilities for which recorded maintenance agreements are not required pursuant to section 8-29(b).*

(d) *A construction record drawing and construction certification for permanent stormwater conveyance system facilities (inlets, pipes, channels, etc.) shall be submitted to the administrator. The construction record drawing and construction certification shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater conveyance system facilities have been constructed in accordance with the approved plan. Construction record drawing and construction certification submittal requirements shall follow standards developed by the administrator or the VSMP authority. The administrator may elect to not require construction record drawings and construction certifications for stormwater conveyance system facilities which maintenance agreements are not required pursuant to section 8-29(b).*

(e) *An internal CCTV post installation inspection, performed by the operator, is required for all stormwater conveyance system pipes, access or inlet structures and culverts of 15-inch nominal diameter size or greater as part of the construction record and construction certification process. CCTV inspections shall follow standards and specifications developed by the administrator or the VSMP authority.*

Sec. 8-28. Technical criteria for regulated land disturbing activities.

(a) *To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land disturbing activities, the county hereby adopts the technical*

criteria for regulated land-disturbing activities set forth in Part IIB, Technical Criteria for Regulated Land-Disturbing Activities of the regulations, 9VAC25-870-62 through 92, as amended, expressly to include 9VAC25-870-63 [water quality design criteria requirements]; 9VAC25-870-65 [water quality compliance]; 9VAC25-870-66 [water quantity]; 9VAC25-870-69 [off-site compliance options]; 9VAC25-870-72 [design storms and hydrologic methods]; 9VAC25-870-74 [stormwater harvesting]; 9VAC25-870-76 [linear development projects]; and 9VAC25-870-85 [stormwater management impoundment structures or facilities]; which shall apply to all land disturbing activities regulated pursuant to this article, except for grandfathering provisions as expressly set forth in subsection (c) through (f) of this section.

(b) Pre-development and post-development site, runoff and hydrology characteristics for water quantity control requirements under the provisions of 9VAC25-870-66 must be verified by site inspections, topographic surveys, available soil mapping or studies and calculations consistent with good engineering practices. Guidance provided in the Virginia stormwater BMP clearinghouse and the Virginia stormwater management handbook shall be considered appropriate practices.

(c) Any land-disturbing activity shall be considered grandfathered by the VSMP authority and shall be subject to Part IIC technical criteria of the VSMP regulations, sections 9VAC25-870-93 through 99, Technical Criteria for Regulated Land-Disturbing Activities: Grandfathered Projects and Projects Subject to the Provisions of 9VAC25-870-47B, provided that:

- (1) A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the administrator to be equivalent thereto, such as a county approved master stormwater management plan, which (i) was approved by the county prior to July 1, 2012; (ii) provided a layout as defined in 9VAC25-870-10; (iii) will comply with the Part IIC technical criteria of the VSMP regulation; and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff;*
- (2) A state permit has not been issued prior to July 1, 2014; and*
- (3) Land disturbance did not commence prior to July 1, 2014.*

(d) County, state, and federal projects shall be considered grandfathered by the VSMP authority and shall be subject to the Part IIC technical criteria of the VSMP regulation provided that:

- (1) There has been an obligation of county, state, or federal funding, in whole or in part, prior to July 1, 2012; or the Department has approved a stormwater management plan prior to July 1, 2012;*
- (2) A state permit has not been issued prior to July 1, 2014; and*
- (3) Land disturbance did not commence prior to July 1, 2014.*

(e) Land-disturbing activities grandfathered under subsections c – d in this section shall remain subject to the Part IIC technical criteria of the VSMP regulation for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the state board.

(f) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the Part IIC technical criteria of the VSMP regulations.

(g) The administrator may grant exceptions to the technical criteria adopted in subsections Part IIB or Part IIC of the regulations, provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions are imposed so that the intent of the Virginia Stormwater Management Act, the VSMP regulations, and this article are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone shall not be a sufficient reason to grant an exception from the requirements of this article.

(1) Exceptions to the requirement that the land-disturbing activity obtain a required VSMP authority permit shall not be given by the administrator, nor shall the administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website <http://vwrrc.vt.edu/swc/>, or any other control measure duly approved by the Department.

(2) Exceptions to requirements for phosphorus reductions shall not be allowed unless off-site options otherwise permitted pursuant to 9VAC25-870-69 have been considered and found not available.

(h) Nothing in this section shall preclude an operator from constructing to a more stringent standard at their discretion.

Sec. 8-29. Long-term maintenance of permanent stormwater facilities.

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

(1) A general template for the instrument document shall be made available by the VSMP authority;

(2) Be submitted to the administrator for review and approval prior to the approval of the stormwater management plan;

(3) Be approved to as by form by the county attorney's office;

(4) Be stated to run with the land;

(5) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;

(6) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the administrator; and

(7) Be enforceable by all appropriate governmental parties.

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

(c) If a recorded instrument is not required pursuant to section 8-29(b), the administrator shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, declarations of covenants and restrictions, plat notes, or other similar methods targeted at promoting the long term maintenance of such facilities. The alternative strategy shall follow standards and procedures as developed by the administrator or the VSMP authority. Such facilities shall not be subject to the requirement for an inspection to be conducted by the administrator.

Sec. 8-30. Monitoring and inspections.

(a) The administrator, or any duly authorized agent of the administrator shall inspect the land disturbing activity during construction for:

(1) Compliance with the approved erosion and sediment control plan;

(2) Compliance with the approved stormwater management plan;

(3) Development, updating, and implementation of a pollution prevention plan; and

(4) Development and implementation of any additional control measures necessary to address a TMDL.

(b) The administrator or the VSMP authority, or any duly authorized agent thereof, may at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this article. In accordance with a performance surety such as bond, letter of credit, bank escrow account, or cash surety or escrow in the form of a cashier's or certified check made payable to the Treasurer, James City County, any combination thereof, or such other legal arrangement satisfactory to the county attorney, the administrator or the VSMP authority, or any duly authorized agent thereof, may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.

(c) Pursuant to §62.1-44.15:40 of the Code of Virginia, the administrator or VSMP authority may require every VSMP authority permit applicant or permittee, to furnish when requested such application

materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of their discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this article. Post construction inspections of stormwater maintenance facilities required by the provisions of this article shall be conducted by the administrator or VSMP authority or any duly authorized agent thereof, pursuant to the locality's adopted and state board approved inspection program and shall occur, at a minimum, at least once every five years except as may otherwise be provided for in section 8-29.

Sec. 8-31. Hearings.

(a) *Any permit applicant or permittee or person subject to an administrative decision, order or requirements of this article, aggrieved by any action of the county taken without a formal hearing, or by inaction of the county, may demand in writing a formal hearing by the county causing such grievance, provided a petition requesting such hearing is filed with the administrator within 30 days after notice of such action is given by the administrator.*

(b) *The board of supervisors shall hold hearings under this article shall do so in a manner consistent with § 62.1-44.26 and § 62.1-44.15:44 of the Code of Virginia. Local hearings held under this section shall be conducted by the board of supervisors at a regular or special meeting of the board of supervisors, or at any such time as may be designated.*

(c) *The board of supervisors shall hear the appeal as soon as practical after receipt of the written request. The appellant, the board of supervisors, and any person or agency expressing an interest in the matter shall be notified by the board, or its agent, not less than ten days prior to the date of the hearing. Published notice of the board's public meetings shall state that appeals from decision under the Virginia stormwater management ordinance may be heard.*

(d) *A verbatim record of the proceedings of such hearings shall be taken and filed with the local governing body. Depositions may be taken and read as in actions at law.*

(e) *The local governing body or its designated member, as the case may be, shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the local governing body, or its designated member, which action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed may receive the same fees and reimbursement for mileage as in civil actions.*

Sec. 8-32. Appeals.

Appeals shall be conducted in accordance with local appeal procedures. Appeals shall include an opportunity for judicial review in the circuit court of James City County. Unless otherwise provided by the law, the circuit court shall conduct such review in accordance with the standards established in § 2.2-4027 of the Code of Virginia, and the decisions of the circuit court shall be subject to review by the court of appeals. A permit applicant or permittee or person subject to a local decision, order or requirement of an appeal, may appeal to the circuit court of James City County no later than 30 days after the final decision. A "final decision" is the decision that resolves the merits of the action pending or effects a dismissal of the case.

Sec. 8-33. Enforcement.

(a) *If the administrator determines that there is a failure to comply with the VSMP authority permit conditions or determines there is an unauthorized discharge, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by any of the following: verbal warnings, inspection reports, notices to comply, notices of corrective action, and consent special orders. Written notices shall be served by registered or certified mail to the address specified in the permit application, or by delivery at the site of the development activities to the agent or employee supervising such activities.*

- (1) *The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with subsection b or the permit may be revoked by the administrator.*
- (2) *If a permittee fails to comply with a notice issued in accordance with this section within the time specified, the administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.*

Such orders shall be issued in accordance with established local procedures developed by the administrator or the VSMP authority. Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the administrator. However, if the administrator finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with section 8-33(c).

(b) *In addition to any other remedy provided by this article, if the administrator or his or her designee determines that there is a failure to comply with the provisions of this article, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with established local procedures or policies.*

(c) *Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification or guidance document, or any permit condition issued by the administrator may be compelled in a proceeding instituted in the circuit court of James City County by the locality to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy.*

(d) Any person who violates any provision of this article or who fails, neglects, or refuses to comply with any order of the administrator, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.

(1) Violations for which a penalty may be imposed under this subsection shall include, but not be limited to, the following:

(a) no permit registration, unless such statement is not required;

(b) no stormwater pollution prevention plan;

(c) An incomplete stormwater pollution prevention plan;

(d) A stormwater pollution prevention plan not available for review;

(e) no approved erosion and sediment control plan;

(f) failure to install stormwater management BMPs or erosion and sediment controls;

(g) stormwater management BMPs or erosion and sediment controls improperly installed or maintained;

(h) operational deficiencies;

(i) failure to conduct required inspections;

(j) incomplete, improper, or missed inspections; and

(k) discharges not in compliance with the requirements of section 9VAC25-880-70 of the General VPDES Permit for the Discharge of Stormwater from Construction Activities (VAR10).

(2) The administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.

(3) In imposing a civil penalty pursuant to this subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.

(4) Any civil penalties assessed by a court as a result of a summons issued by the county shall be paid into the treasury of the county to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the county and abating environmental pollution therein in such manner as the court may, by order, direct.

(e) Notwithstanding any other civil or equitable remedy provided by this section or by the Virginia Stormwater Management Act or Virginia Stormwater Management Regulations, any person who willfully or negligently violates any provision of this article, any order of the administrator, any condition of a

permit, or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than \$2,500 nor more than \$32,500, or both.

Sec. 8-34. Fees.

(a) Fees to cover the costs associated with erosion and sediment control plan review and inspection shall be imposed in accordance with requirements of the VESCP authority and section 8-5 of the county code.

(b) Fees to cover the costs associated with stormwater facility inspections shall be imposed in accordance with requirements of the VSMP authority and section 19-15 and section 24-7, as applicable, of the county code.

(c) Fees to cover costs associated with stormwater management and pollution prevention plan review including implementation of a VSMP related to land disturbing activities and issuance of permit coverage and VSMP authority permits shall be imposed by the VSMP authority in accordance with the fee schedule indicated in Table 1. When a site or sites has been purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees in accordance with the disturbed acreage of their site or sites according to Table 1. The VSMP authority portion of the statewide permit fee for coverage under the general permit for discharges of stormwater for construction activities for small construction activity involving a single-family detached residential structure with a site or area, within or outside a common plan of development or sale, that is equal to or greater than one acre but less than five acres shall be no greater than the VSMP authority portion of the fee for coverage of sites or areas with a land-disturbance acreage of less than one acre within a common plan of development or sale. Neither a registration statement nor payment of the Department's portion of the statewide permit fee established pursuant to subdivision A.5 of § 62.1-44.15:28 of the Code of Virginia shall be required for coverage under the general permit for discharges of stormwater from construction activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale.

Table 1: Fee Schedule for Registration and Issuance of General VPDES Permit for Discharges of Stormwater from Construction Activities 9VAC25-870-820.

<i>Fee Type</i>	<i>Fee Amount</i>
<i>Chesapeake Bay Preservation Act land disturbing activity (not subject to general permit coverage; sites within designated areas of Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than one acre)</i>	\$290
<i>General / Stormwater Management - small construction activity/land clearing (areas within common plans of development or sale with land disturbance acreage less than one acre)</i>	\$290
<i>General / Stormwater Management - small construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than one acre and less than five acres)</i>	\$2,700 **
<i>General / Stormwater Management – large construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than five acres and less than ten acres)</i>	\$3,400
<i>General / Stormwater Management – large construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than ten acres and less than 50 acres)</i>	\$4,500
<i>General / Stormwater Management – large construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)</i>	\$6,100
<i>General / Stormwater Management – large construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)</i>	\$9,600

***Pursuant to amendments to the Virginia Stormwater Management Act, as amended, § 62.1-44.15:28 of the Code of Virginia, this fee tier will be \$290 for small construction activity involving a single-family detached residential structure with a site or area, within or outside a common plan of development or sale, that is equal to or greater than one acre but less than five acres. In addition, neither a registration statement nor payment of the Department's portion of the statewide permit fee shall be required for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale within this tier, and all other tiers consistent with § 62.1-44.15:28(A)(8).*

(d) *Fees for the modification or transfer of registration statements from the general permit issued by the state board shall be imposed in accordance with the fee schedule indicated in Table 2. If the general permit modifications result in changes to stormwater management plans that require additional review by the county, such reviews shall be subject to the fees set out in the fee schedule indicated in Table 2. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the general permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee that would have applied for the total disturbed acreage in the fee schedule indicated in Table 2. All fees specified in this subsection are payable to the locality.*

Table 2: Fee Schedule for the Modification or Transfer of Registration Statements for the General VPDES Permit for Discharges of Stormwater from Construction Activities 9VAC25-870-825.

<i>Type of Permit</i>	<i>Fee Amount</i>
<i>General / Stormwater Management – small construction activity/land clearing (areas within common plans of development or sale with land disturbance acreage less than one acre)</i>	\$20
<i>General / Stormwater Management – small construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than one acre and less than five acres)</i>	\$200
<i>General / Stormwater Management – large construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than five acres and less than ten acres)</i>	\$250
<i>General / Stormwater Management – large construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than ten acres and less than 50 acres)</i>	\$300
<i>General / Stormwater Management – large construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)</i>	\$450
<i>General / Stormwater Management – large construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)</i>	\$700

(e) The following annual permit maintenance shall be imposed in accordance with the fee schedule indicated in Table 3, including fees imposed on expired permits that have been administratively continued. With respect to the general permit, these fees shall apply until the permit coverage is terminated by the administrator or the VSMP authority. All fees specified in this subsection are payable to the county, except for those individual permits or for projects completely administered by the Department such as state or federal projects, which shall be paid to the Department. General permit coverage maintenance fees shall be paid annually to the county on or before the anniversary date of general permit coverage. No permit will be reissued or automatically continued without payment of the required fee. General permit coverage maintenance fees shall be applied until a notice of termination is effective.

Table 3: Fee Schedule for the Maintenance of the General VPDES Permit for Discharges of Stormwater from Construction Activities 9VAC25-870-830.

<i>Type of Permit</i>	<i>Fee Amount</i>
<i>Chesapeake Bay Preservation Act Land Disturbing Activity (not subject to the general permit coverage; sites within designated areas of Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than one acre)</i>	\$50
<i>General / Stormwater Management – small construction activity/land clearing (areas within common plans of development or sale with land disturbance acreage less than one acre)</i>	\$50
<i>General / Stormwater Management – small construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than one acre and less than five acres)</i>	\$400
<i>General / Stormwater Management – large construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than five acres and less than 10 acres)</i>	\$500
<i>General / Stormwater Management – large construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)</i>	\$650
<i>General / Stormwater Management – large construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)</i>	\$900
<i>General / Stormwater Management – large construction activity/land clearing (sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)</i>	\$1,400

(f) The fees set forth in sections (c) – (e), above shall apply to:

- (1) All persons seeking coverage under the general permit;
- (2) All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit;
- (3) Persons whose coverage under the general permit has been revoked shall apply to the Department for an individual permit for discharges of stormwater from construction activities;
- (4) Permit and permit coverage maintenance fees outlined under section 8-34(e) may apply to each general permit holder.

(g) No permit application fees will be assessed to:

- (1) *Permittees who request minor modifications to permits as defined in section 8-21 of this article. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the administrator shall not be exempt pursuant to this section.*
- (2) *Permittees whose permits are modified or amended at the initiative of the Department, excluding errors in the registration statement identified by the administrator or errors related to the acreage of the site.*
- (3) *The county, any entity created solely by the county and those regional entities to which the county is a party provided that: (1) the other parties to the regional entity similarly waive fees; (2) the regional entity has locations in more than one locality; and (3) those portions of the fees required to be paid to the Department are completed.*

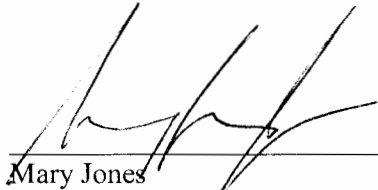
(h) *All incomplete payments will be deemed as non-payments, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in §58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10- percent late payment fee shall be charged to any delinquent (over 90 days past due) account. The county shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.*

(i) *Nothing in this section shall prohibit the Department and VSMP authority from entering into an agreement whereby the total fee to be paid by the applicant for coverage under the general permit for discharge of stormwater from construction activities (VAR10) 9VAC25-880 is payable to the VSMP authority and the VSMP authority transmits the Department portion set forth in 9VAC25-870-820 of the Virginia Administrative Code to the Department on a schedule set forth by the Department.*

Sec. 8-35. Performance surety.

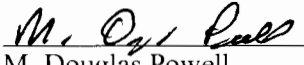
Prior to issuance of any permit, the applicant shall be required to submit a reasonable performance surety such as bond, letter of credit, bank escrow account, or cash surety or escrow in the form of a cashier's or certified check made payable to the Treasurer, James City County, or any combination thereof, or such other legal arrangement acceptable to the county attorney to ensure that measures could be taken by the county at the applicant's expense should he/she fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him/her by the permit conditions as a result of his/her land disturbing activity. If the county takes such action upon such failure by the applicant, the locality may collect from the applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any. Within 60 days of the completion of the requirements of the permit conditions, including permit termination and proper submittal and approval of construction record drawings and construction certifications for permanent BMP facilities and permanent stormwater conveyance system facilities by the administrator or the VSMP authority, such surety including bond, letter of credit, bank escrow account, or cash surety, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be released or refunded to the applicant or terminated, as applicable.

This ordinance shall become effective on July 1, 2014.



Mary Jones
Chairman, Board of Supervisors

ATTEST:



M. Douglas Powell
Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
KENNEDY	<u>X</u>	___	___
JONES	<u>X</u>	___	___
MCGLENNON	<u>X</u>	___	___
ONIZUK	<u>X</u>	___	___
HIPPLE	<u>X</u>	___	___

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of May,
2014.

VSMP-Ord-Final