

**ARLINGTON COUNTY CODE**

**Chapter 60**

**STORMWATER MANAGEMENT\***

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\* **Editors Note:** Ordinance No. 14-05 adopted May 10, 2014 and effective July 1, 2014, repealed Chapter 60: Stormwater Detention, and amended it in its entirety, as Chapter 60: Stormwater Management, to read as herein set out in §§ 60-1-60-20.

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**§ 60-1. Title.**

This chapter shall be known as the “Stormwater Management Ordinance of Arlington County, Virginia.” (Ord. No. 14-05, 5-10-14, effective 7-1-14)

**§ 60-2. Authority.**

This chapter is authorized pursuant to the authority and mandates of 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, and the Virginia Stormwater Program (VSMP) Permit Regulations (9VAC25-870 et seq.), and § 15.2-2122 of Chapter 21 of Title 15.2 of the Code of Virginia (9-11-76) (Ord. No. 14-05, 5-10-14, effective 7-1-14)

**§ 60-3. Purpose.**

The purpose of this chapter is to ensure the general health, safety, and welfare of the citizens of Arlington County and to 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, and other natural resources, and to establish procedures whereby stormwater requirements related

to water quality and quantity shall be administered and enforced. The Administrator shall be responsible for the administration of this chapter and shall set forth in the Stormwater Manual and associated documents the guidelines and standards for compliance with this chapter. The chapter establishes a local stormwater management program that shall be administered in conjunction with the County's Municipal Separate Storm Sewer System (MS4) Program, erosion and sediment control program, and Chesapeake Bay Preservation Act requirements. (Ord. No. 14-05, 5-10-14, effective 7-1-14)

#### **§ 60-4. Definitions.**

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

*"Act"* means 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"* means the Director of the Department of Environmental Services or designee which acts as the VSMP Authority on behalf of the Arlington County.

*"Applicant"* means any person submitting an application for a permit or requesting issuance of a permit under this chapter.

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

*"Chapter 57 of the Arlington County Code"* means the Erosion and Sediment Control Ordinance.

*"Chapter 61 of the Arlington County Code"* means the Chesapeake Bay Preservation Ordinance.

*"Chesapeake Bay Preservation Act land-disturbing activity"* means a land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal to or greater than 2,500 square feet and less than one acre in 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.

*"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.

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

*"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.

*"Department"* means the Virginia Department of Environmental Quality ("DEQ")

*"Development"* means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures or the clearing of land for non-agricultural or non-silvicultural purposes.

*"Director"* means the director of the Virginia Department of Environmental Quality or his designee.

*"General permit"* means the state permit titled GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES found in Part XIV (9VAC25-880-1 et seq.) of the

Regulations authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.

*"Impervious cover"* or *"impervious surface"* means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Depending on the design, impervious surfaces may include, but are not limited to: roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel or dirt surface.

*"Land disturbance"* or *"land-disturbing activity"* means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation except that the term shall not include those exemptions specified in Section 60-5 of this chapter.

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

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

*"Minor modification"* means an amendment to an existing General permit before its expiration 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 General permit modification or amendment does not substantially alter General 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" or "MS4"* means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

- (1) 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;
- (2) Designed or used for collecting or conveying stormwater;
- (3) That is not a combined sewer; and
- (4) That is not part of a publicly owned treatment works.

*"Municipal Separate Storm Sewer System Management Program" or "MS4 Program"* means a management program covering the duration of a permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations and the Act and attendant regulations, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

*"New development"* means the process of developing land that has not been previously developed by the construction of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures.

*"Operator"* means the owner or operator of any facility or activity subject to regulation under this chapter.

*"Permit" or "VSMP Authority Permit"* means an approval to conduct a land-disturbing activity issued by the Administrator for the initiation of a land-disturbing activity, in accordance with this chapter, and which may only be issued after evidence of General permit coverage, if applicable, has been provided by the Department.

*"Permittee"* means the person to whom the VSMP Authority Permit is issued.

*"Person"* means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including federal, state, or local entity as applicable, any interstate body or any other legal entity.

*"Redevelopment"* means the process of developing land that is or has been previously developed by the construction of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures.

*"Regulations"* means the Virginia Stormwater Management Program (VSMP) Permit Regulations, 9 VAC 25-870-10 et seq., as amended.

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

*"State"* means the Commonwealth of Virginia.

*"State Board"* means the State Water Control Board.

*"State permit"* means an approval to conduct a land-disturbing activity issued by the State Board in the form of a state stormwater individual permit or coverage issued under a state General permit or an approval issued by the State Board 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 Virginia Stormwater Management Act and the Regulations.

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

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

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

*"Stormwater management plan"* means a document(s) containing material describing methods for complying with the requirements of Section 60-8 of this chapter.

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

*"Stormwater manual"* means the Arlington County Department of Environmental Services Manual, which contains the guidelines and standards for compliance with this chapter.

*"Stormwater Pollution Prevention Plan" or "SWPPP"* means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site, and otherwise meets the requirements of this chapter. In addition the document 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, approved erosion and sediment control plan, an approved stormwater management plan, and an approved pollution prevention plan.

*"Subdivision"* means the same as defined in Chapter 23 of the Arlington County Code.

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

*"Virginia Stormwater Management Act"* or *"Act"* means 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 BMP Clearinghouse website"* means 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.

*"Virginia Stormwater Management Program"* or *"VSMP"* means a program approved by the State Board after September 13, 2011, that has been established by a locality 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 review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations.

*"Virginia Stormwater Management Program authority"* or *"VSMP authority"* means an authority approved by the State Board after September 13, 2011, to operate a Virginia Stormwater Management Program. (Ord. No. 14-05, 5-10-14, effective 7-1-14)

#### **§ 60-5. Stormwater Permit Requirement; Exemptions.**

A. Except as provided herein, no person may engage in any land-disturbing activity, including Chesapeake Bay Preservation Act land disturbing activities, until a VSMP authority permit has been issued by the Administrator in accordance with the provisions of this chapter.

B. Notwithstanding any other provisions of this chapter, the following activities are exempt, unless otherwise required by federal law:

(1) 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;

(2) 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;

(3) Land disturbing activities that disturb less than 2,500 square feet of land area, except for land disturbing activities that are part of a larger common plan of development or sale that is one acre or greater;

(4) Discharges to a sanitary sewer or a combined sewer system;

(5) Activities under a State or federal reclamation program to return an abandoned property to an agricultural or open land use;

(6) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and

(7) 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 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.  
(Ord. No. 14-05, 5-10-14, effective 7-1-14)

**§ 60-6. Stormwater Management Program Established; Submission and Approval of Plans. VSMP Authority Permit.**

A. Pursuant to § 62.1-44.15:27 of the Code of Virginia, Arlington County hereby establishes a Virginia 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 60-3 of this chapter. The Arlington County Board hereby designates the Director of the Department of Environmental Services or designee as the Administrator of the Virginia stormwater management program.

B. 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, except that Chesapeake Bay Preservation Act land-disturbing activities do not require a General permit but shall be subject the technical criteria set forth in Section 60-11;

(2) An erosion and sediment control plan approved in accordance with the Chapter 57 of the Arlington County Code;

(3) A pollution prevention plan that meets the requirements of 60-9 of this chapter;

(4) A stormwater management plan that meets the requirements of 60-8 of this chapter;

(5) Evidence of General permit coverage is obtained, except for Chesapeake Bay Preservation Act land-disturbing activities;

(6) The requirements of Chapter 61 of the Arlington County Code must be satisfied;

(7) The fees required to be paid pursuant to the Arlington County Code and State Fee Schedule (as set forth in 9VAC25-870-820 through 830), are received, and a reasonable performance bond, if required, pursuant to Section 60-18 of this chapter has been submitted; and

(8) Unless and until the permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit.

C. No land disturbance activity, building or other local permit shall be issued for a property unless a VSMP authority permit has been issued by the Administrator, unless the phase of construction does not yet require a stormwater management plan.

(Ord. No. 14-05, 5-10-14, effective 7-1-14)

**§ 60-7. Stormwater Pollution Prevention Plan; Contents of Plan.**

A. The Stormwater Pollution Prevention Plan (SWPPP) shall include, but not be limited to, an approved sediment and control plan, an approved stormwater management plan, an approved pollution prevention plan, and a description of any additional control measure necessary to address a TMDL pursuant to 9VAC25-870-54E and must also comply with the requirements and general information set forth in 9VAC25-870-54 (Stormwater pollution prevention plan requirements) of the Regulations and Section II of the General permit.

B. The SWPPP shall be amended by the operator 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 SWPPP.

C. The SWPPP must be maintained by the operator at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site. Operators shall make the SWPPP available for public review in accordance with Section II of the General permit, either electronically or in hard copy.

(Ord. No. 14-05, 5-10-14, effective 7-1-14)

### **§ 60-8. Stormwater Management Plan; Contents of Plan.**

A. The Stormwater Management Plan, required in Section 60-6 of this chapter, must apply the stormwater management technical criteria set forth in 60-11 of this chapter to the entire common plan of development or sale where applicable. Individual lots or parcels 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. A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff, and include the following information, at a minimum:

(1) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features, if present, and the predevelopment and post development drainage areas;

(2) Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected;

(3) A narrative that includes a description of current site conditions and final site conditions;

(4) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;

(5) Information on the proposed stormwater management facilities, including but not limited to:

a. The type of facilities;

b. Location, including geographic coordinates;

c. Total, impervious, turf and forested/open space acres treated; and

d. The surface waters or karst features, if present, into which the facility will discharge.

(6) Hydrologic and hydraulic computations, including runoff characteristics;

(7) Documentation and calculations verifying compliance with the water quality and quantity requirements of 60-11 of this Chapter.

(8) A map or maps of the site that depicts the topography of the site and includes:

a. All contributing drainage areas;

b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;

c. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;

- d. Current land use including existing structures, roads, and locations of known utilities and easements;
- e. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
- f. The limits of clearing and grading, and the proposed drainage patterns on the site;
- g. Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
- h. Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.

(9) Additional information as set forth in the Stormwater Manual.

B. If an Operator intends to meet the water quality and/or quantity requirements set forth in Section 60-11 of this chapter 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 and must be located within Arlington County's MS4 service area to ensure compliance with the Chesapeake Bay TMDL requirements of Arlington County's MS4 Permit.

C. Elements of the stormwater management plans 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 for permanent stormwater management facilities shall be submitted to the Administrator. The construction record drawing 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.  
(Ord. No. 14-05, 5-10-14, effective 7-1-14)

**§ 60-9. Pollution Prevention Plan; Contents of Plan.**

A. A Pollution Prevention Plan, required by 9VAC25-870-56, shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to prevent the discharge of pollutants to the Arlington County MS4 according to the requirements of the Arlington County's MS4 Permit. Only the following non - stormwater discharges are authorized by Arlington County's MS4 permit, unless the State Water Control Board, the Virginia Soil and Water Conservation Board (Board), or Arlington County determines the discharge to be a significant source of pollutants to surface waters:

- (1) Water line flushing; landscape irrigation; diverted stream flows; rising ground waters;
- (2) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)); uncontaminated pumped ground water;
- (3) Discharges from potable water sources; foundation drains; air conditioning condensation; irrigation water; springs; water from crawl space pumps; footing drains;
- (4) Lawn watering; individual residential car washing;
- (5) Flows from riparian habitats and wetlands;
- (6) Dechlorinated swimming pool discharges;
- (7) Discharges or flows from firefighting;



(8) Other activities generating discharges identified by the Department as not requiring Virginia Pollutant Discharge Elimination System (“VDPES”) authorization.

B. At a minimum measures must be designed, installed, implemented, and maintained to:

(1) Prevent the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

(2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and

(3) Prevent the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

C. 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.

(5) Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls

(6) Any other discharges prohibited by Arlington County’s MS4 permit.  
(Ord. No. 14-05, 5-10-14, effective 7-1-14)

#### **§ 60-10. Review of Stormwater Management Plan.**

A. The Administrator shall review stormwater management plans and shall approve or disapprove a stormwater management plan according to the following:

(1) The Administrator shall determine the completeness of a plan in accordance with Section 60-8 of this chapter, and shall notify the applicant, in writing by letter through the regular postal service or electronic mail, of such determination, within 15 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 subdivision (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 chapter.

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

B. Approved stormwater 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 for permanent stormwater management facilities.

(Ord. No. 14-05, 5-10-14, effective 7-1-14)

#### **§ 60-11. 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, Arlington County hereby adopts the technical criteria for regulated land-disturbing activities, including Chesapeake Bay Preservation Act land disturbing activities, set forth in Part II B of the Regulations, 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 [offsite compliance options]; 9VAC25-870-72 [design storms and hydrologic methods]; 9VAC25-870-74 [stormwater harvesting]; 9VAC25-870-76 [linear development project]; 9VAC25-870-85 [stormwater management impoundment structures or facilities]; and 9VAC25-870-92 [comprehensive stormwater management plans] which shall apply to all land-disturbing activities regulated pursuant to this chapter, except as expressly set forth in Subsections B through J of this Section. The specific compliance requirements to satisfy these technical criteria shall be set forth in the Stormwater Manual.

B. 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, shall be considered a regulated land disturbing activity as allowed by § 62.1-44.15:34 of the Code of Virginia for localities subject to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) but shall not require coverage under the General Permit. The specific compliance requirements for these single-family residences shall be set forth in the Stormwater Manual.

C. Notwithstanding the requirements of subsection (A), within the Four Mile Run watershed, post-development peak runoff shall not increase 100-year peak flow in the Four Mile Run flood control channel as required by the Four Mile Run Flood Control Agreement with the United States Army Corps of Engineers. The specific compliance requirements for Four Mile Run flood protection shall be set forth in the Stormwater Manual.

D. The Administrator may grant exceptions to the technical requirements of Part II B 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 Act, the Regulations, and this chapter are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this chapter.

E. Exceptions to the requirement that the land-disturbing activity obtain 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, or any other control measure duly approved by the Director. (Ord. No. 14-05, 5-10-14, effective 7-1-14)

## **§ 60-12. Grandfathering**

A. Any land disturbing activity shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C technical criteria of the VSMP Regulation provided:

(1) A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012, (ii) provided a layout as defined in 9VAC25-870-10, (iii) will comply with the Part II C 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.

B. Locality, state and federal projects shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C technical criteria of the VSMP Regulation provided:

(1) There has been an obligation of locality, state or federal funding, in whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 1, 2012;

(2) A state permit has not been issued prior to July 1, 2014; and

(3) Land disturbance did not commence prior to July 1, 2014.

C. Land disturbing activities grandfathered under subsections A and B of this section shall remain subject to the Part II C 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.

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

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

F. The Administrator may grant exceptions to the technical requirements of Part II C 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 Act, the Regulations, and this chapter are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this chapter.

G. Exceptions to the requirement that the land-disturbing activity obtain 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, or any other control measure duly approved by the Director, except where allowed under Part IIC.

(Ord. No. 14-05, 5-10-14, effective 7-1-14)

**§ 60-13. Long Term Maintenance of Permanent Stormwater Facilities.**

A. Provision for long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff are required. Such requirements shall be set forth in an instrument as follows:

- (1) Be submitted to the Administrator for review and approval and recordation prior to the approval of the stormwater management plan;
  - (2) Be stated to run with the land;
  - (3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
  - (4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator;
  - (5) Be enforceable by all appropriate governmental parties;
  - (6) Ensure that measures could be taken by the County to maintain the stormwater management facilities or perform inspections at the owner's expense should the owner fail to maintain the stormwater management facilities in good working order in accordance with the maintenance specifications in the agreement or perform the periodic inspections required by the agreement;
  - (7) Provide that in the event the County, pursuant to the agreement, performs work of any nature or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the owner will reimburse the County for all costs incurred by the County; and
  - (8) Provide for liens to be placed on the property should the owner fail to reimburse the County for costs incurred by the County.
- (Ord. No. 14-05, 5-10-14, effective 7-1-14)

**§ 60-14. Monitoring and Inspections.**

- A. 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 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 chapter.
- C. In accordance with any performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument, the Administrator 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 Sca permittee, after proper notice, has failed to take acceptable action within the time specified.

D. Pursuant to § 62.1-44.15:40 of the Code of Virginia, the Administrator may require every VSMP authority permit applicant or permittee, or any such person subject to VSMP authority permit requirements under this chapter, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this chapter.

E. The Administrator shall establish an inspection program that ensures that stormwater management facilities are being adequately maintained as designed after completion of land-disturbing activities. The inspection programs shall:

- (1) Be approved by the State Board;
- (2) Ensure that each stormwater management facility is inspected by the Administrator, or his designee, not to include the owner, except as provided in subsection F this section, at least once every five years; and
- (1) Be documented by records.

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

#### **§ 60-15. Hearings.**

A. A Hearing Officer(s) shall be appointed by the County Manager for the purpose of hearing appeals of actions or the failure to take action by the Administrator under this chapter.

B. Any permit applicant or permittee, or person subject to this chapter, aggrieved by any action or any inaction of the Administrator taken without a formal hearing, may demand in writing a hearing by the Hearing Officer, provided that a request for such hearing is filed with the Administrator within 30 days after notice of such action is given by the Administrator.

C. After a request for a hearing is filed with the Administrator, the Hearing Officer shall issue a notice of hearing to the aggrieved party and the Administrator providing the date, time, and location of the hearing. The notice of hearing to the aggrieved party shall be issued by certified mail.

D. The Hearing Officer shall conduct the hearing and render a written decision within thirty (30) days after conclusion of the hearing.  
(Ord. No. 14-05, 5-10-14, effective 7-1-14)

#### **§ 60-16. Appeals.**

The permit applicant, permittee, or person to whom a final decision is issued by the Hearing Officer may seek judicial review of the final decision or order issued by the Hearing Officer by appeal to the Circuit Court of Arlington County on the record of the proceedings before the Hearing Officer. To commence an appeal, a party shall file a petition in the Circuit Court of Arlington County within 30 days of the date of the final order issued by the Hearing Officer. Failure to do so shall constitute a waiver of the right to appeal.  
(Ord. No. 14-05, 5-10-14, effective 7-1-14)

## **§ 60-17. Enforcement, Violations and Penalties.**

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 associated with a land disturbing activity, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by any of the following: verbal warnings and inspection reports, notices to comply, notice of violation, and consent special orders.

B. Notices to comply, notice of violation, and consent special orders 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(2) or the permit may be revoked by the Administrator.

(2) If a permittee or person responsible for carrying out the permit conditions fails to comply with a notice issued in accordance with this Section within the time specified, the Administrator may issue a stop work 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 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. Failure to comply with a stop work order shall constitute a separate violation of this chapter.

(3) 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 this section.

C. It is unlawful and constitutes a separate violation of this Chapter for any person to fail to comply with any stop work order, emergency order, or a special order issued in accordance with this chapter. Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the Administrator may be compelled in a proceeding instituted in the Circuit Court of Arlington County to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

D. Any person who violates any provision of this chapter 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 state permit registration;
- b. No SWPPP;
- c. Incomplete SWPPP;
- d. SWPPP not available for review;
- e. No approved erosion and sediment control plan;
- f. Failure to install stormwater BMPs or erosion and sediment controls;
- g. Stormwater 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 permit.

(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 Arlington County to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality 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 law, any person who willfully or negligently violates any provision of this chapter, 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.  
(Ord. No. 14-05, 5-10-14, effective 7-1-14)

#### **§ 60-18. Performance Bond.**

Prior to issuance of any permit, the Applicant may be required to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the County Attorney to ensure that measures could be taken by Arlington County at the Applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the permit conditions as a result of his land disturbing activity. If Arlington County takes such action upon such failure by the Applicant, the County 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, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the Applicant or terminated.  
(Ord. No. 14-05, 5-10-14, effective 7-1-14)

#### **§ 60-19. Severability.**

If any provision of this chapter is held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the remaining provisions of this chapter.  
(Ord. No. 14-05, 5-10-14, effective 7-1-14)

#### **§ 60-20. Conflict of Chapter.**

In any case where a provision of this chapter is found to be in conflict with any other provision of the Arlington County Code existing on the effective date of this chapter, the provision which establishes the more stringent standard for the promotion and protection of the health and safety of the people shall prevail. In any case where a provision of this chapter is found to be in conflict with any other provision of the Arlington County Code existing on the effective date of this chapter which establishes a less stringent standard for the promotion and protection of the health and safety of the people, the provisions of this chapter shall be deemed to prevail, and such other provisions are hereby declared to be repealed to the extent that they may be found in conflict with this chapter.  
(Ord. No. 14-05, 5-10-14, effective 7-1-14)