

ARLINGTON COUNTY CODE

Chapter 60

EROSION AND 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* **Editors Note:** Ordinance No. 14-05 adopted May 10, 2014 and effective July 1, 2014, repealed Chapter 60: Stormwater Detention, and amended it in its entirety, as Chapter 60: Stormwater Management, to read as herein set out in §§ 60-1-60-22. Ordinance No. 24-12 adopted October 19, 2024 and effective October 19, 2024 repealed Chapter 57: Erosion and Sediment Control. Various requirements related to erosion and sediment control now appear in this Chapter 60.

§ 60-1. Title.

This chapter shall be known as the “Erosion and Stormwater Management Ordinance of Arlington County, Virginia.”
(Ord. No. 14-05, 5-10-14, effective 7-1-14; Ord. No. 24-12, 10-19-24, effective 10-19-24)

§ 60-2. Authority.

This chapter is authorized pursuant to the authority and mandates of the Virginia Erosion and Stormwater Management Act (codified as Virginia Code § 62.1-44.15:24 *et seq.*) and the Virginia Erosion and Stormwater Management Regulation (9VAC25-875 *et seq.*), and Virginia Code § 15.2-2122, as amended.
(Ord. No. 14-05, 5-10-14, effective 7-1-14; Ord. No. 24-12, 10-19-24, effective 10-19-24)

§ 60-3. Purpose.

The purpose of this chapter is to ensure the general health, safety, and welfare of the citizens of Arlington County, 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 erosion and sediment control and stormwater requirements related to water quality and quantity shall be administered and enforced. The purpose of this chapter is also to conserve the land, water, air and other natural resources of Arlington County and promote the public health and welfare of the people in Arlington County by establishing requirements for the control of erosion and sedimentation, and by establishing procedures whereby these requirements 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 the associated documents, guidelines, and standards detailing compliance with this chapter. The chapter establishes a local erosion and stormwater management program that shall be administered in conjunction with the County's Municipal Separate Storm Sewer System (MS4) Permit Program, Chesapeake Bay Preservation Ordinance, and Floodplain Management Ordinance.
(Ord. No. 14-05, 5-10-14, effective 7-1-14; Ord. No. 24-12, 10-19-24, effective 10-19-24)

§ 60-4. Virginia Erosion and Stormwater Management Program Established.

Pursuant to § 62.1-44.15:27 of the Code of Virginia, as amended, Arlington County hereby establishes a Virginia Erosion and Stormwater Management Program for land-disturbing activities and adopts the applicable Regulations that specify standards and specifications for VESMPs promulgated by the State Water Control 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 his or her designee as the Administrator of the Virginia Erosion and Stormwater Management Program.
(Ord. No. 24-12, 10-19-24, effective 10-19-24)

§ 60-5. Definitions.

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

"Administrator" means the Director of the Department of Environmental Services or designee acting as the VESMP Authority on behalf of Arlington County.

"Agreement in lieu of plan" means a contract between the plan approving authority and the owner that specifies conservation measures that must be implemented in the construction or addition to a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

"Applicant" means any person submitting materials required by 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 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.

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

"Common plan of development or sale" 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.

"DEQ" means the Virginia Department of Environmental Quality.

"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.

"Erosion and Sediment Control Plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps and 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 conversation decisions to assure that entire unit or units of land will be treated to achieve the conversation objectives.

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

"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 60-6 of this chapter.

"LDA 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 DEQ.

"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.

"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 Permit Program" or "MS4 Permit Program" means a management program covering the duration of a MS4 Permit 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.

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

"Permittee" means the person to whom the LDA Permit is issued.

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

"Plan" means either an Erosion and Sediment Control Plan, Stormwater Management Plan, Pollution Prevention Plan, or Stormwater Pollution Prevention Plan or any combination of the forgoing up to and including all.

"Pollution Prevention Plan" means a document containing information on the design, installation, implementation, and maintenance of pollution prevention measures to prevent discharge of pollutants to the Arlington County MS4 system and/or surface waters in accordance with Arlington County's MS4 Permit.

"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 Erosion and Stormwater Management Program Regulation, 9VAC-25-875 *et seq.*, as amended.

"Responsible Land-Disturber Certificate" means the certificate granted to an individual pursuant to §62.1-44.15:30 of the Code of Virginia, 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, as amended.

"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 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 Management Plan*" means a document(s) containing material describing methods for complying with the requirements of this chapter.

"*Stormwater Manual*" means the Arlington County Department of Environmental Services's Stormwater 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. A SWPPP required under the VESMP shall identify and require the implementation of control measures, and shall include the incorporation by reference of, an approved Erosion and Sediment Control Plan, a Pollution Prevention Plan, and an approved Stormwater Management Plan, and TMDL as applicable.

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

"*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 Erosion and Stormwater Management Act*" or "*Act*" means Virginia Code § 62.1-44.15:24 *et seq.*

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

(Ord. No. 14-05, 5-10-14, effective 7-1-14; Ord. No. 24-12, 10-19-24, effective 10-19-24)

§ 60-6. LDA 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 the Administrator has issued an LDA Permit.

B. No LDA Permit shall be issued by the Administrator until the following items have been submitted to and approved, where applicable, by the Administrator:

- (1) Evidence of General permit coverage is obtained, except for Chesapeake Bay Preservation Act land-disturbing activities;
- (2) An Erosion and Sediment Control Plan approved in accordance with this chapter.
- (3) A Pollution Prevention Plan approved in accordance with this chapter;

- (4) A Stormwater Management Plan approved in accordance with this chapter;
- (5) The requirements of Chapter 61 of the Arlington County Code must be satisfied;
- (6) The fees as set forth in that Arlington County Department of Environmental Services Consolidated Development-Related Fee Schedule adopted by the County Board for plan review and performance of field inspections and State Fee Schedule as set for in 9VAC25-875-1400 through 9VAC25-875-1420 are received, and a reasonable performance bond, if required, pursuant to this chapter has been submitted;
- (7) 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;
- (8) The name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber certificate pursuant to § 62.1-44.15:30 of the Code of Virginia, as amended, is submitted to the Administrator, except that such certificate shall not be required where an agreement in lieu of a plan for construction of a single-family detached residential structure is provided; however, if a violation occurs during the land-disturbing activity for the single-family detached residential structure, then the owner shall correct the violation and provide the name of the individual holding a Responsible Land Disturber certificate. Failure to provide the name of an individual holding a Responsible Land Disturber certificate prior to engaging in land-disturbing activities may result in revocation of the land-disturbance approval and shall subject the owner to the penalties provided by this chapter; and
- (9) Any and all other requirements of the Arlington County Code and the Code of Virginia are satisfied.

C. No building or other local permit shall be issued for a property unless and until an LDA Permit has been issued by the Administrator, except where the phase of construction does not yet require a Stormwater Management Plan or where the land-disturbing activity is exempted as provided by this chapter.

D. Notwithstanding any other provisions of this chapter, the following activities are exempt from the requirement to obtain an LDA Permit, unless otherwise required by federal law:

- (1) 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;
- (2) Installation, maintenance, or repair of any individual service connection;
- (3) Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
- (4) Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
- (5) Installation of fence or sign posts or telephone and electric poles and other kinds of posts or poles;
- (6) 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;

- (7) 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 as amended 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 as amended;
- (8) Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity;
- (9) [RESERVED];
- (10) 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 this chapter is required within 30 days of commencing the land-disturbing activity;
- (11) Emergency work to protect life, limb, or property, and emergency repairs; provided that if the land-disturbing activity would have required an approved Erosion and Sediment Control Plan, if the activity were not emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of this chapter; and
- (12) Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Virginia Marine Resources Commission, or the U.S. Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to the VESMA and the regulations adopted pursuant thereto.

E. Notwithstanding any other provisions of this chapter, the following activities are required to obtain an LDA Permit and comply with the erosion and sediment control plan and pollution prevention plan requirements but are not required to comply with the stormwater management plan requirements and technical criteria, unless otherwise required by federal law:

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

F. Nothing in this chapter shall be construed as authorizing the County to regulate, or to require approval by the County for, a state or federal project, unless authorized by law. (Ord. No. 14-05, 5-10-14, effective 7-1-14; Ord. No. 24-12, 10-19-24, effective 10-19-24; Ord. No. 25-01, 3-15-25, effective 3-15-25)

§ 60-7. Review and Approval of Plans; Prohibitions.

A. The Administrator shall approve or disapprove Erosion and Sediment Control Plans, Pollution Prevention Plans, and Stormwater Management Plans according to the following:

- (1) The Administrator shall determine the completeness of any plan within 15 days after receipt and shall act on any plan within 60 days after it has been determined to be complete.
- (2) During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the Applicant. Approval or denial shall be based on compliance with the requirements of this chapter.
- (3) Prior to issuing a plan approval, The Administrator shall be required to obtain evidence of permit coverage when such coverage is required.
- (4) If the Administrator disapproves plan application, then written notice of the disapproval and rationale for the disapproval must be communicated to the Applicant within 45 days.
- (5) The Administrator shall determine whether any resubmittal of a previously disapproved plan is complete within 15 days after receipt and shall act on the resubmitted plan within 45 days after receipt.
- (6) If a plan meeting all requirements of this chapter is submitted and no action is taken within the stated time for review, the plan shall be deemed approved.

B. Prior to issuance of any LDA Permit approval, the Administrator may also require an Applicant, excluding state agencies and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement it finds acceptable, to ensure that the Administrator can take measures at the Applicant's expense should the Applicant fail, after proper notice, within the time specified to comply with the conditions it imposes as a result of the Applicant's land-disturbing activity. If the Administrator takes such action upon such failure by the Applicant, the Administrator may collect from the Applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the completion of the Administrator's conditions, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the Applicant or terminated.

C. Fees for reviewing Erosion and Sediment Control Plans, Stormwater Management Plans, and performing field inspections shall be collected at the time of LDA Permit application according to the Arlington County Department of Environmental Services Consolidated Development-Related Fee Schedule adopted by the County Board.

D. The Administrator may require changes to an approved Erosion and Sediment Control Plan or Stormwater Management Plan in the following cases:

- (1) Where, upon inspection of the site, the Administrator has found the implementation of the plan to be inadequate to accomplish the erosion and sediment control objective of the plan; or

- (2) Where inspection has revealed that the plan is inadequate to satisfy applicable regulations or ordinances; or
- (3) Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of the Act, are agreed to by the Administrator and the person responsible for carrying out the approved plan.
- (4) In order to prevent further erosion, the Administrator may require approval of an Erosion and Sediment Control Plan and a Stormwater Management Plan for any land it identifies as an erosion impact area in accordance with § 62.1-44.15:34 of the Code of Virginia, as amended.

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

F. No exception to, or waiver of, post-development nonpoint nutrient runoff compliance requirements shall be granted unless offsite options have been considered and found not available in accordance with subsection D of § 62.1-44.15:35 of the Code of Virginia, as amended.

G. The Administrator is authorized to cooperate and enter into agreements with any federal or state agency in connection with the requirements for land-disturbing activities in accordance with § 62.1-44.15:50 of the Code of Virginia, as amended.

H. The Administrator shall obtain evidence of permit coverage from DEQ's online reporting system, where such coverage is required, prior to providing land-disturbance approval.
(Ord. No. 24-12, 10-19-24, effective 10-19-24)

§ 60-8. Performance Bond.

Prior to issuance of any permit, the Applicant, excluding state agencies and federal entities, shall 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 the Applicant fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of the Applicant by the permit conditions as a result of the Applicant's 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; Ord. No. 24-12, 10-19-24, effective 10-19-24)

§ 60-9. Erosion and Sediment Control Plan; Contents of Plan.

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

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

B. The person responsible for carrying out the plan shall provide the name of an individual holding a certificate who will be in charge of and responsible for carrying out the land-disturbing activity to the Administrator. However, the Administrator may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by Virginia Code § 62.1-14:30. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided herein.

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

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

E. All land disturbing activities shall be conducted in a manner that is consistent with the applicable requirements of 9VAC25-875-560(A).
(Ord. No. 24-12, 10-19-24, effective 10-19-24; Ord. No. 26-03, 2-21-26;)

§ 60-10. Pollution Prevention Plan; Contents of Plan.

A. A Pollution Prevention Plan, required by 9VAC-875-520, 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 Arlington County's MS4 and/or surface waters according to the requirements of Arlington County's MS4 Permit.

B. Only the non-stormwater discharges listed in Arlington County's MS4 permit are allowed to be discharged to Arlington County's MS4 and surface waters, unless the State Water Control Board or Arlington County determines the discharge(s) to be a significant source of pollutants to surface waters.

C. At a minimum, pollution prevention measures or controls 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;
- (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.

D. 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 construction activities;
- (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; and
- (6) Any other discharges not authorized by Arlington County's MS4 Permit.

(Ord. No. 14-05, 5-10-14, effective 7-1-14; Ord. No. 24-12, 10-19-24, effective 10-19-24)

§ 60-11. Stormwater Management Plan; Contents of Plan.

- A. A Stormwater Management Plan shall be developed and submitted to the Administrator in accordance with the following:
 - (1) A Stormwater Management Plan shall apply the stormwater management technical criteria set forth in this chapter and 9VAC25-875-470 *et seq.* to the entire land-disturbing activity. Individual lots or parcels in a residential, commercial, or industrial common plan of development or sale shall not be considered separate land-disturbing activities.
 - (2) A Stormwater Management Plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.
- B. The Stormwater Management Plan shall be implemented as approved or modified by the Administrator.
- C. 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 or karst features, if present, and the predevelopment and post development drainage areas;
 - (2) Contact information including the name, address, e-mail 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 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. Acres treated;
 - d. The surface waters or karst features, if present, into which the facility will discharge;
 - e. Detailed narrative on the conversion to a long-term stormwater management facility if the facility was used as a temporary erosion and sediment control measure.

- (6) Hydrologic and hydraulic computations, including runoff characteristics;
- (7) Documentation and calculations verifying compliance with the water quality and quantity requirements of this chapter.
- (8) A map 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.

D. If an Operator intends to meet the water quality or quantity requirements established in 9VAC25-875-580 or 9VAC25-875-600 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 protection of local water quality, the purposes of this chapter, and compliance with the Chesapeake Bay TMDL requirements of Arlington County's MS4 Permit.

E. All final plan elements, specifications, or calculations of the Stormwater Management Plans shall be prepared by a licensed professional under Chapter 4 (§54.1-400 *et seq.*) of Title 54.1 of the Code of Virginia, as amended, and shall be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth of Virginia. Nothing in this subsection shall authorize any person to engage in practice outside their area of professional competence.

F. A construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator. The construction record drawing shall be appropriately sealed, and the record drawing shall contain a statement signed by a professional registered in the Commonwealth of Virginia pursuant to Chapter 4 (§ 54.1-400 *et seq.*) or 22 (§ 54.1- 2200 *et seq.*) of Title 54.1 of the Code of Virginia, as amended, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.
(Ord. No. 24-12, 10-19-24, effective 10-19-24)

§ 60-12. Stormwater Pollution Prevention Plan; Contents of Plan.

A. A Stormwater Pollution Prevention Plan (SWPPP) shall include, but not be limited to, an approved Erosion and Sediment 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

9VAC25-875-500 and must also comply with the requirements and general information set forth in 9VAC25-875-500 (stormwater pollution prevention plan requirements) of the Regulations and Section II of the General Permit. An erosion and sediment control plan consistent with the requirements of 9VAC25-875-550 and 9VAC25-875-560 must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the Administrator.

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; Ord. No. 24-12, 10-19-24, effective 10-19-24; Ord. No. 26-03, 2-21-26;)

§ 60-13. 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 Part V of 9VAC25-875 expressly to include 9VAC25-875-580 [water quality design criteria requirements]; 9VAC25-875-590 [water quality compliance]; 9VAC25-875-600 [water quantity]; 9VAC25-875-610 [offsite compliance options]; 9VAC 25-875-620 [design storms and hydrologic methods]; 9VAC 25-875-630 [stormwater harvesting]; 9VAC25-875-640 [linear development project]; and, 9VAC25-875-650 [stormwater management impoundment structures or facilities], which shall apply to all land-disturbing activities regulated pursuant to this ordinance, except as expressly set forth in § 60-14. 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, as amended, for localities subject to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 *et seq.*, as amended) 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 criteria of this section, 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 LDA Permit shall not be given by the Administrator, nor shall the Administrator approve the use of a BMP not approved by the DEQ Virginia Stormwater Management Handbook, as amended and as applicable, or any other control measure duly approved by the Director of DEQ.

F. Exceptions to requirements for phosphorous reductions shall not be allowed unless offsite options available through 9VAC25-875-610 have been considered and found not available.

G. A record of all exceptions granted shall be maintained by the Administrator in accordance with

9VAC25-875-180.

(Ord. No. 14-05, 5-10-14, effective 7-1-14; Ord. No. 24-12, 10-19-24, effective 10-19-24)

§ 60-14. Grandfathering

A. Any land-disturbing activity shall be considered grandfathered by the Administrator and shall be subject to the technical criteria of Article 4 of Part V of the Regulations provided:

(1) A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012, (ii) provided a layout as defined in 9VAC25-875-10, (iii) will comply with the technical criteria of Article 4 of Part V of the Regulations, 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;

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

(4) Land disturbance commenced prior to July 1, 2019.

B. Locality, state and federal projects shall be considered grandfathered by the Administrator and shall be subject to the technical criteria of Article 4 of Part V of the Regulations provided:

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

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

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

(4) Land disturbance commenced prior to July 1, 2019.

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

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

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 Article 4 Part V 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 the required LDA Permit shall not be given by the Administrator, nor shall the Administrator approve the use of a BMP not approved by the DEQ Virginia Stormwater Management Handbook, as amended and as applicable, or any other control measure duly approved by the Director of DEQ, except where allowed under Article 4 Part V of the Regulations. (Ord. No. 14-05, 5-10-14, effective 7-1-14; Ord. No. 24-12, 10-19-24, effective 10-19-24; Ord. No. 26-03, 2-21-26;)

§ 60-15. Long Term Maintenance of Permanent Stormwater Management 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 to be set forth in an instrument.

B. The instrument shall be submitted to the Administrator for review and approval and recorded by the owner or his agent upon approval prior to approval of a Stormwater Management Plan. At a minimum, the instrument shall set forth the following requirements:

- (1) Be stated to run with the land;
- (2) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
- (3) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator;
- (4) Be enforceable by all appropriate governmental parties;
- (5) 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 instrument;
- (6) Provide that in the event the County, pursuant to the instrument, 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
- (7) 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; Ord. No. 24-12, 10-19-24, effective 10-19-24)

§ 60-16. 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.

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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 the 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, as amended, the Administrator may require every LDA Permit applicant or permittee, or any such person subject to LDA 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 conduct periodic inspections on all projects during construction. The Administrator shall either:

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

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

- (1) Be approved by DEQ;
- (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 G of this section, at least once every five years; and
- (3) Be documented by records.

G. 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, as amended; 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 DEQ.
(Ord. No. 24-12, 10-19-24, effective 10-19-24)

§ 60-17 Right of Entry

A. The Administrator 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 ordinance.

B. In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, the Administrator may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions that are required by conditions imposed by the Administrator on a land-disturbing activity when an owner, after proper notice, has failed to take acceptable action within the time specified.
(Ord. No. 24-12, 10-19-24, effective 10-19-24)

§ 60-18. Enforcement, Violations and Penalties.

A. Informal and Formal Administrative Enforcement.

The Administrator may utilize informal and formal administrative enforcement procedures, including:

- (1) Right of entry;
- (2) Verbal notices and inspection reports;
- (3) Notices of corrective action;
- (4) Notices to comply;
- (5) Stop work orders;
- (6) Special orders in accordance with §§ 62.1-44.15:25.1 and 62.1-44.15:48 of the Code of Virginia, as amended;
- (7) Consent orders in accordance with §§ 62.1-44.15:25.1 and 62.1-44.15:48 of the Code of Virginia, as amended; and
- (8) Any other procedures authorized by law.

B. Civil and Criminal Judicial Enforcement Procedures.

The Administrator may utilize civil and criminal judicial enforcement procedures, including:

- (1) Schedule of civil penalties in accordance with § 62.1-44.15:25.1 and § 62.1-44.15:48 of the Code of Virginia, as amended;
- (2) Criminal penalties in accordance with § 62.1-44.15:48 of the Code of Virginia, as amended;
- (3) Injunctions in accordance with § 62.1-44.15:48 of the Code of Virginia, as amended; and
- (4) Any other procedures authorized by law.

C. Notices to Comply.

- (1) If the Administrator determines that there is a failure (i) to comply with the permit conditions or conditions of land-disturbance approval or (ii) to obtain an approved plan, permit, or land-disturbance approval prior to commencing land-disturbing activities, the Administrator may serve a notice to comply upon the owner, permittee, or person conducting land-disturbing activities without an approved plan, permit, or approval.
- (2) A notice to comply shall be served by delivery by: (i) facsimile, email, or other technology; (ii) mailing with confirmation of delivery to address specified in the permit or land-disturbance application, if available, or in the land records of Arlington County, or (iii) by delivery at the site to of the development activities to a person previously identified to the Administrator by the permittee or owner.
- (3) The notice to comply shall specify the measures needed to comply with the permit conditions or land-disturbance approval conditions or shall identify the plan approval or permit or land-disturbance approval needed to comply with this chapter and shall specify a reasonable time within which such measures shall be completed. In any instance in which a required permit or land-disturbance approval has not been obtained, the Administrator may require immediate compliance. In any other case, the Administrator may establish the time for compliance by taking into account the risk of damage to natural resources and other relevant factors. Notwithstanding any other provision of this subsection C of § 60-18 of this chapter, the Administrator may count any days of noncompliance as days of violation should the Administrator take an enforcement action.

D. Stop Work Orders.

- (1) Upon failure to comply within the time specified in a notice to comply issued in accordance with this chapter, the Administrator may issue a stop work order requiring the owner, permittee, or person conducting the land-disturbing activities without an approved plan or required permit or land-disturbance approval to cease all land-disturbing activities until the violation has ceased or an approved plan and required permits and approval are obtained, and specified corrective measures have been completed. The Administrator shall lift the order immediately upon completion of corrective action or upon obtaining an approved plan or any required permits or approvals.
- (2) Such orders shall become effective upon service on the person in the manner set forth in subsection C of § 60-18 of this chapter.
- (3) Emergency Stop Work Order.

Where the alleged noncompliance is causing or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, the Administrator may issue, without advance notice or procedures, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.

- (4) The owner, permittee, or person conducting a land-disturbing activity may appeal the issuance of any order to the circuit court of Arlington County

E. Civil Penalties.

- (1) For a land-disturbing activity that disturbs 2,500 square feet of or more of land in Arlington County: Any person who violates any applicable provision of this chapter, any ordinance adopted pursuant to the County's MS4 permit, or any condition of a local land-

disturbance approval, or who fails, neglects, or refuses to comply with any order of the Administrator or a court, issued as herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. Such civil penalties shall be paid into the treasury of Arlington County and are to be used solely for stormwater management capital projects, including (i) new stormwater best management practices; (ii) stormwater best management practice maintenance, inspection, or retrofitting; (iii) stream restoration; (iv) low-impact development projects; (v) buffer restoration; (vi) pond retrofitting; and (vii) wetlands restoration.

- (2) Penalties imposed in accordance with this chapter may reflect the degree of harm caused by the violation and take into account the economic benefit to the violator from noncompliance.
- (3) At the request of another MS4, the Administrator may apply the penalties provided for in this subsection E or subsection F to direct or indirect discharges to any MS4 located within its jurisdiction in accordance with § 62.1-44.15:49 of the Code of Virginia, as amended.
- (4) 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.
- (5) The Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.

F. Criminal Penalties.

- (1) Except as otherwise provided in this chapter, any person who willfully or negligently violates any land-disturbance approval, provision of this chapter, or order of the Administrator or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not less than \$2,500 nor more than \$32,500, either or both.
- (2) Any person who knowingly violates any land-disturbance approval, provision of this chapter, or order of the Administrator or any order of a court, or who knowingly makes any false statement in any form required to be submitted under this chapter or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay

a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate offense.

- (3) Except as otherwise provided in this chapter, any person who knowingly violates any provision of this chapter, and who knows at that time that he/she/they thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than 15 years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of \$1 million or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.
- (4) Criminal prosecution under this section shall be commenced within three years of discovery of the offense, notwithstanding the limitations provided in any other statute.

G. Additional Remedies.

- (1) The Administrator may seek an injunction, mandamus, or other appropriate remedy pursuant to Virginia Code § 62.1-44.23, as amended. The Administrator may apply to the appropriate court in Arlington County to enjoin a violation or a threatened violation of the provisions of this chapter or order or the conditions of a local land-disturbance approval. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this chapter shall be subject, in the discretion of the court, to a civil penalty that shall be assessed and used in accordance with the provisions of subsection E.
- (2) The Administrator may issue orders in accordance with the procedures of Virginia Code § 15.2-2122(10)(a), as amended, to any owner subject to the requirements of this chapter. Such orders may include civil penalties in specific sums not to exceed the limit specified in subsection E, and such civil penalties shall be paid into the treasury of the County. The provisions of this subsection and subsection G(3) notwithstanding, the Administrator may proceed directly under subsections E, F, or G(1) for any past violation or violations of any provision of this chapter.
- (3) The Administrator may issue consent orders with the consent of any person who has violated or failed, neglected, or refused to obey this chapter, any condition of the Administrator's land-disturbance approval, or any order of the Administrator. Such consent order may provide for the payment of civil charges not to exceed the limits specified in subsection E. Such civil charges shall be in lieu of any appropriate civil penalty that could be imposed under this chapter. Any civil charges collected shall be paid to the treasury of the County.

H. Policies and Procedures.

The Administrator shall develop policies and procedures that outline the steps to be taken regarding enforcement actions under (a) the Act, (b) attendant regulations, and (c) this chapter.

I. Separate Violation.

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.

(Ord. No. 14-05, 5-10-14, effective 7-1-14; Ord. No. 24-12, 10-19-24, effective 10-19-24)

§ 60-19. Administrative Hearing.

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; Ord. No. 24-12, 10-19-24, effective 10-19-24)

§ 60-20. Appeal and Judicial Review of Administrative Hearing.

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; Ord. No. 24-12, 10-19-24, effective 10-19-24)

§ 60-21. 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; Ord. No. 24-12, 10-19-24, effective 10-19-24)

§ 60-22. 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; Ord. No. 24-12, 10-19-24, effective 10-19-24)