

Stormwater Stakeholder Advisory Group (SAG)

Monday, March 16, 2015

Final Meeting Notes

Location: DEQ Piedmont Regional Office - Training Room
4949-A Cox Road, Glen Allen, VA

Start: 9:11 am

End: 2:48 pm

SAG Members Present:

Michael L. Toalson, HBAV
Philip F. Abraham, VACRE
Bart Thrasher, VDOT
Peggy F. Sanner, Chesapeake Bay Foundation
Adrienne Kotula, James River Association
Rick Parrish, formerly SELC
Larry J. Land, VACO
Joe Lerch, VML
Whitney Katchmark, HRPDC
L. Eldon James, Jr., Rappahannock River Basin
Commission

Chris Pomeroy, Aqua Law
Katie Frazier, Va. Agribusiness Council
M. Ann Neil Cosby, Sands Anderson
Austin R. Mitchell, Amherst County
Jimmy Edmonds, Loudoun County
Glenn Telfer, Draper Aden
Elizabeth A. Andrews, DEQ
Melanie Davenport, DEQ
James Golden, DEQ

SAG Members Absent:

Peter J. Rigby, Paciulli Simmons
Douglas Beisch, Stantec

Facilitator: Mark Rubin, VCU

Recorder: Debra Harris, DEQ

Guests and Public Attendees:

John Wood, CBF
Chris French
Lee Hill, Joyce Engineering
Mona Gabriel, Townes Site Engineering
Jason Ericson, Dominion
Lacey England, NiSource

June Whitehurst, City of Norfolk
John McCutcheon, DEQ
Fred Cunningham, DEQ
Drew Hammond, DEQ
Joan Salvati, DEQ

I. Agenda Item: Welcome and Overview of the Day

Discussion Leader: Mark Rubin, Facilitator

Discussion: Mr. Rubin welcomed everyone to the second meeting of the SAG and reviewed the agenda for the day (Attachment I). Afterward, the attendees introduced themselves. Mr. Rubin explained that there is an open chair at the table for members of the public to use during a discussion and reminded all attendees to sign-in.

II. Agenda Item: Review Minutes and Revised Ground Rules

Discussion Leader: Mark Rubin, Facilitator

Discussion: Mr. Rubin asked for any corrections to the previous meeting minutes provided to the SAG. No corrections were noted. The SAG was then asked to look at the revised Ground Rules (Attachment 1). Mr. Rubin highlighted the changes to the ground rules for the group. There were questions on how we would reconvene the group if needed in the future. It was noted that this would be a duly noticed public meeting and additional clarification of the FOIA requirements was provided. The SAG had no changes to the ground rules.

III. Agenda Item: Overview of Documents Prepared for the Meeting by DEQ

Discussion Leader: Elizabeth Andrews, DEQ

Discussion: Ms. Andrews provided the SAG with an overview of the matrix (Attachment 2) and the various statutes with line numbers (Attachment 3) that would be reviewed by the SAG. It was noted that the matrix was developed at the request of the SAG and as a tool to flag issues found within the existing laws, such as inconsistencies and language needing clarification. Following the matrix overview, a brief history of water law in Virginia was provided to the SAG by Melanie Davenport, DEQ. Ms. Davenport noted that Virginia's [State Water Control Law](#) (SWCL) predates the federal Clean Water Act and it is the overarching water law framework for water protection. After the SWCL, the [Erosion and Sediment Control Law](#) (ESCL) was passed in the 1970s followed by the [Chesapeake Bay Preservation Action](#) (CBPA) in the 1980s. Lastly, the [Stormwater Management Act](#) (SWMA) was created and was originally voluntary and has morphed into what we have today.

IV. Agenda Item: Presentation of the Laws and the Matrix

Discussion Leader: Elizabeth Andrews, DEQ

Discussion: Ms. Andrews presented the matrix (Attachment 2) and corresponding laws (Attachment 3) to the SAG. It was noted that this was a flagging exercise to highlight any issues or problematic areas and not an attempt to fix the problems. Attendees were asked to provide input on any issues or problems that they noted as well. The purpose of each law was reviewed and the SAG was informed that the matrix follows the framework of the SWMA. Following the outline of the matrix, the group reviewed each of the issues flagged in the matrix and explanations of why these were problems were provided by Ms. Andrews and Ms. Davenport. During the review of the issues flagged in the matrix (see Attachment 2 for the issues flagged), the following comments were noted by the SAG:

- The definition of Virginia Erosion and Sediment Control Program in the ESCL was flagged as the phrase “to prevent the unreasonable degradation of properties” (line 1129) is problematic. Degradation of property is a difficult provision to enforce due to problems with access, interaction with nuisance suits, etc. and this phrase may need clarification.
- It was noted that if changes are made and depending on the structure used, the SAG needs to review the other laws to avoid any domino effect problems that may occur.
- The issue of fees under the SWMA and ESCL was flagged in the matrix. Discussion by the SAG noted some additional consideration regarding fees:
 - Fees are not a consistent source.
 - Fees should pay for the program.
 - These fees are relatively high compared to other fees paid at the local level for development.
 - Two sets of fees and two sets of forms -- needs to be consolidated and fixed.
 - When DEQ acts as the VSMP, authority for fees needs to be in the statute/regulation.
 - Northern Virginia fees are excessively high (\$1700-\$1900). The SAG needs to find a balance for the fees.
 - “One size fits all” fix may not work for fees.
 - Loudoun does justify its fees annually and has a very robust program.
 - Exemptions from certain fees are provided by the General Assembly, these need to be kept in mind when looking at fees.

As noted in the matrix and the additional issues noted during the discussion, fees will be an overarching issue to discuss for the SAG.

- The SAG was asked for their input on § 62.1-44.15:33 and § 62.1-44.15:65 regarding authorization for more stringent ordinances. As noted in the matrix, DEQ asked if this process is still needed and if so, could clarity be provided. The SAG noted that:
 - For developers, this section is seen as an anti-development tool and maybe more so now than it was before. Developers would prefer no option for more stringent ordinances.
 - It was noted that there are situations where more stringent ordinances are necessary for localities.
 - There are a lot of people with concern over this section and perhaps clarification may be a better option.

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- The provisions in the SWMA and ESCL are different so that should be flagged and clarified (Subsection E).
 - Under regulatory activity [§ 62.1-44.15:34 (SWMA) and § 62.1-44.14 (ESCL)], it was noted that there are also provisions in the CBPA that are different and will also need to be considered.
 - The SAG discussed the issue of nutrient credits under § 62.1-44.1.15:35. This section needs clarity as flagged in the matrix. In addition to these issues, the SAG noted that:
 - The intent was originally targeted at phosphorus credits.
 - This entire section seems to need some clarity as it looks to have been amended as needed but has lost some clarity and should be looked at regarding construction provisions but also MS4s.
 - There is some confusion regarding waste load allocations' interplay with credits.
 - Trading simulations have indicated some issues that may need to be addressed regarding the ability to go outside of a locality to buy credits without harming MS4 reductions.
 - There is a growing concern with the use of credits within MS4s, especially regarding credits generated outside the MS4 boundaries even if still nutrient neutral for the waterbody area.
 - There seems to be a lot of confusion on how this works and clarification is needed.
 - There is concern regarding local water quality and MS4s regarding credit uses. Where credits are generated and where they are used could be a problem for localities if future reductions are needed within the MS4.
 - May need to clarify provisions in Subsection D as well concerning what shall be allowed regarding development (less than five acres and under ten pounds per years).

The SAG took a break from 10:47 a.m. until 10:58 a.m.

The remaining flagged issues as noted in the matrix were explained to the SAG. The SAG was asked if there were any additional sections to be flagged. The additional issue of generating excess nutrient credits was noted as this issue is not addressed in the matrix.

V. Agenda Item: Discussion of Structure of New Legislation

Discussion Leader: Mark Rubin, Facilitator

Discussion: Mr. Rubin initiated the discussion on what the future structure of the statute may look like. The SAG provided comments on the structure and what it should do. The SAG noted that the structure should:

- § Be efficient for the regulated community, local governments, and regulators.
 - Easy and simple to understand the structure.
 - Intuitive for users.
- § Remove redundancies and duplications.
- § Have no conflicts between programs.
- § Be consistent across jurisdictions and predictable.
- § Have redundancy and duplication removed.
- § Facilitate compliance.
- § Account for dual roles of local government (sometimes a regulated body, sometimes a regulator).
- § Have clear lines of authority – avoid duplicative enforcement.
- § Provide clarity and avoid inconsistency.
- § Have flexibility to deal with unique circumstances – geographic, types of localities (population density).
- § Allow sufficient staffing (budgetary concerns).
- § Eliminate outdated references.
- § Have a bright-line between statutory and regulatory issues.
- § Promote program effectiveness.
- § Retain successes of regional distinct programs (i.e., CBPA).
- § Elevate what can be elevated to the SWCL.

The SAG then was asked for options on what this structure may look like. The options were:

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1. State water control law – add language to provide overall consistency for the programs.
 2. Keep the three current statutes separate and fix them (SWMA, ESCL, CBPA)
 3. Consolidate all provisions into one statute.
 4. Combine SWMA and the ESCL statutes but leave CBPA alone except for revisions to make it consistent with the combined statute.
 5. Combine options 1 and 4.

During the discussion of the options, the comments noted were:

- § If the statutes are combined, it may affect current local ordinances. These may need to be redone.
- § The SAG should go through the exercise of listing the pros and cons for the options.
- § The CBPA includes a lot of non-stormwater provisions and other complexities. These provisions should probably stay within the CBPA and there are only a couple of instances in the CBPA that reference the other acts.
- § The first step should be to get to consistency and clarity of the existing statutes first. Once that is accomplished then look and see what makes sense for streamlining and combining the statutes.
- § While the goal to combine the SWMA and ESCL is good, it may be best to start with the matrix and go through that to make all three statutes consistent and clear and see what can be moved to the SWCL. It seems the most important role is to provide consistency.

CONCLUSION: The SAG decided that at this time it would be best to put the structure outline on-hold and to go through the matrix in order to clarify and provide consistency between the three acts and to look at what provisions may be able to be elevated to the SWCL statute. Afterwards, the structure outline including consolidating can be considered.

The SAG broke for lunch at 11:45am.

The SAG reconvened for the afternoon at 12:59 pm.

VI. Agenda Item: Who Does What & Workgroups

Discussion Leader: Mark Rubin, Facilitator

Discussion: Mr. Rubin reviewed the morning activities and the remaining agenda. Rather than go through the matrix, he suggested that it may be more helpful to identify workgroups and who does what. A Nutrient Credit Trading Workgroup was suggested. Mr. Rubin asked the SAG about ideas for other workgroups. The SAG's ideas were for a workgroup to identify issues in the laws regarding the practical implementation of the programs on-the-ground. This will be the Implementation Workgroup. This group would look at:

- § The ways that the laws are implemented in an inconsistent or confusing way.
- § How does the stormwater management program create redundancies on a site with E&S controls in place?
- § Post-Construction stormwater requirements in the general permit.

Editorial Note: Later in the discussion the option of an Enforcement Workgroup was noted (see Next Steps). So the workgroups will be the Nutrient Trading Workgroup, the Implementation Workgroup and the Enforcement Workgroup.

Melanie Davenport, DEQ, then provided an overview of who does what currently in the stormwater programs. DEQ is the only entity that can issue coverage under the Construction General Permit (CGP) as it is a Clean Water Act (CWA) Virginia Pollutant Discharge Elimination System (VPDES) permit. Currently, there are a number of localities that have either opted-in to running a stormwater program or are MS4s. These localities receive the permit information for the CGP and the Stormwater Pollution Prevention Plan (SWPPP). Once all of the information is submitted, the locality/MS4 lets DEQ know that the requirements have been met and that DEQ can issue the coverage letter under the CGP. However, for localities that have chosen to opt-out, they still retain authority for erosion and sediment (E&S) controls. So now, there is a situation where an opt-out locality is reviewing the E&S Plan at the same time that DEQ is reviewing the SWPPP. The problem arises because there is a lot of intersection between these two plans so if one plan is changed then the other will likely also require a change. Another problematic issue is the threshold for regulation under the CGP, ESCL and the CBPA. In the CGP, the threshold is

for land disturbance of one acre or greater. For ESCL, the threshold is 10,000 square feet so for developments that are over 10,000 square feet and up to one acre there is still a need for E&SC and that requires addressing the stormwater technical standards for water quantity. For the CBPA, the threshold is 2,500 square feet of land disturbance for both stormwater management and erosion and sediment control. So a CBPA locality retains the authority for regulating land disturbances exceeding 2,500 square feet (including requiring compliance with the stormwater technical standards). This all leads to a lot of confusion for everyone and to a lot of inefficiencies in the program.

After the “who does what” overview, the SAG discussed the issues and the problems. The SAG was asked to consider what was “busted”. The first issue noted was that there are duplicative reviews between the local governments and DEQ. For instance, the development plan covers stormwater and E&SC so could that one review be sufficient? Could the review be done by one or the other? What about the water quality and quantity distinction in the development plan? The SAG also asked if the E&SC review was duplicative of the stormwater management plan review? For opt-out localities, can the E&SC plan and the stormwater management plan review be accomplished by one entity?

The discussion of the problems and possible options continued and it was noted that the SWPPP is mandated by the federal construction rule and there are three components of a SWPPP: E&SC plan, stormwater management plan, and pollution prevention plan. One option noted was possibly putting all the plans together and calling the plan one thing, but changing the plans may not be worth the confusion caused by the last 30 years of implementation. However, a big issue is with the opt-out localities. For these localities, there is dual government involvement with the locality and DEQ and solving that problem is needed.

One option discussed by the SAG was the possibility of perhaps combining the plans and dividing it by the phase of construction (pre-construction, during construction, and post construction). Phase I could be pre-construction (before final grading); Phase II could be during construction (after final grading); and then Phase III could be for post-construction and could include the permanent stormwater controls. The SAG had the following comments and questions on this type of an option:

- § Could this be done in one place (local government) with flexibility for the locality on how the review is done?
- § Can you just call everything stormwater and not divide between during and post-construction as programs (replace/revise MS19 and maybe add an MS20 & 21)?
- § There seems to be a need for one fee and one permit with clear instructions. Are there ways to achieve that goal and leave flexibility for the localities?
- § For instance, what if the opt-out localities had the option to opt-out of E&SC, and then DEQ would do it all so that one entity does it all?
- § Another possibility is to just have stormwater (not E&SC and stormwater) and divide it between construction and post-construction?
- § What about the overlapping long term maintenance responsibilities between the local governments (E&SC ordinance obligations) and DEQ (VSMP requirements)?

Another problem noted was who does what for maintenance/inspections. Localities with little development have concerns as they do not have the ability to create a program for this because they don't have the development to support it. Currently, for MS4s, the locality does it all and for the opt-out localities, DEQ does it all. As a future option, perhaps we could use population density as a determinant for which localities run their own programs, instead of opt-in and opt-out? There are a lot of possibilities of what the program can be and look like and who would do what. Perhaps this can be diagramed with alternatives and efficiencies.

No other “busted” issues were provided and the SAG discussed the “who” aspects of the programs. There are federal, state and local requirements that can lead to a “co-regulation” situation. The federal parameters were provided by Fred Cunningham, DEQ, and Ms. Davenport. Mr. Cunningham noted that any land disturbing activity that is greater than one acre or within a common plan of development must have coverage under the VPDES CGP.

Ms. Davenport noted that the CGP has been approved by EPA and found to be consistent with the elements of the federal rule so there is EPA oversight but DEQ has the permit issuance authority. CGPs are the largest number of DEQ's general permit universe. VSMP authorities/agents are implementing the program for DEQ with the exception that DEQ provides the coverage letter under the CGP. Additionally, the activity is regulated under the CGP to include compliance with other state laws and that brings in the E&SC. There are rigorous reporting requirements for the CGP to make sure the components of "good" construction are used. When the sites are done with construction, there is a review to make sure the site meets the post-construction controls. If these controls are in place and meet the requirements, the CGP can then be terminated. Inspections of these sites are done by the VSMP authority – if that is the locality, it is the locality that inspects, and if the VSMP authority is DEQ, then it is DEQ that inspects. Under the Chesapeake Bay TMDL, there is a requirement to demonstrate maintenance and inspection of the best management practices (BMPs) for areas with the Bay watershed. Occasionally, federal 3rd party contactors are doing these inspections. So there are a lot of "whos". The main points of the "who" discussion were:

- STRUCTURE – add provision in Code as to who does what (see the CBPA, as this is set out in CBPA).
- Local government and DEQ are not always separate as there are some shared responsibilities.
- Co –regulators (look at dual role of local government sometimes as regulator, sometimes as regulated entity)
- Local governments act as an agent for DEQ on some matters as noted above. This role may need to be clarified.
- As for economies of scale for localities with less development, possible ideas are:
 - Can the State take over the job?
 - Can the locality contract with another locality (see town and county programs)? The regional concept is in the law but is not used.
- Should the provisions be mandatory regarding who becomes a VSMP as opposed to keeping the concept of choice in the law for local governments to opt-in or opt-out?
- For opt-outs, DEQ could do water quality and locality could do permitting, inspection, etc. For the developer there would be one stop shopping in that developer only goes into one door then DEQ and locality divide work among themselves.
- MAJOR ISSUE – if the provisions do become mandatory, then that will need to be phased in over time. Another way to approach this issue is to be very conservative and change as little as possible.
- Having a choice is a big issue for localities but can you have a more efficient system if choice is retained?

VII. Agenda Item: Next Steps

Discussion Leader: Mark Rubin, Facilitator

Discussion: Mr. Rubin went through the list of action items for the next meeting and the next steps.

ACTION ITEMS – DEQ – for the next meeting DEQ will provide:

- § A map of localities to indicate if they are opt-in or opt-out.
- § A population density map for current populations and expected future populations.
- § A diagram for who does what for an opt-out locality and for an opt-in locality. What does the locality do and what does DEQ do (maintenance, inspection and enforcement)?
- § A list with potential alternatives (options of who runs program and what is the program).
- § DEQ staff offered to provide a comparison to other states' approaches if that would be helpful.

ACTION ITEMS – SAG Members were asked to e-mail Mark Rubin if interested in being on the workgroups: Nutrient Trading Workgroup, Implementation Workgroup, and the Enforcement Workgroup.

The next meeting is scheduled for 10:00 am on April 17, 2015 at the DEQ Piedmont Regional Office again.

Attachment 1

STORMWATER STAKEHOLDERS ADVISORY GROUP
GROUND RULES

MISSION STATEMENT

The Stormwater Stakeholders Advisory Group will develop draft consensus legislation to coordinate, streamline and simplify the law of the Commonwealth of Virginia regarding the regulation of stormwater. The goal is to make the law and its implementation efficient, clear, consistent and understandable for local and state regulators and those whose activities are regulated by the law. The intent is to neither increase nor decrease the environmental protections currently existing in the law of Virginia.

Every effort will be made to develop a consensus draft of legislation by the end of summer 2015, so that it can be reported to the Governor and the chairs of the Senate and House natural resources committees in time for consideration for introduction in the 2016 session of the General Assembly of Virginia.

PARTICIPATION

The Group is comprised of members with experience in stormwater management issues and is representative of environmental organizations, the regulated community, agriculture, and local government as well as regional, engineering and state regulatory agency interests.

If a Group member becomes unavailable or otherwise unable to serve, the representatives of the interests similar to those of the unavailable member shall jointly determine whether that member should be replaced. If the decision is to seek a replacement, those members with similar interests shall make a recommendation for a replacement to the facilitator.

Group meetings will be open to the public and public notice will be provided on the Virginia Regulatory Town Hall website of the date, time and location of Group meetings. During Group meetings, one chair will be left open at the negotiating table where a member of the public can sit temporarily to present information or comment on any given topic. Members of the public will be encouraged to communicate their concerns through a member of the Group who represents their interests but the open chair is available if the member of the public feels it necessary to address the Group directly to add information that has not been considered. Members of the Group will not ask members of the public to sit at the table with them during discussions, in order to ensure that representation remains balanced in the Group.

Smaller work groups may be designated by the Group to address specific issues or to make recommendations to the full Group. Public notice will be provided for such work group meetings; if three or more members of the Group will be present it will be open to the public. Work groups are not authorized to make decisions for the Group as a whole.

The Group by consensus may invite experts to address the Group, as appropriate.

DECISION MAKING

The Group will make every effort to reach unanimity on all issues related to the proposed legislation, meaning that there is no dissent by any member. However, if the facilitator determines that additional discussions are not likely to lead to unanimous consent, the Group will consider consensus to have been reached when there is no dissent by more than two non-DEQ members. Dissent means that more than two non-DEQ members state that they think that there are major problems with the proposal and are unable to live with it or support it (see No.4 below). Consensus will not be considered to have been reached if there is dissent by DEQ. In the event that consensus is not reached on a particular issue, the process will continue as to remaining issues.

Upon the request of a dissenter to the legislation, DEQ will include the dissenter's reasons for dissenting in any report provided to the Governor and the chairs of the natural resources committees.

During the course of the facilitation, the facilitator may propose a test for consensus on any given issue or on the entire proposal utilizing a 4 level scale to determine gradients of agreement. The scale to be used is as follows:

1. I fully agree and support the proposal.
2. I can live with the decision. It is okay and I can support it.
3. I have reservations but will not oppose the proposal.

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4. I think there are major problems with the proposal and am unable to live with it or support it. More work is needed.

If consensus is not present, the Group's discussion continues to determine if the interests of those who could not support the proposal can be met.

Decision making authority rests with the Group members. Other individuals who attend the Group meetings will not have the right to dissent or vote.

AGREEMENT

If the Group develops a final consensus legislative proposal, DEQ agrees to report it to the Governor and chairs of the Senate and House natural resources committees and Group members agree to support the legislation as it was presented to the Governor in the legislative process. If the Group does not reach consensus, a report will be delivered to the Governor and the legislative chairs but it will not be represented as a consensus report.

It is understood that many of the members are representatives of groups and that some groups have processes to approve legislative agendas that may not fit with the timeline set forth above. It is further understood that a group may determine that it cannot support a consensus proposal after the report has been submitted to the Governor and the legislative chairs. The obligation of the member is to make their best effort to gain support (or at least no opposition) from the group he or she represents once consensus is reached. It is also understood that members only speak for their respective organizations and not for stakeholders they do not represent in regard to expressing agreement or disagreement.

In the event that amendments are offered to the bill during the executive branch review or the legislative process, Group members agree to reconvene as quickly as possible to review the proposed amendments and submit comments to DEQ and the patron of the legislation for consideration. Group members may speak as individuals to any such amendments.

If a Group member dissents from the final consensus draft, such Group member may express the dissent during any future legislative process.

GROUP MEETINGS

The facilitator will prepare an agenda for each meeting in consultation with members of the Group and distribute it to the Group prior to each meeting along with any documents that may be proposed for discussion.

The facilitator will draft meeting summaries to maintain a clear and reliable record of tentative and final agreements reached during the process. Such summaries will be provided to Group members for their comments and corrections in the event of inaccuracies.

OBLIGATIONS OF GROUP MEMBERS

Group members will communicate their interests and concerns to each other and be accountable for points of disagreement. They will present proposals and counterproposals which will be designed to address points of disagreement. Members will not block consensus unless they have serious reservations with the approach or solution proposed for consensus.

Group members will attend regularly scheduled Group meetings and any meetings of smaller work groups for which they sign up. They will come to such meetings prepared for the subject matter of the meetings.

Members shall act in good faith and in a respectful manner in all aspects of these discussions whether during meetings or during communications with others, including the media outside of meetings. They shall also keep the long term interests of the Commonwealth in mind as they participate in the process. If an article appears in the media that misquotes or inaccurately represents an individual's position, that individual should inform the Group members of it.

Members will maintain contact with constituencies throughout the process to obtain feedback on proposals, to provide information about tentative agreements reached, and to otherwise make their best efforts to obtain the support of their constituency or a decision not to oppose the consensus legislation.

Any member may withdraw from the process at any time by notifying the facilitator in writing.

MEETING FACILITATION

Facilitation services will be provided by the Virginia Center for Consensus Building located at Virginia Commonwealth University. The facilitator will support the deliberative process and help to ensure that the process runs smoothly by helping the members resolve their differences and achieve consensus. The facilitator will render such services in a neutral manner.

Attachment 2

SWMA vs. ESCL vs. CBPA vs. SWCL

<u>Subject</u>	<u>Stormwater Management Act</u>	<u>Erosion&Sediment Control Law</u>	<u>Chesapeake Bay Preservation Act</u>	<u>State Water Control Law</u>
	<p><i>Scope/Purpose:</i> "In addition to other powers and duties conferred upon the Board, it shall permit, regulate, and control stormwater runoff in the Commonwealth. The Board may issue, deny, revoke, terminate, or amend state stormwater individual permits or coverage issued under state general permits; adopt regulations; approve and periodically review Virginia Stormwater Management Programs and management programs developed in conjunction with a state municipal separate storm sewer permit; enforce the provisions of this article; and otherwise act to ensure the general health, safety, and welfare of the citizens of the Commonwealth as well as protect the quality and quantity of state waters from the potential harm of unmanaged stormwater." 62.1-44.15:25.</p>	<p><i>Scope/Purpose:</i> "The Board shall develop a program and adopt regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) for the effective control of soil erosion, sediment deposition, and nonagricultural runoff that shall be met in any control program to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources." 62.1-44.15:52(A).</p>	<p><i>Scope/Purpose:</i> "Healthy state and local economies and a healthy Chesapeake Bay are integrally related; balanced economic development and water quality protection are not mutually exclusive. The protection of the public interest in the Chesapeake Bay, its tributaries, and other state waters and the promotion of the general welfare of the people of the Commonwealth require that (i) the counties, cities, and towns of Tidewater Virginia incorporate general water quality protection measures into their comprehensive plans, zoning ordinances, and subdivision ordinances; (ii) the counties, cities, and towns of Tidewater Virginia establish programs, in accordance with criteria established by the Commonwealth, that define and protect certain lands, hereinafter called Chesapeake Bay Preservation Areas, which if improperly developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries; (iii) the Commonwealth make its resources available to local governing bodies by providing financial and technical assistance, policy guidance, and oversight when requested or otherwise required to carry out and enforce the provisions of this article; and (iv) all agencies of the Commonwealth exercise their delegated authority in a manner consistent with water quality protection provisions of local comprehensive plans, zoning ordinances, and subdivision ordinances when it has been determined that they comply with the provisions of this article." 62.1-44.15:67(A).</p>	<p><i>Scope/Purpose:</i> "It is the policy of the Commonwealth of Virginia and the purpose of this law to: (1) protect existing high quality state waters and restore all other state waters to such condition of quality that any such waters will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (2) safeguard the clean waters of the Commonwealth from pollution; (3) prevent any increase in pollution; (4) reduce existing pollution; (5) promote and encourage the reclamation and reuse of wastewater in a manner protective of the environment and public health; and (6) promote water resource conservation, management and distribution, and encourage water consumption reduction in order to provide for the health, safety, and welfare of the present and future citizens of the Commonwealth." 62.1-44.2.</p>

Definitions	<p>62.1-44.15:24</p> <ul style="list-style-type: none"> - “Land disturbing activity” defined with exemptions referenced in 62.1-44.15:34 -For clarity, delete “CBPA land disturbing activity” definition and simply state regulatory thresholds in Regulated Activities section? - Delete concept of “permit” and simply refer to VSMP approval? Because some localities do not issue a permit. - If technical criteria are moved from statute into regs, can omit “Water Quality Volume” 	<p>62.1-44.15:51</p> <p>“Land disturbing activity” defined with exemptions included</p>	<p>62.1-44.15:68</p>	<p>62.1-44.3</p> <p>If choose to amend SWCL rather than having separate provisions in SWMA or ESCL, need to review definitions such as “owner”</p>
SWCB Powers & Duties	<p>62.1-44.15:25</p>	<p>Included in 62.1-44.15:52; not a separate section</p>	<p>62.1-44.15:69</p>	<p>62.1-44.15, 62.1-44.15:01</p>
State Permits	<p>62.1-44.15:26</p> <p>Can this be addressed by amending 62.1-44.15(5a)?</p>			<p>62.1-44.15(5a)</p>
Establishment of Program	<p>62.1-44.15:27</p> <ul style="list-style-type: none"> - Subsection A requires CBPA localities to administer SW requirements for CBPA land disturbing activities, even if opt out of being a VSMP authority. Keep as is or revise? - Delete language re: adoption schedule in 2014? -In subsection B, clarify town and county responsibilities - DEQ recommends deleting language in subsection F re: state & federal entities and utilities being able to operate VSMPs (if this is done, need to amend definition of “VSMP Authority” too). - Note subsections K (CBPA) & L (ESCL) references 	<p>62.1-44.15:54</p> <ul style="list-style-type: none"> - see 62.1-44.15:54(A) - DEQ recommends deleting language in subsection E re: state & federal entities and utilities being able to operate VSMPs. 	<p>62.1-44.15:74, 76</p>	

Development of Regulations	62.1-44.15:28 - Subsection A(10) conflicts with 62.1-44.15:52(A) of the ESCL because of termination date - Note subsection B – reference to ESCL and CBPA - Should fee be set in state regs or by localities? This section requires them to be in regs - Subsections A(5)(c)&(d) can be deleted.	62.1-44.15:52 - 62.1-44.15:54(J) authorizes localities to set VESCP fees to cover costs, after a hearing.	62.1-44.15:72	
VA Stormwater Management Fund	62.1-44.15:29 Unique to SWMA, although Fund is referenced in ESCL & CBPA, and in 62.1-44.15(8a)			
Education & Training	62.1-44.15:30	62.1-44.15:52(E)&(F) and 15:53		
Annual Standards & Specifications	62.1-44.15:31 - Does this need to be an annual requirement, or on an as-needed basis? - Should this be “may” rather than “shall”? - No time period for review	62.1-44.15:55(D), -44.15:56 - Does this need to be an annual requirement, or on an as-needed basis? - Should this be “may” rather than “shall”? - 60 days for review (62.1-44.15:55(D) & 56(D)) - Subsection E discusses wetlands; SWMA does not		
Duties of the Dept.	62.1-44.15:32 DEQ would like to replace subsection B with language from E&SCL 62.1-44.15:55: “A VESCP may enter into an agreement with an adjacent VESCP regarding the administration of multijurisdictional projects whereby the jurisdiction that contains the greater portion of the project shall be responsible for all or	62.1-44.15:52(B), (E); 62.1-44.15:55(A) DEQ would like to omit language in 62.1-44.15:55(A) re: submitting plans to DEQ for review.	62.1-44.15:69 (Note: This sets forth duties of the SWCB, not DEQ)	

	part of the administrative procedures.”			
Authorization for More Stringent Ordinances	62.1-44.15:33 - Is this process needed? Or should localities be able to adopt more stringent ordinances and just report them to DEQ? Or another process? - Clarify what is meant by “findings developed through the implementation of a MS4 permit” in subsection A - Clarify subsection E	62.1-44.15:65		
Regulated Activities	62.1-44.15:34 - Can subsection B be deleted because no longer needed? - Subsections C3 & 4 are unclear; need to be rewritten. - Move all exceptions to Definitions section, or leave here?	62.1-44.15:55, 57 & 59		
Nutrient Credits	62.1-44.15:35 - Reorganize to address nutrient credits and offsite options separately? - Clarify use of credits for construction vs. MS4 permits (see subsection J) - Clarify subsection C			
Recovery of Administrative Costs	62.1-44.15:36 Delete, based on enactment clause language?			
Monitoring & Reports	62.1-44.15:37	62.1-44.15:58		
Program Review	62.1-44.15:38 Compare this program review process with the ESCL & CBPA; which is preferable?	62.1-44.15:52(D), 54(F)	62.1-44.15:69(10), 71	
Right of Entry	62.1-44.15:39	62.1-44.15:60		62.1-44.20 Does not provide Right of

				Entry specifically for localities; only “any duly authorized agent” of SWCB
Information to be Furnished	62.1-44.15:40			62.1-44.21 - Applies to “owner” - Does not require info to be provided to localities
Private Rights, Liability	62.1-44.15:41			62.1-44.22
Enforcement by Injunction	62.1-44.15:42	62.1-44.15:58, 63		62.1-44.23 62.1-44.15(8b) – injunction with special order
Judicial Review	62.1-44.15:43	62.1-44.15:62	62.1-44.15:71, 74(F)	62.1-44.29
Right to Hearing	62.1-44.15:44			62.1-44.25
Hearings	62.1-44.15:45			62.1-44.26, 27
Appeals	62.1-44.15:46	62.1-44.15:62	62.1-44.15:71	62.1-44.29
Appeal to Court of Appeals	62.1-44.15:47			62.1-44.30
Penalties, Injunctions	62.1-44.15:48	62.1-44.15:63 - Owner of property that has sustained damage or which is in imminent danger of being damaged may apply for injunction, in addition to DEQ or locality - What does subsection D mean? -Note additional provision in 62.1-44.15:64 – not in SWMA: an aggrieved owner of property sustaining pecuniary damage can complain & DEQ will investigate; can lead to stop work order	62.1-44.15:74	62.1-44.32
Enforcement Authority of MS4s	62.1-44.15:49 - Unique to SWMA - Necessary? See subsection C; if MS4s remain required to operate VSMPs, can this			

	section be deleted?			
Cooperation with Federal and State Agencies	62.1-44.15:50	62.1-44.15:61		
No Limitation on DMME's Authority		62.1-44.15:66 Unique to ESCL		

Attachment 3

1 Chapter 3.1. State Water Control Law

2 Article 2.3. Stormwater Management Act

3 **§ 62.1-44.15:24. Definitions.**

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

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

9 "Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity
10 including clearing, grading, or excavation that results in a land disturbance equal to or greater
11 than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to
12 the regulations adopted pursuant to the Chesapeake Bay Preservation provisions of this chapter.

13 "CWA" means the federal Clean Water Act (33 U.S.C. § 1251 et seq.), formerly referred to as
14 the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of
15 1972, P.L. 92-500, as amended by P.L. 95-217, P.L. 95-576, P.L. 96-483, and P.L. 97-117, or
16 any subsequent revisions thereto.

17 "Department" means the Department of Environmental Quality.

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

19 "Flooding" means a volume of water that is too great to be confined within the banks or walls of
20 the stream, water body, or conveyance system and that overflows onto adjacent lands, thereby
21 causing or threatening damage.

22 "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface
23 that potentially changes its runoff characteristics including clearing, grading, or excavation,
24 except that the term shall not include those exemptions specified in § [62.1-44.15:34](#).

25 "Municipal separate storm sewer" means a conveyance or system of conveyances otherwise
26 known as a municipal separate storm sewer system or "MS4," including roads with drainage
27 systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm
28 drains:

29 1. Owned or operated by a federal, state, city, town, county, district, association, or other public
30 body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion

31 and sediment control and stormwater management, or a designated and approved management
32 agency under § 208 of the CWA that discharges to surface waters;

33 2. Designed or used for collecting or conveying stormwater;

34 3. That is not a combined sewer; and

35 4. That is not part of a publicly owned treatment works.

36 "Municipal Separate Storm Sewer System Management Program" means a management program
37 covering the duration of a state permit for a municipal separate storm sewer system that includes
38 a comprehensive planning process that involves public participation and intergovernmental
39 coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect
40 water quality, and to satisfy the appropriate water quality requirements of the CWA and
41 regulations, and this article and its attendant regulations, using management practices, control
42 techniques, and system, design, and engineering methods, and such other provisions that are
43 appropriate.

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

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

49 "Permit" or "VSMP authority permit" means an approval to conduct a land-disturbing activity
50 issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of
51 state VSMP general permit coverage has been provided where applicable.

52 "Permittee" means the person to which the permit or state permit is issued.

53 "Runoff volume" means the volume of water that runs off the land development project from a
54 prescribed storm event.

55 "State permit" means an approval to conduct a land-disturbing activity issued by the Board in the
56 form of a state stormwater individual permit or coverage issued under a state general permit or
57 an approval issued by the Board for stormwater discharges from an MS4. Under these permits,
58 the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act
59 and regulations and this article and its attendant regulations.

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

63 "Stormwater management plan" means a document containing material describing methods for
64 complying with the requirements of a VSMP.

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

66 "Virginia Stormwater Management Program" or "VSMP" means a program approved by the Soil
67 and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State
68 Water Control Board on and after June 30, 2013, that has been established by a VSMP authority
69 to manage the quality and quantity of runoff resulting from land-disturbing activities and shall
70 include such items as local ordinances, rules, permit requirements, annual standards and
71 specifications, policies and guidelines, technical materials, and requirements for plan review,
72 inspection, enforcement, where authorized in this article, and evaluation consistent with the
73 requirements of this article and associated regulations.

74 "Virginia Stormwater Management Program authority" or "VSMP authority" means an authority
75 approved by the Board after September 13, 2011, to operate a Virginia Stormwater Management
76 Program or the Department. An authority may include a locality; state entity, including the
77 Department; federal entity; or, for linear projects subject to annual standards and specifications
78 in accordance with subsection B of § [62.1-44.15:31](#), electric, natural gas, and telephone utility
79 companies, interstate and intrastate natural gas pipeline companies, railroad companies, or
80 authorities created pursuant to § [15.2-5102](#).

81 "Water quality volume" means the volume equal to the first one-half inch of runoff multiplied by
82 the impervious surface of the land development project.

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

87 1989, cc. 467, 499, § 10.1-603.2; 1991, c. 84; 1994, cc. [605](#), [898](#); 2004, c. [372](#); 2006, cc. [21](#),
88 [171](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2014, cc. [303](#), [598](#).

89 **§ 62.1-44.15:25. Further powers and duties of the State Water Control Board.**

90 In addition to other powers and duties conferred upon the Board, it shall permit, regulate, and
91 control stormwater runoff in the Commonwealth. The Board may issue, deny, revoke, terminate,

92 or amend state stormwater individual permits or coverage issued under state general permits;
93 adopt regulations; approve and periodically review Virginia Stormwater Management Programs
94 and management programs developed in conjunction with a state municipal separate storm sewer
95 permit; enforce the provisions of this article; and otherwise act to ensure the general health,
96 safety, and welfare of the citizens of the Commonwealth as well as protect the quality and
97 quantity of state waters from the potential harm of unmanaged stormwater. The Board may:

98 1. Issue, deny, amend, revoke, terminate, and enforce state permits for the control of stormwater
99 discharges from Municipal Separate Storm Sewer Systems and land-disturbing activities.

100 2. Take administrative and legal actions to ensure compliance with the provisions of this article
101 by any person subject to state or VSMP authority permit requirements under this article, and
102 those entities with an approved Virginia Stormwater Management Program and management
103 programs developed in conjunction with a state municipal separate storm sewer system permit,
104 including the proper enforcement and implementation of, and continual compliance with, this
105 article.

106 3. In accordance with procedures of the Administrative Process Act (§ 2.2-4000 et seq.), amend
107 or revoke any state permit issued under this article on the following grounds or for good cause as
108 may be provided by the regulations of the Board:

109 a. Any person subject to state permit requirements under this article has violated or failed,
110 neglected, or refused to obey any order or regulation of the Board, any order, notice, or
111 requirement of the Department, any condition of a state permit, any provision of this article, or
112 any order of a court, where such violation results in the unreasonable degradation of properties,
113 water quality, stream channels, and other natural resources, or the violation is representative of a
114 pattern of serious or repeated violations, including the disregard for or inability to comply with
115 applicable laws, regulations, permit conditions, orders, rules, or requirements;

116 b. Any person subject to state permit requirements under this article has failed to disclose fully
117 all relevant material facts or has misrepresented a material fact in applying for a state permit, or
118 in any other report or document required under this law or under the regulations of the Board;

119 c. The activity for which the state permit was issued causes unreasonable degradation of
120 properties, water quality, stream channels, and other natural resources; or

121 d. There exists a material change in the basis on which the state permit was issued that requires
122 either a temporary or a permanent reduction or elimination of any discharge or land-disturbing
123 activity controlled by the state permit necessary to prevent unreasonable degradation of
124 properties, water quality, stream channels, and other natural resources.

125 4. Cause investigations and inspections to ensure compliance with any state or VSMP authority
126 permits, conditions, policies, rules, regulations, rulings, and orders which it may adopt, issue, or
127 establish and to furnish advice, recommendations, or instructions for the purpose of obtaining
128 such compliance.

129 5. In accordance with procedures of the Administrative Process Act (§ 2.2-4000 et seq.), adopt
130 rules governing (i) hearings, (ii) the filing of reports, (iii) the issuance of permits and special
131 orders, and (iv) all other matters relating to procedure, and amend or cancel any rule adopted.

132 6. Issue special orders to any person subject to state or VSMP authority permit requirements
133 under this article (i) who is permitting or causing the unreasonable degradation of properties,
134 water quality, stream channels, and other natural resources to cease and desist from such
135 activities; (ii) who has failed to construct facilities in accordance with final approved plans and
136 specifications to construct such facilities; (iii) who has violated the terms and provisions of a
137 state or VSMP authority permit issued by the Board or VSMP authority to comply with the
138 provisions of the state or VSMP authority permit, this article, and any decision of the VSMP
139 authority, the Department, or the Board; or (iv) who has violated the terms of an order issued by
140 the court, the VSMP authority, the Department, or the Board to comply with the terms of such
141 order, and also to issue orders to require any person subject to state or VSMP authority permit
142 requirements under this article to comply with the provisions of this article and any decision of
143 the Board.

144 Such special orders are to be issued in accordance with the procedures of the Administrative
145 Process Act (§ 2.2-4000 et seq.) and shall become effective not less than 15 days after the date of
146 mailing with confirmation of delivery of the notice to the last known address of any person
147 subject to state or VSMP authority permit requirements under this article, provided that if the
148 Board finds that any such person subject to state or VSMP authority permit requirements under
149 this article is grossly affecting or presents an imminent and substantial danger to (i) the public
150 health, safety, or welfare or the health of animals, fish, or aquatic life; (ii) a public water supply;
151 or (iii) recreational, commercial, industrial, agricultural, or other reasonable uses, it may issue,
152 without advance notice or hearing, an emergency special order directing any person subject to
153 state or VSMP authority permit requirements under this article to cease such pollution or
154 discharge immediately, and shall provide an opportunity for a hearing, after reasonable notice as
155 to the time and place thereof to any person subject to state or VSMP authority permit
156 requirements under this article, to affirm, modify, amend, or cancel such emergency special
157 order. If any person subject to state or VSMP authority permit requirements under this article
158 who has been issued such a special order or an emergency special order is not complying with
159 the terms thereof, the Board may proceed in accordance with § 62.1-44.15:48, and where the

160 order is based on a finding of an imminent and substantial danger, the court shall issue an
161 injunction compelling compliance with the emergency special order pending a hearing by the
162 Board. If an emergency special order requires cessation of a discharge, the recipient of the order
163 may appeal its issuance to the circuit court of the jurisdiction wherein the discharge was alleged
164 to have occurred.

165 The provisions of this section notwithstanding, the Board may proceed directly under § 62.1-
166 44.15:48 for any past violation or violations of any provision of this article or any regulation
167 duly adopted hereunder.

168 With the consent of any person subject to state or VSMP authority permit requirements under
169 this article who has violated or failed, neglected, or refused to obey any regulation or order of the
170 Board, any order, notice, or requirement of the Department or VSMP authority, any condition of
171 a state or VSMP authority permit, or any provision of this article, the Board may provide, in an
172 order issued by the Board against such person, for the payment of civil charges for violations in
173 specific sums not to exceed the limit specified in subsection A of § 62.1-44.15:48. Such civil
174 charges shall be collected in lieu of any appropriate civil penalty that could be imposed pursuant
175 to subsection A of § 62.1-44.15:48 and shall not be subject to the provisions of § 2.2-514. Such
176 civil charges shall be paid into the state treasury and deposited by the State Treasurer into the
177 Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29.

178 2004, c. 372, § 10.1-603.2:1; 2006, c. 171; 2012, cc. 785, 819; 2013, cc. 756, 793.

179 **§ 62.1-44.15:26. State permits.**

180 A. All state permits issued by the Board under this article shall have fixed terms. The term of a
181 state permit shall be based upon the projected duration of the project, the length of any required
182 monitoring, or other project operations or permit conditions; however, the term shall not exceed
183 five years. The term of a permit issued by the Board shall not be extended by modification
184 beyond the maximum duration and the permit shall expire at the end of the term unless it is
185 administratively continued in accordance with Board regulations.

186 B. State individual construction permits shall be administered by the Department.

187 2004, c. 372, § 10.1-603.2:2; 2006, c. 171; 2012, cc. 785, 819; 2013, cc. 756, 793.

188 **§ 62.1-44.15:27. Establishment of Virginia Stormwater Management Programs.**

189 A. Any locality that operates a regulated MS4 or that notifies the Department of its decision to
190 participate in the establishment of a VSMP shall be required to adopt a VSMP for land-
191 disturbing activities consistent with the provisions of this article according to a schedule set by
192 the Department. Such schedule shall require implementation no later than July 1, 2014.

193 Thereafter, the Department shall provide an annual schedule by which localities can submit
194 applications to implement a VSMP. Localities subject to this subsection are authorized to
195 coordinate plan review and inspections with other entities in accordance with subsection H. The
196 Department shall operate a VSMP on behalf of any locality that does not operate a regulated
197 MS4 and that does not notify the Department, according to a schedule set by the Department, of
198 its decision to participate in the establishment of a VSMP. A locality that decides not to establish
199 a VSMP shall still comply with the requirements set forth in this article and attendant regulations
200 as required to satisfy the stormwater flow rate capacity and velocity requirements set forth in the
201 Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.). A locality that is subject to the
202 provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) also shall adopt
203 requirements set forth in this article and attendant regulations as required to regulate Chesapeake
204 Bay Preservation Act land-disturbing activities in accordance with § 62.1-44.15:28.

205 Notwithstanding any other provision of this subsection, any county that operates an MS4 that
206 became a regulated MS4 on or after January 1, 2014 may elect, on a schedule set by the
207 Department, to defer the implementation of the county's VSMP until no later than January 1,
208 2015. During this deferral period, when such county thus lacks the legal authority to operate a
209 VSMP, the Department shall operate a VSMP on behalf of the county and address post-
210 construction stormwater runoff and the required design criteria for stormwater runoff controls.
211 Any such county electing to defer the establishment of its VSMP shall still comply with the
212 requirements set forth in this article and attendant regulations as required to satisfy the
213 stormwater flow rate capacity and velocity requirements set forth in the Erosion and Sediment
214 Control Law (§ 62.1-44.15:51 et seq.).

215 B. Any town, including a town that operates a regulated MS4, lying within a county that has
216 adopted a VSMP in accordance with subsection A may decide, but shall not be required, to
217 become subject to the county's VSMP. Any town lying within a county that operates an MS4 that
218 became a regulated MS4 on or after January 1, 2014 may elect to become subject to the county's
219 VSMP according to the deferred schedule established in subsection A. During the county's
220 deferral period, the Department shall operate a VSMP on behalf of the town and address post-
221 construction stormwater runoff and the required design criteria for stormwater runoff controls for
222 the town as provided in subsection A. If a town lies within the boundaries of more than one
223 county, the town shall be considered to be wholly within the county in which the larger portion
224 of the town lies. Towns shall inform the Department of their decision according to a schedule
225 established by the Department. Thereafter, the Department shall provide an annual schedule by
226 which towns can submit applications to adopt a VSMP.

227 C. In support of VSMP authorities, the Department shall:

228 1. Provide assistance grants to localities not currently operating a local stormwater management
229 program to help the localities to establish their VSMP.

230 2. Provide technical assistance and training.

231 3. Provide qualified services in specified geographic areas to a VSMP to assist localities in the
232 administration of components of their programs. The Department shall actively assist localities
233 in the establishment of their programs and in the selection of a contractor or other entity that may
234 provide support to the locality or regional support to several localities.

235 D. The Department shall develop a model ordinance for establishing a VSMP consistent with
236 this article and its associated regulations, including the Virginia Stormwater Management
237 Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities.

238 E. Each locality that administers an approved VSMP shall, by ordinance, establish a VSMP that
239 shall be administered in conjunction with a local MS4 program and a local erosion and sediment
240 control program if required pursuant to the Erosion and Sediment Control Law (§ [62.1-44.15:51](#)
241 et seq.), and which shall include the following:

242 1. Consistency with regulations adopted in accordance with provisions of this article;

243 2. Provisions for long-term responsibility for and maintenance of stormwater management
244 control devices and other techniques specified to manage the quality and quantity of runoff; and

245 3. Provisions for the integration of the VSMP with local erosion and sediment control, flood
246 insurance, flood plain management, and other programs requiring compliance prior to
247 authorizing construction in order to make the submission and approval of plans, issuance of
248 permits, payment of fees, and coordination of inspection and enforcement activities more
249 convenient and efficient both for the local governments and those responsible for compliance
250 with the programs.

251 F. The Board may approve a state entity, including the Department, federal entity, or, for linear
252 projects subject to annual standards and specifications, electric, natural gas, and telephone utility
253 companies, interstate and intrastate natural gas pipeline companies, railroad companies, or
254 authorities created pursuant to § [15.2-5102](#) to operate a Virginia Stormwater Management
255 Program consistent with the requirements of this article and its associated regulations and the
256 VSMP authority's Department-approved annual standards and specifications. For these
257 programs, enforcement shall be administered by the Department and the Board where applicable
258 in accordance with the provisions of this article.

259 G. The Board shall approve a VSMP when it deems a program consistent with this article and
260 associated regulations, including the Virginia Stormwater Management Program (VSMP)
261 General Permit for Discharges of Stormwater from Construction Activities.

262 H. A VSMP authority may enter into agreements or contracts with soil and water conservation
263 districts, adjacent localities, or other public or private entities to carry out or assist with the
264 responsibilities of this article.

265 I. If a locality establishes a VSMP, it shall issue a consolidated stormwater management and
266 erosion and sediment control permit that is consistent with the provisions of the Erosion and
267 Sediment Control Law (§ 62.1-44.15:51 et seq.). When available in accordance with subsection
268 J, such permit, where applicable, shall also include a copy of or reference to state VSMP permit
269 coverage authorization to discharge.

270 J. Upon the development of an online reporting system by the Department, but no later than July
271 1, 2014, a VSMP authority shall then be required to obtain evidence of state VSMP permit
272 coverage where it is required prior to providing approval to begin land disturbance.

273 K. Any VSMP adopted pursuant to and consistent with this article shall be considered to meet
274 the stormwater management requirements under the Chesapeake Bay Preservation Act (§ 62.1-
275 44.15:67 et seq.) and attendant regulations, and effective July 1, 2014, shall not be subject to
276 local program review under the stormwater management provisions of the Chesapeake Bay
277 Preservation Act.

278 L. All VSMP authorities shall comply with the provisions of this article and the stormwater
279 management provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and
280 related regulations. The VSMP authority responsible for regulating the land-disturbing activity
281 shall require compliance with the issued permit, permit conditions, and plan specifications. The
282 state shall enforce state permits.

283 1989, cc. 467, 499, § 10.1-603.3; 2004, c. 372; 2006, c. 171; 2009, c. 18; 2012, cc. 785, 819;
284 2013, cc. 756, 793; 2014, cc. 303, 598.

285 **§ 62.1-44.15:28. Development of regulations.**

286 A. The Board is authorized to adopt regulations that specify minimum technical criteria and
287 administrative procedures for Virginia Stormwater Management Programs. The regulations shall:

288 1. Establish standards and procedures for administering a VSMP;

289 2. Establish minimum design criteria for measures to control nonpoint source pollution and
290 localized flooding, and incorporate the stormwater management regulations adopted pursuant to

291 the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), as they relate to the prevention
292 of stream channel erosion. These criteria shall be periodically modified as required in order to
293 reflect current engineering methods;

294 3. Require the provision of long-term responsibility for and maintenance of stormwater
295 management control devices and other techniques specified to manage the quality and quantity
296 of runoff;

297 4. Require as a minimum the inclusion in VSMPs of certain administrative procedures that
298 include, but are not limited to, specifying the time period within which a VSMP authority shall
299 grant land-disturbing activity approval, the conditions and processes under which approval shall
300 be granted, the procedures for communicating disapproval, the conditions under which an
301 approval may be changed, and requirements for inspection of approved projects;

302 5. Establish by regulations a statewide permit fee schedule to cover all costs associated with the
303 implementation of a VSMP related to land-disturbing activities of one acre or greater. Such fee
304 attributes include the costs associated with plan review, VSMP registration statement review,
305 permit issuance, state-coverage verification, inspections, reporting, and compliance activities
306 associated with the land-disturbing activities as well as program oversight costs. The fee
307 schedule shall also include a provision for a reduced fee for land-disturbing activities between
308 2,500 square feet and up to one acre in Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et
309 seq.) localities. The fee schedule shall be governed by the following:

310 a. The revenue generated from the statewide stormwater permit fee shall be collected utilizing,
311 where practicable, an online payment system, and the Department's portion shall be remitted to
312 the State Treasurer for deposit in the Virginia Stormwater Management Fund established
313 pursuant to § 62.1-44.15:29. However, whenever the Board has approved a VSMP, no more than
314 30 percent of the total revenue generated by the statewide stormwater permit fees collected shall
315 be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund, with
316 the balance going to the VSMP authority.

317 b. Fees collected pursuant to this section shall be in addition to any general fund appropriation
318 made to the Department or other supporting revenue from a VSMP; however, the fees shall be
319 set at a level sufficient for the Department and the VSMP to fully carry out their responsibilities
320 under this article and its attendant regulations and local ordinances or standards and
321 specifications where applicable. When establishing a VSMP, the VSMP authority shall assess the
322 statewide fee schedule and shall have the authority to reduce or increase such fees, and to
323 consolidate such fees with other program-related charges, but in no case shall such fee changes
324 affect the amount established in the regulations as available to the Department for program

325 oversight responsibilities pursuant to subdivision 5 a. A VSMP's portion of the fees shall be used
326 solely to carry out the VSMP's responsibilities under this article and its attendant regulations,
327 ordinances, or annual standards and specifications.

328 c. Until July 1, 2014, the fee for coverage under the General Permit for Discharges of
329 Stormwater from Construction Activities issued by the Board, or where the Board has issued an
330 individual permit or coverage under the General Permit for Discharges of Stormwater from
331 Construction Activities for an entity for which it has approved annual standards and
332 specifications, shall be \$750 for each large construction activity with sites or common plans of
333 development equal to or greater than five acres and \$450 for each small construction activity
334 with sites or common plans of development equal to or greater than one acre and less than five
335 acres. On and after July 1, 2014, such fees shall only apply where coverage has been issued
336 under the Board's General Permit for Discharges of Stormwater from Construction Activities to a
337 state agency or federal entity for which it has approved annual standards and specifications.
338 After establishment, such fees may be modified in the future through regulatory actions.

339 d. Until July 1, 2014, the Department is authorized to assess a \$125 reinspection fee for each
340 visit to a project site that was necessary to check on the status of project site items noted to be in
341 noncompliance and documented as such on a prior project inspection.

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

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

351 6. Establish statewide standards for stormwater management from land-disturbing activities of
352 one acre or greater, except as specified otherwise within this article, and allow for the
353 consolidation in the permit of a comprehensive approach to addressing stormwater management
354 and erosion and sediment control, consistent with the provisions of the Erosion and Sediment
355 Control Law (§ [62.1-44.15:51](#) et seq.) and this article. However, such standards shall also apply
356 to land-disturbing activity exceeding an area of 2,500 square feet in all areas of the jurisdictions
357 designated as subject to the Chesapeake Bay Preservation Area Designation and Management
358 Regulations;

- 359 7. Establish a procedure by which a stormwater management plan that is approved for a
360 residential, commercial, or industrial subdivision shall govern the development of the individual
361 parcels, including those parcels developed under subsequent owners;
- 362 8. Notwithstanding the provisions of subdivision A 5, establish a procedure by which neither a
363 registration statement nor payment of the Department's portion of the statewide permit fee
364 established pursuant to that subdivision shall be required for coverage under the General Permit
365 for Discharges of Stormwater from Construction Activities for construction activity involving a
366 single-family detached residential structure, within or outside a common plan of development or
367 sale;
- 368 9. Provide for reciprocity with programs in other states for the certification of proprietary best
369 management practices;
- 370 10. Require that VSMPs maintain after-development runoff rate of flow and characteristics that
371 replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site
372 hydrology, or improve upon the contributing share of the existing predevelopment runoff
373 characteristics and site hydrology if stream channel erosion or localized flooding is an existing
374 predevelopment condition. Except where more stringent requirements are necessary to address
375 total maximum daily load requirements or to protect exceptional state waters, any land-
376 disturbing activity that provides for stormwater management shall satisfy the conditions of this
377 subsection if the practices are designed to (i) detain the water quality volume and to release it
378 over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from
379 the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-
380 year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow
381 rate from the site assuming it was in a good forested condition, achieved through multiplication
382 of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the
383 site when it was in a good forested condition divided by the runoff volume from the site in its
384 proposed condition, and shall be exempt from any flow rate capacity and velocity requirements
385 for natural or man-made channels as defined in any regulations promulgated pursuant to this
386 section or any ordinances adopted pursuant to § [62.1-44.15:27](#) or [62.1-44.15:33](#);
- 387 11. Encourage low-impact development designs, regional and watershed approaches, and
388 nonstructural means for controlling stormwater;
- 389 12. Promote the reclamation and reuse of stormwater for uses other than potable water in order to
390 protect state waters and the public health and to minimize the direct discharge of pollutants into
391 state waters;

392 13. Establish procedures to be followed when a locality that operates a VSMP wishes to transfer
393 administration of the VSMP to the Department;

394 14. Establish a statewide permit fee schedule for stormwater management related to municipal
395 separate storm sewer system permits; and

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

398 B. The Board may integrate and consolidate components of the regulations implementing the
399 Erosion and Sediment Control program and the Chesapeake Bay Preservation Area Designation
400 and Management program with the regulations governing the Virginia Stormwater Management
401 Program (VSMP) Permit program or repeal components so that these programs may be
402 implemented in a consolidated manner that provides greater consistency, understanding, and
403 efficiency for those regulated by and administering a VSMP.

404 1989, cc. 467, 499, § 10.1-603.4; 1991, c. 84; 2004, c. 372; 2005, c. 102; 2006, c. 21; 2008, c.
405 405; 2009, c. 709; 2012, cc. 785, 819; 2013, cc. 756, 793; 2014, cc. 303, 598.

406 **§ 62.1-44.15:29. Virginia Stormwater Management Fund established.**

407 There is hereby created in the state treasury a special nonreverting fund to be known as the
408 Virginia Stormwater Management Fund, hereafter referred to as "the Fund." The Fund shall be
409 established on the books of the Comptroller. All moneys collected by the Department pursuant to
410 §§ 62.1-44.15:28, 62.1-44.15:38, and 62.1-44.15:71 and all civil penalties collected pursuant to §
411 62.1-44.19:22 shall be paid into the state treasury and credited to the Fund. Interest earned on
412 moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the
413 Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund
414 but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of
415 carrying out the Department's responsibilities under this article. Expenditures and disbursements
416 from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon
417 written request signed by the Director.

418 An accounting of moneys received by and distributed from the Fund shall be kept by the State
419 Comptroller.

420 2004, c. 372, § 10.1-603.4:1; 2012, cc. 748, 785, 808, 819; 2013, cc. 756, 793.

421 **§ 62.1-44.15:30. Education and training programs.**

422 A. The Board shall issue certificates of competence concerning the content and application of
423 specified subject areas of this article and accompanying regulations, including program

424 administration, plan review, and project inspection, to personnel of VSMP authorities and to any
425 other persons who have completed training programs or in other ways demonstrated adequate
426 knowledge to the satisfaction of the Board. As part of education and training programs
427 authorized pursuant to subsection E of § 62.1-44.15:52, the Department shall develop or certify
428 expanded components to address program administration, plan review, and project inspection
429 elements of this article and attendant regulations. Reasonable fees to cover the costs of these
430 additional components may be charged.

431 B. Effective July 1, 2014, personnel of VSMP authorities reviewing plans or conducting
432 inspections pursuant to this chapter shall hold a certificate of competence as provided in
433 subsection A. Professionals registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et
434 seq.) of Chapter 4 of Title 54.1 shall be deemed to have met the provisions of this section for the
435 purposes of renewals.

436 2012, cc. 785, 819, § 10.1-603.4:2; 2013, cc. 756, 793.

437 **§ 62.1-44.15:31. Annual standards and specifications for state agencies, federal entities, and**
438 **other specified entities.**

439 A. State entities, including the Department of Transportation, and for linear projects set out in
440 subsection B, electric, natural gas, and telephone utility companies, interstate and intrastate
441 natural gas pipeline companies, and railroad companies shall, and federal entities and authorities
442 created pursuant to § 15.2-5102 may, annually submit a single set of standards and specifications
443 for Department approval that describes how land-disturbing activities shall be conducted. Such
444 standards and specifications shall be consistent with the requirements of this article and
445 associated regulations, including the regulations governing the General Virginia Stormwater
446 Management Program (VSMP) Permit for Discharges of Stormwater from Construction
447 Activities and the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and associated
448 regulations. Each project constructed in accordance with the requirements of this article, its
449 attendant regulations, and where required standards and specifications shall obtain coverage
450 issued under the state general permit prior to land disturbance. The standards and specifications
451 shall include:

- 452 1. Technical criteria to meet the requirements of this article and regulations developed under this
453 article;
- 454 2. Provisions for the long-term responsibility and maintenance of stormwater management
455 control devices and other techniques specified to manage the quantity and quality of runoff;

- 456 3. Provisions for erosion and sediment control and stormwater management program
457 administration, plan design, review and approval, and construction inspection and enforcement;
- 458 4. Provisions for ensuring that responsible personnel and contractors obtain certifications or
459 qualifications for erosion and sediment control and stormwater management comparable to those
460 required for local government;
- 461 5. Implementation of a project tracking and notification system to the Department of all land-
462 disturbing activities covered under this article; and
- 463 6. Requirements for documenting onsite changes as they occur to ensure compliance with the
464 requirements of the article.

465 B. Linear projects subject to annual standards and specifications include:

- 466 1. Construction, installation, or maintenance of electric transmission, natural gas, and telephone
467 utility lines and pipelines, and water and sewer lines; and
- 468 2. Construction of the tracks, rights-of-way, bridges, communication facilities, and other related
469 structures and facilities of a railroad company.

470 Linear projects not included in subdivisions 1 and 2 shall comply with the requirements of the
471 local or state VSMP in the locality within which the project is located.

472 C. The Department shall perform random site inspections or inspections in response to a
473 complaint to assure compliance with this article, the Erosion and Sediment Control Law (§ 62.1-
474 44.15:51 et seq.), and regulations adopted thereunder. The Department may take enforcement
475 actions in accordance with this article and related regulations.

476 D. The Department shall assess an administrative charge to cover the costs of services rendered
477 associated with its responsibilities pursuant to this section.

478 1989, cc. 467, 499, § 10.1-603.5; 2004, c. 372; 2012, cc. 785, 819; 2013, cc. 756, 793.

479 **§ 62.1-44.15:32. Duties of the Department.**

480 A. The Department shall provide technical assistance, training, research, and coordination in
481 stormwater management technology to VSMP authorities consistent with the purposes of this
482 article.

483 B. The Department is authorized to review the stormwater management plan for any project with
484 real or potential interjurisdictional impacts upon the request of one or all of the involved
485 localities to determine that the plan is consistent with the provisions of this article. Any such

486 review shall be completed and a report submitted to each locality involved within 90 days of
487 such request being accepted. The Department may charge a fee of the requesting locality to cover
488 its costs for providing such services.

489 C. The Department shall be responsible for the implementation of this article.

490 1989, cc. 467, 499, § 10.1-603.6; 2004, c. 372; 2012, cc. 785, 819; 2013, cc. 756, 793.

491 **§ 62.1-44.15:33. Authorization for more stringent ordinances.**

492 A. Localities that are VSMP authorities are authorized to adopt more stringent stormwater
493 management ordinances than those necessary to ensure compliance with the Board's minimum
494 regulations, provided that the more stringent ordinances are based upon factual findings of local
495 or regional comprehensive watershed management studies or findings developed through the
496 implementation of a MS4 permit or a locally adopted watershed management study and are
497 determined by the locality to be necessary to prevent any further degradation to water resources,
498 to address TMDL requirements, to protect exceptional state waters, or to address specific
499 existing water pollution including nutrient and sediment loadings, stream channel erosion,
500 depleted groundwater resources, or excessive localized flooding within the watershed and that
501 prior to adopting more stringent ordinances a public hearing is held after giving due notice.

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

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

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

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

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

549 E. Any provisions of a local stormwater management program in existence before January 1,
550 2013, that contains more stringent provisions than this article shall be exempt from the
551 requirements of this section. However, such provisions shall be reported to the Board at the time
552 of the locality's VSMP approval package.

1989, cc. 467, 499, § 10.1-603.7; 1991, c. 84; 2004, c. 372; 2011, cc. 341, 353; 2012, cc. 785, 819; 2013, cc. 591, 756, 793; 2014, cc. 303, 598.

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

A. A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance. A locality that is not a VSMP authority shall provide a general notice to applicants of the state permit coverage requirement and report all approvals pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) to begin land disturbance of one acre or greater to the Department at least monthly. Upon the development of an online reporting system by the Department, but no later than July 1, 2014, a VSMP authority shall be required to obtain evidence of state VSMP permit coverage where it is required prior to providing approval to begin land disturbance. The VSMP authority shall act on any permit application within 60 days after it has been determined by the VSMP authority to be a complete application. The VSMP authority may either issue project approval or denial and shall provide written rationale for the denial. The VSMP authority shall act on any permit application that has been previously disapproved within 45 days after the application has been revised, resubmitted for approval, and deemed complete. Prior to issuance of any approval, the VSMP authority may also require an applicant, excluding state and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the VSMP authority, to ensure that measures could be taken by the VSMP authority at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions that may be required of him by the permit conditions as a result of his land-disturbing activity. If the VSMP authority takes such action upon such failure by the applicant, the VSMP authority may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the completion of the 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. These requirements are in addition to all other provisions of law relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

B. A Chesapeake Bay Preservation Act Land-Disturbing Activity shall be subject to coverage under the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities until July 1, 2014, at which time it shall no longer be

589 considered a small construction activity but shall be then regulated under the requirements of this
590 article.

591 C. Notwithstanding any other provisions of this article, the following activities are exempt,
592 unless otherwise required by federal law:

593 1. Permitted surface or deep mining operations and projects, or oil and gas operations and
594 projects conducted under the provisions of Title 45.1;

595 2. Clearing of lands specifically for agricultural purposes and the management, tilling, planting,
596 or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as
597 additionally set forth by the Board in regulations, including engineering operations as follows:
598 construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip
599 cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land
600 irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on
601 which harvesting occurs is reforested artificially or naturally in accordance with the provisions of
602 Chapter 11 (§ 10.1-1100 et seq.) or is converted to bona fide agricultural or improved pasture use
603 as described in subsection B of § 10.1-1163;

604 3. Single-family residences separately built and disturbing less than one acre and not part of a
605 larger common plan of development or sale, including additions or modifications to existing
606 single-family detached residential structures. However, localities subject to the provisions of the
607 Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) may regulate these single-family
608 residences where land disturbance exceeds 2,500 square feet;

609 4. Land-disturbing activities that disturb less than one acre of land area except for land-
610 disturbing activity exceeding an area of 2,500 square feet in all areas of the jurisdictions
611 designated as subject to the Chesapeake Bay Preservation Area Designation and Management
612 Regulations adopted pursuant to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-
613 44.15:67 et seq.) or activities that are part of a larger common plan of development or sale that is
614 one acre or greater of disturbance; however, the governing body of any locality that administers a
615 VSMP may reduce this exception to a smaller area of disturbed land or qualify the conditions
616 under which this exception shall apply;

617 5. Discharges to a sanitary sewer or a combined sewer system;

618 6. Activities under a state or federal reclamation program to return an abandoned property to an
619 agricultural or open land use;

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

624 8. Conducting land-disturbing activities in response to a public emergency where the related
625 work requires immediate authorization to avoid imminent endangerment to human health or the
626 environment. In such situations, the VSMP authority shall be advised of the disturbance within
627 seven days of commencing the land-disturbing activity, and compliance with the administrative
628 requirements of subsection A is required within 30 days of commencing the land-disturbing
629 activity.

630 1989, cc. 467, 499, § 10.1-603.8; 1994, cc. 605, 898; 2004, c. 372; 2011, c. 400; 2012, cc. 785,
631 819; 2013, cc. 756, 793; 2014, cc. 303, 598.

632 **§ 62.1-44.15:35. Nutrient credit use and additional offsite options for construction**
633 **activities.**

634 A. As used in this section:

635 "Nutrient credit" or "credit" means a nutrient credit certified pursuant to Article 4.02 (§ 62.1-
636 44.19:12 et seq.).

637 "Tributary" has the same meaning as in § 62.1-44.19:13. For areas outside of the Chesapeake
638 Bay Watershed, "tributary" includes the following watersheds: Albemarle Sound, Coastal;
639 Atlantic Ocean, Coastal; Big Sandy; Chowan; Clinch-Powell; New Holston (Upper Tennessee);
640 New River; Roanoke; and Yadkin.

641 "Virginia Stormwater Management Program Authority" or "VSMP authority" has the same
642 meaning as in § 62.1-44.15:24 and includes, until July 1, 2014, any locality that has adopted a
643 local stormwater management program.

644 B. A VSMP authority is authorized to allow compliance with stormwater nonpoint nutrient
645 runoff water quality criteria established pursuant to § 62.1-44.15:28, in whole or in part, through
646 the use of the applicant's acquisition of nutrient credits in the same tributary.

647 C. No applicant shall use nutrient credits to address water quantity control requirements. No
648 applicant shall use nutrient credits or other offsite options in contravention of local water quality-
649 based limitations (i) determined pursuant to subsection B of § 62.1-44.19:14, (ii) adopted
650 pursuant to § 62.1-44.15:33 or other applicable authority, (iii) deemed necessary to protect public
651 water supplies from demonstrated adverse nutrient impacts, or (iv) as otherwise may be

652 established or approved by the Board. Where such a limitation exists, offsite options may be
653 used provided that such options do not preclude or impair compliance with the local limitation.

654 D. A VSMP authority shall allow offsite options in accordance with subsection I when:

655 1. Less than five acres of land will be disturbed;

656 2. The postconstruction phosphorous control requirement is less than 10 pounds per year; or

657 3. The state permit applicant demonstrates to the satisfaction of the VSMP authority that (i)
658 alternative site designs have been considered that may accommodate onsite best management
659 practices, (ii) onsite best management practices have been considered in alternative site designs
660 to the maximum extent practicable, (iii) appropriate onsite best management practices will be
661 implemented, and (iv) full compliance with postdevelopment nonpoint nutrient runoff
662 compliance requirements cannot practicably be met onsite. For purposes of this subdivision, if an
663 applicant demonstrates onsite control of at least 75 percent of the required phosphorous nutrient
664 reductions, the applicant shall be deemed to have met the requirements of clauses (i) through
665 (iv).

666 E. Documentation of the applicant's acquisition of nutrient credits shall be provided to the VSMP
667 authority and the Department in a certification from the credit provider documenting the number
668 of phosphorus nutrient credits acquired and the associated ratio of nitrogen nutrient credits at the
669 credit-generating entity. Until the effective date of regulations establishing application fees in
670 accordance with § [62.1-44.19:20](#), the credit provider shall pay the Department a water quality
671 enhancement fee equal to six percent of the amount paid by the applicant for the credits. Such fee
672 shall be deposited into the Virginia Stormwater Management Fund established by § [62.1-](#)
673 [44.15:29](#).

674 F. Nutrient credits used pursuant to subsection B shall be generated in the same or adjacent
675 eight-digit hydrologic unit code as defined by the United States Geological Survey as the
676 permitted site except as otherwise limited in subsection C. Nutrient credits outside the same or
677 adjacent eight-digit hydrologic unit code may only be used if it is determined by the VSMP
678 authority that no credits are available within the same or adjacent eight-digit hydrologic unit
679 code when the VSMP authority accepts the final site design. In such cases, and subject to other
680 limitations imposed in this section, credits available within the same tributary may be used. In no
681 case shall credits from another tributary be used.

682 G. For that portion of a site's compliance with stormwater nonpoint nutrient runoff water quality
683 criteria being obtained through nutrient credits, the applicant shall (i) comply with a 1:1 ratio of
684 the nutrient credits to the site's remaining postdevelopment nonpoint nutrient runoff compliance

685 requirement being met by credit use and (ii) use credits certified as perpetual credits pursuant to
686 Article 4.02 (§ [62.1-44.19:12](#) et seq.).

687 H. No VSMP authority may grant an exception to, or waiver of, postdevelopment nonpoint
688 nutrient runoff compliance requirements unless offsite options have been considered and found
689 not available.

690 I. The VSMP authority shall require that nutrient credits and other offsite options approved by
691 the Department or applicable state board, including locality pollutant loading pro rata share
692 programs established pursuant to § [15.2-2243](#), achieve the necessary nutrient reductions prior to
693 the commencement of the applicant's land-disturbing activity. A pollutant loading pro rata share
694 program established by a locality pursuant to § [15.2-2243](#) and approved by the Department or
695 applicable state board prior to January 1, 2011, including those that may achieve nutrient
696 reductions after the commencement of the land-disturbing activity, may continue to operate in
697 the approved manner for a transition period ending July 1, 2014. The applicant shall have the
698 right to select between the use of nutrient credits or other offsite options, except during the
699 transition period in those localities to which the transition period applies. The locality may use
700 funds collected for nutrient reductions pursuant to a locality pollutant loading pro rata share
701 program under § [15.2-2243](#) for nutrient reductions in the same tributary within the same locality
702 as the land-disturbing activity or for the acquisition of nutrient credits. In the case of a phased
703 project, the applicant may acquire or achieve the offsite nutrient reductions prior to the
704 commencement of each phase of the land-disturbing activity in an amount sufficient for each
705 such phase.

706 J. Nutrient reductions obtained through nutrient credits shall be credited toward compliance with
707 any nutrient allocation assigned to a municipal separate storm sewer system in a Virginia
708 Stormwater Management Program Permit or Total Maximum Daily Load applicable to the
709 location where the activity for which the nutrient credits are used takes place. If the activity for
710 which the nutrient credits are used does not discharge to a municipal separate storm sewer
711 system, the nutrient reductions shall be credited toward compliance with the applicable nutrient
712 allocation.

713 K. A VSMP authority shall allow the full or partial substitution of perpetual nutrient credits for
714 existing onsite nutrient controls when (i) the nutrient credits will compensate for 10 or fewer
715 pounds of the annual phosphorous requirement associated with the original land-disturbing
716 activity or (ii) existing onsite controls are not functioning as anticipated after reasonable attempts
717 to comply with applicable maintenance agreements or requirements and the use of nutrient
718 credits will account for the deficiency. Upon determination by the VSMP authority that the
719 conditions established by clause (i) or (ii) have been met, the party responsible for maintenance

720 shall be released from maintenance obligations related to the onsite phosphorous controls for
721 which the nutrient credits are substituted.

722 L. To the extent available, with the consent of the applicant, the VSMP authority, the Board or
723 the Department may include the use of nutrient credits or other offsite measures in resolving
724 enforcement actions to compensate for (i) nutrient control deficiencies occurring during the
725 period of noncompliance and (ii) permanent nutrient control deficiencies.

726 M. This section shall not be construed as limiting the authority established under § 15.2-2243;
727 however, under any pollutant loading pro rata share program established thereunder, the
728 subdivider or developer shall be given appropriate credit for nutrient reductions achieved through
729 nutrient credits or other offsite options.

730 N. In order to properly account for allowed nonpoint nutrient offsite reductions, an applicant
731 shall report to the Department, in accordance with Department procedures, information regarding
732 all offsite reductions that have been authorized to meet stormwater postdevelopment nonpoint
733 nutrient runoff compliance requirements.

734 O. An applicant or a permittee found to be in noncompliance with the requirements of this
735 section shall be subject to the enforcement and penalty provisions of this article.

736 2009, c. 364, § 10.1-603.8:1; 2010, c. 686; 2011, c. 523; 2012, cc. 748, 785, 808, 819; 2013, cc.
737 756, 793.

738 **§ 62.1-44.15:36. (For contingent repeal -- Editor's note) Recovery of administrative costs.**

739 Any locality that administers a stormwater management program may charge applicants a
740 reasonable fee to defray the cost of program administration, including costs associated with plan
741 review, issuance of permits, periodic inspection for compliance with approved plans, and
742 necessary enforcement, provided that charges for such costs are not made under any other law,
743 ordinance, or program. The fee shall not exceed an amount commensurate with the services
744 rendered and expenses incurred or \$1,000, whichever is less.

745 1989, cc. 467, 499, § 10.1-603.10; 2013, cc. 756, 793.

746 **§ 62.1-44.15:37. Monitoring, reports, investigations, inspections, and stop work orders.**

747 A. The VSMP authority (i) shall provide for periodic inspections of the installation of
748 stormwater management measures, (ii) may require monitoring and reports from the person
749 responsible for meeting the permit conditions to ensure compliance with the permit and to
750 determine whether the measures required in the permit provide effective stormwater
751 management, and (iii) shall conduct such investigations and perform such other actions as are

752 necessary to carry out the provisions of this article. If the VSMP authority, where authorized to
753 enforce this article, or the Department determines that there is a failure to comply with the permit
754 conditions, notice shall be served upon the permittee or person responsible for carrying out the
755 permit conditions by mailing with confirmation of delivery to the address specified in the permit
756 application, or by delivery at the site of the development activities to the agent or employee
757 supervising such activities. The notice shall specify the measures needed to comply with the
758 permit conditions and shall specify the time within which such measures shall be completed.
759 Upon failure to comply within the time specified, a stop work order may be issued in accordance
760 with subsection B by the VSMP authority, where authorized to enforce this article, or by the
761 Board, or the permit may be revoked by the VSMP authority, or the state permit may be revoked
762 by the Board. The Board or the VSMP authority, where authorized to enforce this article, may
763 pursue enforcement in accordance with § 62.1-44.15:48.

764 B. If a permittee fails to comply with a notice issued in accordance with subsection A within the
765 time specified, the VSMP authority, where authorized to enforce this article, or the Department
766 may issue an order requiring the owner, permittee, person responsible for carrying out an
767 approved plan, or person conducting the land-disturbing activities without an approved plan or
768 required permit to cease all land-disturbing activities until the violation of the permit has ceased,
769 or an approved plan and required permits are obtained, and specified corrective measures have
770 been completed.

771 Such orders shall be issued (i) in accordance with local procedures if issued by a locality serving
772 as a VSMP authority or (ii) after a hearing held in accordance with the requirements of the
773 Administrative Process Act (§ 2.2-4000 et seq.) if issued by the Department. Such orders shall
774 become effective upon service on the person by mailing, with confirmation of delivery, sent to
775 his address specified in the land records of the locality, or by personal delivery by an agent of the
776 VSMP authority or Department. However, if the VSMP authority or the Department finds that
777 any such violation is grossly affecting or presents an imminent and substantial danger of causing
778 harmful erosion of lands or sediment deposition in waters within the watersheds of the
779 Commonwealth or otherwise substantially impacting water quality, it may issue, without
780 advance notice or hearing, an emergency order directing such person to cease immediately all
781 land-disturbing activities on the site and shall provide an opportunity for a hearing, after
782 reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or
783 cancel such emergency order.

784 If a person who has been issued an order is not complying with the terms thereof, the VSMP
785 authority or the Department may institute a proceeding in accordance with § 62.1-44.15:42.

786 1989, cc. 467, 499, § 10.1-603.11; 2004, c. 372; 2012, cc. 785, 819. 2013, cc. 756, 793.

787 **§ 62.1-44.15:38. Department to review VSMPs.**

788 A. The Department shall develop and implement a review and evaluation schedule so that the
789 effectiveness of each VSMP authority, Municipal Separate Storm Sewer System Management
790 Program, and other MS4 permit requirements is evaluated no less than every five years. The
791 review shall include an assessment of the extent to which the program has reduced nonpoint
792 source pollution and mitigated the detrimental effects of localized flooding. Such reviews shall
793 be coordinated with those being implemented in accordance with the Erosion and Sediment
794 Control Law (§ 62.1-44.15:51 et seq.) and associated regulations and, where applicable, the
795 Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and associated regulations.

796 B. Following completion of a compliance review of a VSMP, the Department shall provide
797 results and compliance recommendations to the Board in the form of a corrective action
798 agreement if deficiencies are found; otherwise, the Board may find the program compliant. If,
799 after such a review and evaluation, a VSMP is found to have a program that does not comply
800 with the provisions of this article or regulations adopted thereunder, the Board shall establish a
801 schedule for the VSMP authority to come into compliance. The Board shall provide a copy of its
802 decision to the VSMP authority that specifies the deficiencies, actions needed to be taken, and
803 the approved compliance schedule. If the VSMP has not implemented the necessary compliance
804 actions identified by the Board within 30 days following receipt of the corrective action
805 agreement, or such additional period as is granted to complete the implementation of the
806 corrective action, then the Board shall have the authority to (i) issue a special order to any VSMP
807 imposing a civil penalty not to exceed \$5,000 per day with the maximum amount not to exceed
808 \$20,000 per violation for noncompliance with the requirements of this article and its regulations,
809 to be paid into the state treasury and deposited in the Virginia Stormwater Management Fund
810 established by § 62.1-44.15:29 or (ii) revoke its approval of the VSMP. The Administrative
811 Process Act (§ 2.2-4000 et seq.) shall govern the activities and proceedings of the Board under
812 this article and the judicial review thereof.

813 If the Board revokes its approval of a VSMP, the Board shall find the VSMP authority
814 provisional and shall have the Department assist with the administration of the program until the
815 VSMP authority is deemed compliant with the requirements of this article and associated
816 regulations. Assisting with administration includes the ability to review and comment on plans to
817 the VSMP authority, to conduct inspections with the VSMP authority, and to conduct
818 enforcement in accordance with this article and associated regulations.

819 In lieu of issuing a special order or revoking the program, the Board may take legal action
820 against a VSMP pursuant to § 62.1-44.15:48 to ensure compliance.

821 1989, cc. 467, 499, § 10.1-603.12; 2004, c. 372; 2012, cc. 785, 819; 2013, cc. 756, 793.

822 **§ 62.1-44.15:39. Right of entry.**

823 The Department, the VSMP authority, where authorized to enforce this article, any duly
824 authorized agent of the Department or VSMP authority, or any locality that is the operator of a
825 regulated municipal separate storm sewer system may, at reasonable times and under reasonable
826 circumstances, enter any establishment or upon any property, public or private, for the purpose
827 of obtaining information or conducting surveys or investigations necessary in the enforcement of
828 the provisions of this article. For operators of municipal separate storm sewer systems, this
829 authority shall apply only to those properties from which a discharge enters their municipal
830 separate storm sewer systems.

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

837 2004, c. 372, § 10.1-603.12:1; 2011, c. 453; 2012, cc. 785, 819; 2013, cc. 756, 793.

838 **§ 62.1-44.15:40. Information to be furnished.**

839 The Board, the Department, or the VSMP authority, where authorized to enforce this article, may
840 require every permit applicant, every permittee, or any person subject to state permit
841 requirements under this article to furnish when requested such application materials, plans,
842 specifications, and other pertinent information as may be necessary to determine the effect of his
843 discharge on the quality of state waters, or such other information as may be necessary to
844 accomplish the purposes of this article. Any personal information shall not be disclosed except to
845 an appropriate official of the Board, Department, U.S. Environmental Protection Agency, or
846 VSMP authority or as may be authorized pursuant to the Virginia Freedom of Information Act (§
847 2.2-3700 et seq.). However, disclosure of records of the Department, the Board, or the VSMP
848 authority relating to (i) active federal environmental enforcement actions that are considered
849 confidential under federal law, (ii) enforcement strategies, including proposed sanctions for
850 enforcement actions, and (iii) any secret formulae, secret processes, or secret methods other than
851 effluent data used by any permittee or under that permittee's direction is prohibited. Upon
852 request, such enforcement records shall be disclosed after a proposed sanction resulting from the
853 investigation has been determined by the Department, the Board, or the VSMP authority. This
854 section shall not be construed to prohibit the disclosure of records related to inspection reports,
855 notices of violation, and documents detailing the nature of any land-disturbing activity that may
856 have occurred, or similar documents.

857 2004, c. 372, § 10.1-603.12:2; 2005, c. 102; 2012, cc. 785, 819; 2013, cc. 756, 793.

858 **§ 62.1-44.15:41. Private rights; liability.**

859 A. Whenever a common interest community cedes responsibility for the maintenance, repair, and
860 replacement of a stormwater management facility on its real property to the Commonwealth or
861 political subdivision thereof, such common interest community shall be immune from civil
862 liability in relation to such stormwater management facility. In order for the immunity
863 established by this subsection to apply, (i) the common interest community must cede such
864 responsibility by contract or other instrument executed by both parties and (ii) the
865 Commonwealth or the governing body of the political subdivision shall have accepted the
866 responsibility ceded by the common interest community in writing or by resolution. As used in
867 this section, maintenance, repair, and replacement shall include, without limitation, cleaning of
868 the facility, maintenance of adjacent grounds that are part of the facility, maintenance and
869 replacement of fencing where the facility is fenced, and posting of signage indicating the identity
870 of the governmental entity that maintains the facility. Acceptance or approval of an easement,
871 subdivision plat, site plan, or other plan of development shall not constitute the acceptance by the
872 Commonwealth or the governing body of the political subdivision required to satisfy clause (ii).
873 The immunity granted by this section shall not apply to actions or omissions by the common
874 interest community constituting intentional or willful misconduct or gross negligence. For the
875 purposes of this section, "common interest community" means the same as that term is defined in
876 § 55-528.

877 B. Except as provided in subsection A, the fact that any permittee holds or has held a permit or
878 state permit issued under this article shall not constitute a defense in any civil action involving
879 private rights.

880 2004, c. 372, § 10.1-603.12:3; 2010, c. 853; 2012, cc. 785, 819; 2013, cc. 756, 793.

881 **§ 62.1-44.15:42. Enforcement by injunction, etc.**

882 A. It is unlawful for any person to fail to comply with any stop work order, emergency order
883 issued in accordance with § 62.1-44.15:37, or a special order or emergency special order issued
884 in accordance with § 62.1-44.15:25 that has become final under the provisions of this article.
885 Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance,
886 approved standard and specification, order, or permit condition issued by the Board, Department,
887 or VSMP authority as authorized to do such, or any provisions of this article, may be compelled
888 in a proceeding instituted in any appropriate court by the Board, Department, or VSMP authority
889 where authorized to enforce this article to obey same and to comply therewith by injunction,
890 mandamus, or other appropriate remedy.

891 B. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or
892 other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a
893 civil penalty in accordance with the provisions of § 62.1-44.15:48.

894 2004, c. 372, § 10.1-603.12:4; 2012, cc. 785, 819; 2013, cc. 756, 793.

895 **§ 62.1-44.15:43. Testing validity of regulations; judicial review.**

896 A. The validity of any regulation adopted by the Board pursuant to this article may be
897 determined through judicial review in accordance with the provisions of the Administrative
898 Process Act (§ 2.2-4000 et seq.).

899 B. An appeal may be taken from the decision of the court to the Court of Appeals as provided by
900 law.

901 2004, c. 372, § 10.1-603.12:5; 2013, cc. 756, 793.

902 **§ 62.1-44.15:44. Right to hearing.**

903 Any permit applicant, permittee, or person subject to state permit requirements under this article
904 aggrieved by any action of the Department or Board taken without a formal hearing, or by
905 inaction of the Department or Board, may demand in writing a formal hearing by the Board,
906 provided a petition requesting such hearing is filed with the Board within 30 days after notice of
907 such action.

908 2004, c. 372, § 10.1-603.12:6; 2012, cc. 785, 819; 2013, cc. 756, 793; 2014, cc. 303, 598.

909 **§ 62.1-44.15:45. Hearings.**

910 When holding hearings under this article, the Board shall do so in a manner consistent with §
911 62.1-44.26. A locality holding hearings under this article shall do so in a manner consistent with
912 local hearing procedures.

913 2004, c. 372, § 10.1-603.12:7; 2012, cc. 785, 819; 2013, cc. 756, 793; 2014, cc. 303, 598.

914 **§ 62.1-44.15:46. Appeals.**

915 Any permittee or party aggrieved by a state permit or enforcement decision of the Department or
916 Board under this article, or any person who has participated, in person or by submittal of written
917 comments, in the public comment process related to a final decision of the Department or Board
918 under this article, whether such decision is affirmative or negative, is entitled to judicial review
919 thereof in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.)
920 if such person meets the standard for obtaining judicial review of a case or controversy pursuant
921 to Article III of the Constitution of the United States. A person shall be deemed to meet such
922 standard if (i) such person has suffered an actual or imminent injury that is an invasion of a

923 legally protected interest and that is concrete and particularized; (ii) such injury is fairly traceable
924 to the decision of the Department or the Board and not the result of the independent action of
925 some third party not before the court; and (iii) such injury will likely be redressed by a favorable
926 decision by the court.

927 The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to decisions
928 rendered by localities. Appeals of decisions rendered by localities shall be conducted in
929 accordance with local appeal procedures and shall include an opportunity for judicial review in
930 the circuit court of the locality in which the land disturbance occurs or is proposed to occur.
931 Unless otherwise provided by law, the circuit court shall conduct such review in accordance with
932 the standards established in § 2.2-4027, and the decisions of the circuit court shall be subject to
933 review by the Court of Appeals, as in other cases under this article.

934 1989, cc. 467, 499, § 10.1-603.13; 2004, c. 372; 2012, cc. 785, 819; 2013, cc. 756, 793; 2014, cc.
935 303, 598.

936 **§ 62.1-44.15:47. Appeal to Court of Appeals.**

937 From the final decision of the circuit court an appeal may be taken to the Court of Appeals as
938 provided in § 17.1-405.

939 2004, c. 372, § 10.1-603.13:1; 2013, cc. 756, 793.

940 **§ 62.1-44.15:48. Penalties, injunctions, and other legal actions.**

941 A. Any person who violates any provision of this article or of any regulation, ordinance, or
942 standard and specification adopted or approved hereunder, including those adopted pursuant to
943 the conditions of an MS4 permit, or who fails, neglects, or refuses to comply with any order of a
944 VSMP authority authorized to enforce this article, the Department, the Board, or a court, issued
945 as herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation
946 within the discretion of the court. Each day of violation of each requirement shall constitute a
947 separate offense. The Board shall adopt a regulation establishing a schedule of civil penalties to
948 be utilized by the VSMP authority in enforcing the provisions of this article. The Board,
949 Department, or VSMP authority may issue a summons for collection of the civil penalty and the
950 action may be prosecuted in the appropriate court. Any civil penalties assessed by a court as a
951 result of a summons issued by a locality as an approved VSMP authority shall be paid into the
952 treasury of the locality wherein the land lies, except where the violator is the locality itself, or its
953 agent. When the penalties are assessed by the court as a result of a summons issued by the Board
954 or Department, or where the violator is the locality itself, or its agent, the court shall direct the
955 penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia
956 Stormwater Management Fund established pursuant to § 62.1-44.15:29. Such civil penalties paid

957 into the treasury of the locality in which the violation occurred are to be used for the purpose of
958 minimizing, preventing, managing, or mitigating pollution of the waters of the locality and
959 abating environmental pollution therein in such manner as the court may, by order, direct.

960 B. Any person who willfully or negligently violates any provision of this article, any regulation
961 or order of the Board, any order of a VSMP authority authorized to enforce this article or the
962 Department, any ordinance of any locality approved as a VSMP authority, any condition of a
963 permit or state permit, or any order of a court shall be guilty of a misdemeanor punishable by
964 confinement in jail for not more than 12 months and a fine of not less than \$2,500 nor more than
965 \$32,500, either or both. Any person who knowingly violates any provision of this article, any
966 regulation or order of the Board, any order of the VSMP authority or the Department, any
967 ordinance of any locality approved as a VSMP authority, any condition of a permit or state
968 permit, or any order of a court issued as herein provided, or who knowingly makes any false
969 statement in any form required to be submitted under this article or knowingly renders inaccurate
970 any monitoring device or method required to be maintained under this article, shall be guilty of a
971 felony punishable by a term of imprisonment of not less than one year nor more than three years,
972 or in the discretion of the jury or the court trying the case without a jury, confinement in jail for
973 not more than 12 months and a fine of not less than \$5,000 nor more than \$50,000 for each
974 violation. Any defendant that is not an individual shall, upon conviction of a violation under this
975 subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each
976 requirement shall constitute a separate offense.

977 C. Any person who knowingly violates any provision of this article, and who knows at that time
978 that he thereby places another person in imminent danger of death or serious bodily harm, shall,
979 upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two
980 years nor more than 15 years and a fine of not more than \$250,000, either or both. A defendant
981 that is not an individual shall, upon conviction of a violation under this subsection, be sentenced
982 to pay a fine not exceeding the greater of \$1 million or an amount that is three times the
983 economic benefit realized by the defendant as a result of the offense. The maximum penalty shall
984 be doubled with respect to both fine and imprisonment for any subsequent conviction of the
985 same person under this subsection.

986 D. Violation of any provision of this article may also include the following sanctions:

987 1. The Board, Department, or the VSMP authority, where authorized to enforce this article, may
988 apply to the appropriate court in any jurisdiction wherein the land lies to enjoin a violation or a
989 threatened violation of the provisions of this article or of the local ordinance without the
990 necessity of showing that an adequate remedy at law does not exist.

991 2. With the consent of any person who has violated or failed, neglected, or refused to obey any
992 ordinance, any condition of a permit or state permit, any regulation or order of the Board, any
993 order of the VSMP authority or the Department, or any provision of this article, the Board,
994 Department, or VSMP authority may provide, in an order issued against such person, for the
995 payment of civil charges for violations in specific sums, not to exceed the limit specified in this
996 section. Such civil charges shall be instead of any appropriate civil penalty that could be imposed
997 under this section. Any civil charges collected shall be paid to the locality or state treasury
998 pursuant to subsection A.

999 1989, cc. 467, 499, § 10.1-603.14; 2004, c. 372; 2006, c. 171; 2012, cc. 785, 819; 2013, cc. 756,
1000 793.

1001 **§ 62.1-44.15:49. Enforcement authority of MS4 localities.**

1002 A. Localities shall adopt a stormwater ordinance pursuant to the conditions of a MS4 permit that
1003 is consistent with this article and its associated regulations and that contains provisions including
1004 the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of
1005 Stormwater from Construction Activities and shall include additional provisions as required to
1006 comply with a state MS4 permit. Such locality may utilize the civil penalty provisions in
1007 subsection A of § 62.1-44.15:48, the injunctive authority as provided for in subdivision D 1 of §
1008 62.1-44.15:48, and the civil charges as authorized in subdivision D 2 of § 62.1-44.15:48, to
1009 enforce the ordinance. At the request of another MS4, the locality may apply the penalties
1010 provided for in this section to direct or indirect discharges to any MS4 located within its
1011 jurisdiction.

1012 B. Any person who willfully and knowingly violates any provision of such an ordinance is guilty
1013 of a Class 1 misdemeanor.

1014 C. The local ordinance authorized by this section shall remain in full force and effect until the
1015 locality has been approved as a VSMP authority.

1016 2008, c. 13, § 10.1-603.14:1; 2012, cc. 785, 819; 2013, cc. 756, 793.

1017 **§ 62.1-44.15:50. Cooperation with federal and state agencies.**

1018 A VSMP authority and the Department are authorized to cooperate and enter into agreements
1019 with any federal or state agency in connection with the requirements for land-disturbing
1020 activities for stormwater management.

1021 1989, cc. 467, 499, § 10.1-603.15; 2004, c. 372; 2012, cc. 785, 819; 2013, cc. 756, 793.

1022

1023 **Article 2.4. Erosion and Sediment Control Law**

1024 **§ 62.1-44.15:51. Definitions.**

1025 As used in this article, unless the context requires a different meaning:

1026 "Agreement in lieu of a plan" means a contract between the plan-approving authority and the
1027 owner that specifies conservation measures that must be implemented in the construction of a
1028 single-family residence; this contract may be executed by the plan-approving authority in lieu of
1029 a formal site plan.

1030 "Applicant" means any person submitting an erosion and sediment control plan for approval or
1031 requesting the issuance of a permit, when required, authorizing land-disturbing activities to
1032 commence.

1033 "Certified inspector" means an employee or agent of a VESCP authority who (i) holds a
1034 certificate of competence from the Board in the area of project inspection or (ii) is enrolled in the
1035 Board's training program for project inspection and successfully completes such program within
1036 one year after enrollment.

1037 "Certified plan reviewer" means an employee or agent of a VESCP authority who (i) holds a
1038 certificate of competence from the Board in the area of plan review, (ii) is enrolled in the Board's
1039 training program for plan review and successfully completes such program within one year after
1040 enrollment, or (iii) is licensed as a professional engineer, architect, landscape architect, land
1041 surveyor pursuant to Article 1 (§ [54.1-400](#) et seq.) of Chapter 4 of Title 54.1, or professional soil
1042 scientist as defined in § [54.1-2200](#).

1043 "Certified program administrator" means an employee or agent of a VESCP authority who (i)
1044 holds a certificate of competence from the Board in the area of program administration or (ii) is
1045 enrolled in the Board's training program for program administration and successfully completes
1046 such program within one year after enrollment.

1047 "Department" means the Department of Environmental Quality.

1048 "Director" means the Director of the Department of Environmental Quality.

1049 "District" or "soil and water conservation district" means a political subdivision of the
1050 Commonwealth organized in accordance with the provisions of Article 3 (§ [10.1-506](#) et seq.) of
1051 Chapter 5 of Title 10.1.

1052 "Erosion and sediment control plan" or "plan" means a document containing material for the
1053 conservation of soil and water resources of a unit or group of units of land. It may include
1054 appropriate maps, an appropriate soil and water plan inventory and management information

1055 with needed interpretations, and a record of decisions contributing to conservation treatment. The
1056 plan shall contain all major conservation decisions to ensure that the entire unit or units of land
1057 will be so treated to achieve the conservation objectives.

1058 "Erosion impact area" means an area of land not associated with current land-disturbing activity
1059 but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring
1060 properties or into state waters. This definition shall not apply to any lot or parcel of land of
1061 10,000 square feet or less used for residential purposes or to shorelines where the erosion results
1062 from wave action or other coastal processes.

1063 "Land-disturbing activity" means any man-made change to the land surface that may result in
1064 soil erosion from water or wind and the movement of sediments into state waters or onto lands in
1065 the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting, and
1066 filling of land, except that the term shall not include:

- 1067 1. Minor land-disturbing activities such as home gardens and individual home landscaping,
1068 repairs, and maintenance work;
- 1069 2. Individual service connections;
- 1070 3. Installation, maintenance, or repair of any underground public utility lines when such activity
1071 occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing
1072 activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
- 1073 4. Septic tank lines or drainage fields unless included in an overall plan for land-disturbing
1074 activity relating to construction of the building to be served by the septic tank system;
- 1075 5. Permitted surface or deep mining operations and projects, or oil and gas operations and
1076 projects conducted pursuant to Title 45.1;
- 1077 6. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot
1078 operations, or as additionally set forth by the Board in regulation, including engineering
1079 operations as follows: construction of terraces, terrace outlets, check dams, desilting basins,
1080 dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing,
1081 land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest
1082 crops unless the area on which harvesting occurs is reforested artificially or naturally in
1083 accordance with the provisions of Chapter 11 (§ [10.1-1100](#) et seq.) of Title 10.1 or is converted
1084 to bona fide agricultural or improved pasture use as described in subsection B of § [10.1-1163](#);
- 1085 7. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other
1086 related structures and facilities of a railroad company;

- 1087 8. Agricultural engineering operations, including but not limited to the construction of terraces,
1088 terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the
1089 provisions of the Dam Safety Act (§ [10.1-604](#) et seq.), ditches, strip cropping, lister furrowing,
1090 contour cultivating, contour furrowing, land drainage, and land irrigation;
- 1091 9. Disturbed land areas of less than 10,000 square feet in size or 2,500 square feet in all areas of
1092 the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and
1093 Management Regulations; however, the governing body of the program authority may reduce
1094 this exception to a smaller area of disturbed land or qualify the conditions under which this
1095 exception shall apply;
- 1096 10. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or
1097 poles;
- 1098 11. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities
1099 are within the regulatory authority of and approved by local wetlands boards, the Marine
1100 Resources Commission, or the United States Army Corps of Engineers; however, any associated
1101 land that is disturbed outside of this exempted area shall remain subject to this article and the
1102 regulations adopted pursuant thereto; and
- 1103 12. Emergency work to protect life, limb, or property, and emergency repairs; however, if the
1104 land-disturbing activity would have required an approved erosion and sediment control plan, if
1105 the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in
1106 accordance with the requirements of the VESCP authority.
- 1107 "Natural channel design concepts" means the utilization of engineering analysis and fluvial
1108 geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for
1109 the purpose of creating or recreating a stream that conveys its bankfull storm event within its
1110 banks and allows larger flows to access its bankfull bench and its floodplain.
- 1111 "Owner" means the owner or owners of the freehold of the premises or lesser estate therein,
1112 mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other
1113 person, firm, or corporation in control of a property.
- 1114 "Peak flow rate" means the maximum instantaneous flow from a given storm condition at a
1115 particular location.
- 1116 "Permittee" means the person to whom the local permit authorizing land-disturbing activities is
1117 issued or the person who certifies that the approved erosion and sediment control plan will be
1118 followed.

1119 "Person" means any individual, partnership, firm, association, joint venture, public or private
1120 corporation, trust, estate, commission, board, public or private institution, utility, cooperative,
1121 county, city, town, or other political subdivision of the Commonwealth, governmental body,
1122 including a federal or state entity as applicable, any interstate body, or any other legal entity.

1123 "Runoff volume" means the volume of water that runs off the land development project from a
1124 prescribed storm event.

1125 "Town" means an incorporated town.

1126 "Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by
1127 the Board that has been established by a VESCP authority for the effective control of soil
1128 erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing
1129 activity to prevent the unreasonable degradation of properties, stream channels, waters, and other
1130 natural resources and shall include such items where applicable as local ordinances, rules, permit
1131 requirements, annual standards and specifications, policies and guidelines, technical materials,
1132 and requirements for plan review, inspection, enforcement where authorized in this article, and
1133 evaluation consistent with the requirements of this article and its associated regulations.

1134 "Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an
1135 authority approved by the Board to operate a Virginia Erosion and Sediment Control Program.
1136 An authority may include a state entity, including the Department; a federal entity; a district,
1137 county, city, or town; or for linear projects subject to annual standards and specifications,
1138 electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline
1139 companies, railroad companies, or authorities created pursuant to § [15.2-5102](#).

1140 "Water quality volume" means the volume equal to the first one-half inch of runoff multiplied by
1141 the impervious surface of the land development project.

1142 1973, c. 486, § 21-89.3; 1974, c. 265; 1977, c. 149; 1980, c. 305; 1988, cc. 690, 732, 891, § 10.1-
1143 560; 1990, c. 491; 1991, c. 469; 1992, c. 184; 1993, c. 925; 1994, c. [703](#); 2003, c. [423](#); 2004, c.
1144 [476](#); 2005, c. [107](#); 2006, c. [21](#); 2009, c. [309](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

1145 **§ 62.1-44.15:52. Virginia Erosion and Sediment Control Program.**

1146 A. The Board shall develop a program and adopt regulations in accordance with the
1147 Administrative Process Act (§ [2.2-4000](#) et seq.) for the effective control of soil erosion, sediment
1148 deposition, and nonagricultural runoff that shall be met in any control program to prevent the
1149 unreasonable degradation of properties, stream channels, waters, and other natural resources.
1150 Stream restoration and relocation projects that incorporate natural channel design concepts are
1151 not man-made channels and shall be exempt from any flow rate capacity and velocity

1152 requirements for natural or man-made channels as defined in any regulations promulgated
1153 pursuant to this section or § [62.1-44.15:54](#) or [62.1-44.15:65](#). Any plan approved prior to July 1,
1154 2014, that provides for stormwater management that addresses any flow rate capacity and
1155 velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and
1156 velocity requirements for natural or man-made channels if the practices are designed to (i) detain
1157 the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour
1158 period the expected rainfall resulting from the one-year, 24-hour storm; and (iii) reduce the
1159 allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a
1160 level that is less than or equal to the peak flow rate from the site assuming it was in a good
1161 forested condition, achieved through multiplication of the forested peak flow rate by a reduction
1162 factor that is equal to the runoff volume from the site when it was in a good forested condition
1163 divided by the runoff volume from the site in its proposed condition, and shall be exempt from
1164 any flow rate capacity and velocity requirement for natural or man-made channels as defined in
1165 regulations promulgated pursuant to § [62.1-44.15:54](#) or [62.1-44.15:65](#). For plans approved on
1166 and after July 1, 2014, the flow rate capacity and velocity requirements of this subsection shall
1167 be satisfied by compliance with water quantity requirements in the Stormwater Management Act
1168 (§ [62.1-44.15:24](#) et seq.) and attendant regulations, unless such land-disturbing activities are in
1169 accordance with the grandfathering provisions of the Virginia Stormwater Management Program
1170 (VSMP) Permit Regulations.

1171 The regulations shall:

- 1172 1. Be based upon relevant physical and developmental information concerning the watersheds
1173 and drainage basins of the Commonwealth, including, but not limited to, data relating to land
1174 use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and
1175 their characteristics, transportation, and public facilities and services;
 - 1176 2. Include such survey of lands and waters as may be deemed appropriate by the Board or
1177 required by any applicable law to identify areas, including multijurisdictional and watershed
1178 areas, with critical erosion and sediment problems; and
 - 1179 3. Contain conservation standards for various types of soils and land uses, which shall include
1180 criteria, techniques, and methods for the control of erosion and sediment resulting from land-
1181 disturbing activities.
- 1182 B. The Board shall provide technical assistance and advice to, and conduct and supervise
1183 educational programs for VESCP authorities.

1184 C. The Board shall adopt regulations establishing minimum standards of effectiveness of erosion
1185 and sediment control programs, and criteria and procedures for reviewing and evaluating the
1186 effectiveness of VESCPs. In developing minimum standards for program effectiveness, the
1187 Board shall consider information and standards on which the regulations promulgated pursuant
1188 to subsection A are based.

1189 D. The Board shall approve VESCP authorities and shall periodically conduct a comprehensive
1190 program compliance review and evaluation to ensure that all VESCPs operating under the
1191 jurisdiction of this article meet minimum standards of effectiveness in controlling soil erosion,
1192 sediment deposition, and nonagricultural runoff. The Department shall develop a schedule for
1193 conducting periodic reviews and evaluations of the effectiveness of VESCPs unless otherwise
1194 directed by the Board. Such reviews where applicable shall be coordinated with those being
1195 implemented in accordance with the Stormwater Management Act (§ [62.1-44.15:24](#) et seq.) and
1196 associated regulations and the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.) and
1197 associated regulations. The Department may also conduct a comprehensive or partial program
1198 compliance review and evaluation of a VESCP at a greater frequency than the standard schedule.

1199 E. The Board shall issue certificates of competence concerning the content, application, and
1200 intent of specified subject areas of this article and accompanying regulations, including program
1201 administration, plan review, and project inspection, to personnel of program authorities and to
1202 any other persons who have completed training programs or in other ways demonstrated
1203 adequate knowledge. The Department shall administer education and training programs for
1204 specified subject areas of this article and accompanying regulations, and is authorized to charge
1205 persons attending such programs reasonable fees to cover the costs of administering the
1206 programs. Such education and training programs shall also contain expanded components to
1207 address plan review and project inspection elements of the Stormwater Management Act (§ [62.1-](#)
1208 [44.15:24](#) et seq.) and attendant regulations in accordance with § [62.1-44.15:30](#).

1209 F. Department personnel conducting inspections pursuant to this article shall hold a certificate of
1210 competence as provided in subsection E.

1211 1973, c. 486, § 21-89.4; 1988, cc. 732, 891, § 10.1-561; 1993, c. 925; 2004, c. [431](#); 2005, c. [107](#);
1212 2006, c. [21](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

1213 **§ 62.1-44.15:53. Certification of program personnel.**

1214 A. The minimum standards of VESCP effectiveness established by the Board pursuant to
1215 subsection C of § [62.1-44.15:52](#) shall provide that (i) an erosion and sediment control plan shall
1216 not be approved until it is reviewed by a certified plan reviewer; (ii) inspections of land-
1217 disturbing activities shall be conducted by a certified inspector; and (iii) a VESCP shall contain a

1218 certified program administrator, a certified plan reviewer, and a certified project inspector, who
1219 may be the same person.

1220 B. Any person who holds a certificate of competence from the Board in the area of plan review,
1221 project inspection, or program administration that was attained prior to the adoption of the
1222 mandatory certification provisions of subsection A shall be deemed to satisfy the requirements of
1223 that area of certification.

1224 C. Professionals registered in the Commonwealth pursuant to Article 1 (§ [54.1-400](#) et seq.) of
1225 Chapter 4 of Title 54.1 or a professional soil scientist as defined in § [54.1-2200](#) shall be deemed
1226 to satisfy the certification requirements for the purposes of renewals.

1227 1993, c. 925, § 10.1-561.1; 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

1228 **§ 62.1-44.15:54. Establishment of Virginia Erosion and Sediment Control Program.**

1229 A. Counties and cities shall adopt and administer a VESCP.

1230 Any town lying within a county that has adopted its own VESCP may adopt its own program or
1231 shall become subject to the county program. If a town lies within the boundaries of more than
1232 one county, the town shall be considered for the purposes of this article to be wholly within the
1233 county in which the larger portion of the town lies.

1234 B. A VESCP authority may enter into agreements or contracts with soil and water conservation
1235 districts, adjacent localities, or other public or private entities to assist with carrying out the
1236 provisions of this article, including the review and determination of adequacy of erosion and
1237 sediment control plans submitted for land-disturbing activities on a unit or units of land as well
1238 as for monitoring, reports, inspections, and enforcement where authorized in this article, of such
1239 land-disturbing activities.

1240 C. Any VESCP adopted by a county, city, or town shall be approved by the Board if it
1241 establishes by ordinance requirements that are consistent with this article and associated
1242 regulations.

1243 D. Each approved VESCP operated by a county, city, or town shall include provisions for the
1244 integration of the VESCP with Virginia stormwater management, flood insurance, flood plain
1245 management, and other programs requiring compliance prior to authorizing a land-disturbing
1246 activity in order to make the submission and approval of plans, issuance of permits, payment of
1247 fees, and coordination of inspection and enforcement activities more convenient and efficient
1248 both for the local governments and those responsible for compliance with the programs.

1249 E. The Board may approve a state entity, federal entity, or, for linear projects subject to annual
1250 standards and specifications, electric, natural gas, and telephone utility companies, interstate and
1251 intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to §
1252 [15.2-5102](#) to operate a VESCP consistent with the requirements of this article and its associated
1253 regulations and the VESCP authority's Department-approved annual standards and
1254 specifications. For these programs, enforcement shall be administered by the Department and the
1255 Board where applicable in accordance with the provisions of this article.

1256 F. Following completion of a compliance review of a VESCP in accordance with subsection D of
1257 § [62.1-44.15:52](#), the Department shall provide results and compliance recommendations to the
1258 Board in the form of a corrective action agreement if deficiencies are found; otherwise, the
1259 Board may find the program compliant. If a comprehensive or partial program compliance
1260 review conducted by the Department of a VESCP indicates that the VESCP authority has not
1261 administered, enforced where authorized to do so, or conducted its VESCP in a manner that
1262 satisfies the minimum standards of effectiveness established pursuant to subsection C of § [62.1-](#)
1263 [44.15:52](#), the Board shall establish a schedule for the VESCP authority to come into compliance.
1264 The Board shall provide a copy of its decision to the VESCP authority that specifies the
1265 deficiencies, actions needed to be taken, and the approved compliance schedule required to attain
1266 the minimum standard of effectiveness and shall include an offer to provide technical assistance
1267 to implement the corrective action. If the VESCP authority has not implemented the necessary
1268 compliance actions identified by the Board within 30 days following receipt of the corrective
1269 action agreement, or such additional period as is granted to complete the implementation of the
1270 corrective action, then the Board shall have the authority to (i) issue a special order to any
1271 VESCP, imposing a civil penalty not to exceed \$5,000 per day with the maximum amount not to
1272 exceed \$20,000 per violation for noncompliance with the state program, to be paid into the state
1273 treasury and deposited in the Virginia Stormwater Management Fund established by § [62.1-](#)
1274 [44.15:29](#) or (ii) revoke its approval of the VESCP. The Administrative Process Act (§ [2.2-4000](#)
1275 et seq.) shall govern the activities and proceedings of the Board and the judicial review thereof.

1276 In lieu of issuing a special order or revoking the program, the Board is authorized to take legal
1277 action against a VESCP to ensure compliance.

1278 G. If the Board revokes its approval of the VESCP of a county, city, or town, and the locality is
1279 in a district, the district, upon approval of the Board, shall adopt and administer a VESCP for the
1280 locality. To carry out its program, the district shall adopt regulations in accordance with the
1281 Administrative Process Act (§ [2.2-4000](#) et seq.) consistent with this article and associated
1282 regulations. The regulations may be revised from time to time as necessary. The program and
1283 regulations shall be available for public inspection at the principal office of the district.

1284 H. If the Board (i) revokes its approval of a VESCP of a district, or of a county, city, or town not
1285 in a district, or (ii) finds that a local program consistent with this article and associated
1286 regulations has not been adopted by a district or a county, city, or town that is required to adopt
1287 and administer a VESCP, the Board shall find the VESCP authority provisional, and have the
1288 Department assist with the administration of the program until the Board finds the VESCP
1289 authority compliant with the requirements of this article and associated regulations. "Assisting
1290 with administration" includes but is not limited to the ability to review and comment on plans to
1291 the VESCP authority, to conduct inspections with the VESCP authority, and to conduct
1292 enforcement in accordance with this article and associated regulations.

1293 I. If the Board revokes its approval of a state entity, federal entity, or, for linear projects subject
1294 to annual standards and specifications, electric, natural gas, and telephone utility companies,
1295 interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created
1296 pursuant to § [15.2-5102](#), the Board shall find the VESCP authority provisional, and have the
1297 Department assist with the administration of the program until the Board finds the VESCP
1298 authority compliant with the requirements of this article and associated regulations. "Assisting
1299 with administration" includes the ability to review and comment on plans to the VESCP
1300 authority and to conduct inspections with the VESCP authority in accordance with this article
1301 and associated regulations.

1302 J. Any VESCP authority that administers an erosion and sediment control program may charge
1303 applicants a reasonable fee to defray the cost of program administration. Such fee may be in
1304 addition to any fee charged for administration of a Virginia Stormwater Management Program,
1305 although payment of fees may be consolidated in order to provide greater convenience and
1306 efficiency for those responsible for compliance with the programs. A VESCP authority shall hold
1307 a public hearing prior to establishing a schedule of fees. The fee shall not exceed an amount
1308 commensurate with the services rendered, taking into consideration the time, skill, and the
1309 VESCP authority's expense involved.

1310 K. The governing body of any county, city, or town, or a district board that is authorized to
1311 administer a VESCP, may adopt an ordinance or regulation where applicable providing that
1312 violations of any regulation or order of the Board, any provision of its program, any condition of
1313 a permit, or any provision of this article shall be subject to a civil penalty. The civil penalty for
1314 any one violation shall be not less than \$100 nor more than \$1,000. Each day during which the
1315 violation is found to have existed shall constitute a separate offense. In no event shall a series of
1316 specified violations arising from the same operative set of facts result in civil penalties that
1317 exceed a total of \$10,000, except that a series of violations arising from the commencement of
1318 land-disturbing activities without an approved plan for any site shall not result in civil penalties

1319 that exceed a total of \$10,000. Adoption of such an ordinance providing that violations are
1320 subject to a civil penalty shall be in lieu of criminal sanctions and shall preclude the prosecution
1321 of such violation as a misdemeanor under subsection A of § [62.1-44.15:63](#). The penalties set out
1322 in this subsection are also available to the Board in its enforcement actions.

1323 1973, c. 486, § 21-89.5; 1976, c. 653; 1978, c. 450; 1980, c. 35; 1983, c. 189; 1988, cc. 732, 891,
1324 § 10.1-562; 1992, c. 298; 1993, c. 925; 2005, c. [129](#); 2007, cc. [51](#), [204](#); 2010, c. [275](#); 2012, cc.
1325 [785](#), [819](#). 2013, cc. [756](#), [793](#).

1326 **§ 62.1-44.15:55. Regulated land-disturbing activities; submission and approval of erosion and**
1327 **sediment control plan.**

1328 A. Except as provided in § [62.1-44.15:56](#) for state agency and federal entity land-disturbing
1329 activities, no person shall engage in any land-disturbing activity until he has submitted to the
1330 VESCP authority an erosion and sediment control plan for the land-disturbing activity and the
1331 plan has been reviewed and approved. Upon the development of an online reporting system by
1332 the Department, but no later than July 1, 2014, a VESCP authority shall then be required to
1333 obtain evidence of Virginia Stormwater Management Program permit coverage where it is
1334 required prior to providing approval to begin land disturbance. Where land-disturbing activities
1335 involve lands under the jurisdiction of more than one VESCP, an erosion and sediment control
1336 plan may, at the request of one or all of the VESCP authorities, be submitted to the Department
1337 for review and approval rather than to each jurisdiction concerned. The Department may charge
1338 the jurisdictions requesting the review a fee sufficient to cover the cost associated with
1339 conducting the review. A VESCP may enter into an agreement with an adjacent VESCP
1340 regarding the administration of multijurisdictional projects whereby the jurisdiction that contains
1341 the greater portion of the project shall be responsible for all or part of the administrative
1342 procedures. Where the land-disturbing activity results from the construction of a single-family
1343 residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control
1344 plan if executed by the VESCP authority.

1345 B. The VESCP authority shall review erosion and sediment control plans submitted to it and
1346 grant written approval within 60 days of the receipt of the plan if it determines that the plan
1347 meets the requirements of this article and the Board's regulations and if the person responsible
1348 for carrying out the plan certifies that he will properly perform the erosion and sediment control
1349 measures included in the plan and shall comply with the provisions of this article. In addition, as
1350 a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the
1351 person responsible for carrying out the plan shall provide the name of an individual holding a
1352 certificate of competence to the VESCP authority, as provided by § [62.1-44.15:52](#), who will be
1353 in charge of and responsible for carrying out the land-disturbing activity. However, any VESCP

1354 authority may waive the certificate of competence requirement for an agreement in lieu of a plan
1355 for construction of a single-family residence. If a violation occurs during the land-disturbing
1356 activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct
1357 the violation and provide the name of an individual holding a certificate of competence, as
1358 provided by § [62.1-44.15:52](#). Failure to provide the name of an individual holding a certificate of
1359 competence prior to engaging in land-disturbing activities may result in revocation of the
1360 approval of the plan and the person responsible for carrying out the plan shall be subject to the
1361 penalties provided in this article.

1362 When a plan is determined to be inadequate, written notice of disapproval stating the specific
1363 reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall
1364 specify the modifications, terms, and conditions that will permit approval of the plan. If no action
1365 is taken by the VESCP authority within the time specified in this subsection, the plan shall be
1366 deemed approved and the person authorized to proceed with the proposed activity. The VESCP
1367 authority shall act on any erosion and sediment control plan that has been previously disapproved
1368 within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.

1369 C. The VESCP authority may require changes to an approved plan in the following cases:

- 1370 1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or
1371 2. Where the person responsible for carrying out the approved plan finds that because of changed
1372 circumstances or for other reasons the approved plan cannot be effectively carried out, and
1373 proposed amendments to the plan, consistent with the requirements of this article and associated
1374 regulations, are agreed to by the VESCP authority and the person responsible for carrying out the
1375 plan.

1376 D. Electric, natural gas, and telephone utility companies, interstate and intrastate natural gas
1377 pipeline companies, and railroad companies shall, and authorities created pursuant to § [15.2-](#)
1378 [5102](#) may, file general erosion and sediment control standards and specifications annually with
1379 the Department for review and approval. Such standards and specifications shall be consistent
1380 with the requirements of this article and associated regulations and the Stormwater Management
1381 Act (§ [62.1-44.15:24](#) et seq.) and associated regulations where applicable. The specifications
1382 shall apply to:

1383 1. Construction, installation, or maintenance of electric transmission, natural gas, and telephone
1384 utility lines and pipelines, and water and sewer lines; and

1385 2. Construction of the tracks, rights-of-way, bridges, communication facilities, and other related
1386 structures and facilities of the railroad company.

1387 The Department shall have 60 days in which to approve the standards and specifications. If no
1388 action is taken by the Department within 60 days, the standards and specifications shall be
1389 deemed approved. Individual approval of separate projects within subdivisions 1 and 2 is not
1390 necessary when approved specifications are followed. Projects not included in subdivisions 1 and
1391 2 shall comply with the requirements of the appropriate VESCP. The Board shall have the
1392 authority to enforce approved specifications and charge fees equal to the lower of (i) \$1,000 or
1393 (ii) an amount sufficient to cover the costs associated with standard and specification review and
1394 approval, project inspections, and compliance.

1395 E. Any person engaging, in more than one jurisdiction, in the creation and operation of a wetland
1396 mitigation or stream restoration bank or banks, which have been approved and are operated in
1397 accordance with applicable federal and state guidance, laws, or regulations for the establishment,
1398 use, and operation of wetlands mitigation or stream restoration banks, pursuant to a mitigation
1399 banking instrument signed by the Department of Environmental Quality, the Marine Resources
1400 Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general
1401 erosion and sediment control standards and specifications for wetland mitigation or stream
1402 restoration banks annually with the Department for review and approval consistent with
1403 guidelines established by the Board.

1404 The Department shall have 60 days in which to approve the specifications. If no action is taken
1405 by the Department within 60 days, the specifications shall be deemed approved. Individual
1406 approval of separate projects under this subsection is not necessary when approved specifications
1407 are implemented through a project-specific erosion and sediment control plan. Projects not
1408 included in this subsection shall comply with the requirements of the appropriate local erosion
1409 and sediment control program. The Board shall have the authority to enforce approved
1410 specifications and charge fees equal to the lower of (i) \$1,000 or (ii) an amount sufficient to
1411 cover the costs associated with standard and specification review and approval, projection
1412 inspections, and compliance. Approval of general erosion and sediment control specifications by
1413 the Department does not relieve the owner or operator from compliance with any other local
1414 ordinances and regulations including requirements to submit plans and obtain permits as may be
1415 required by such ordinances and regulations.

1416 F. In order to prevent further erosion, a VESCP authority may require approval of an erosion and
1417 sediment control plan for any land identified by the VESCP authority as an erosion impact area.

1418 G. For the purposes of subsections A and B, when land-disturbing activity will be required of a
1419 contractor performing construction work pursuant to a construction contract, the preparation,
1420 submission, and approval of an erosion and sediment control plan shall be the responsibility of
1421 the owner.

1422 1973, c. 486, § 21-89.6; 1979, c. 432; 1988, cc. 732, 891, § 10.1-563; 1993, c. 925; 1999, c. [555](#);
1423 2001, c. [490](#); 2003, cc. [827](#), [966](#); 2006, c. [466](#); 2008, c. [23](#); 2011, cc. [720](#), [721](#); 2012, cc. [785](#),
1424 [819](#); 2013, cc. [756](#), [793](#).

1425 **§ 62.1-44.15:56. State agency and federal entity projects.**

1426 A. A state agency shall not undertake a project involving a land-disturbing activity unless (i) the
1427 state agency has submitted annual standards and specifications for its conduct of land-disturbing
1428 activities that have been reviewed and approved by the Department as being consistent with this
1429 article and associated regulations or (ii) the state agency has submitted an erosion and sediment
1430 control plan for the project that has been reviewed and approved by the Department. When a
1431 federal entity submits an erosion and sediment control plan for a project, land disturbance shall
1432 not commence until the Department has reviewed and approved the plan.

1433 B. The Department shall not approve an erosion and sediment control plan submitted by a state
1434 agency or federal entity for a project involving a land-disturbing activity (i) in any locality that
1435 has not adopted a local program with more stringent regulations than those of the state program
1436 or (ii) in multiple jurisdictions with separate local programs, unless the erosion and sediment
1437 control plan is consistent with the requirements of the state program.

1438 C. The Department shall not approve an erosion and sediment control plan submitted by a state
1439 agency or federal entity for a project involving a land-disturbing activity in one locality with a
1440 local program with more stringent ordinances than those of the state program unless the erosion
1441 and sediment control plan is consistent with the requirements of the local program. If a locality
1442 has not submitted a copy of its local program regulations to the Department, the provisions of
1443 subsection B shall apply.

1444 D. The Department shall have 60 days in which to comment on any standards and specifications
1445 or erosion and sediment control plan submitted to it for review, and its comments shall be
1446 binding on the state agency and any private business hired by the state agency.

1447 E. As onsite changes occur, the state agency shall submit changes in an erosion and sediment
1448 control plan to the Department.

1449 F. The state agency responsible for the land-disturbing activity shall ensure compliance with an
1450 approved plan, and the Department and Board, where applicable, shall provide project oversight
1451 and enforcement as necessary.

1452 G. If the state agency or federal entity has developed, and the Department has approved, annual
1453 standards and specifications, and the state agency or federal entity has been approved by the
1454 Board to operate a VESCP as a VESCP authority, erosion and sediment control plan review and

1455 approval and land-disturbing activity inspections shall be conducted by such entity. The
1456 Department and the Board, where applicable, shall provide project oversight and enforcement as
1457 necessary and comprehensive program compliance review and evaluation. Such standards and
1458 specifications shall be consistent with the requirements of this article and associated regulations
1459 and the Stormwater Management Act (§ [62.1-44.15:24](#) et seq.) and associated regulations when
1460 applicable.

1461 1973, c. 486, § 21-89.6; 1979, c. 432; 1988, c. 891, § 10.1-564; 1993, c. 925; 2012, cc. [785](#), [819](#);
1462 2013, cc. [756](#), [793](#).

1463 **§ 62.1-44.15:57. Approved plan required for issuance of grading, building, or other permits;**
1464 **security for performance.**

1465 Agencies authorized under any other law to issue grading, building, or other permits for activities
1466 involving land-disturbing activities regulated under this article shall not issue any such permit
1467 unless the applicant submits with his application an approved erosion and sediment control plan
1468 and certification that the plan will be followed and, upon the development of an online reporting
1469 system by the Department but no later than July 1, 2014, evidence of Virginia Stormwater
1470 Management Program permit coverage where it is required. Prior to issuance of any permit, the
1471 agency may also require an applicant to submit a reasonable performance bond with surety, cash
1472 escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to
1473 the agency, to ensure that measures could be taken by the agency at the applicant's expense
1474 should he fail, after proper notice, within the time specified to initiate or maintain appropriate
1475 conservation action that may be required of him by the approved plan as a result of his land-
1476 disturbing activity. The amount of the bond or other security for performance shall not exceed
1477 the total of the estimated cost to initiate and maintain appropriate conservation action based on
1478 unit price for new public or private sector construction in the locality and a reasonable allowance
1479 for estimated administrative costs and inflation, which shall not exceed 25 percent of the
1480 estimated cost of the conservation action. If the agency takes such conservation action upon such
1481 failure by the permittee, the agency may collect from the permittee the difference should the
1482 amount of the reasonable cost of such action exceed the amount of the security held. Within 60
1483 days of the achievement of adequate stabilization of the land-disturbing activity in any project or
1484 section thereof, the bond, cash escrow, letter of credit, or other legal arrangement, or the
1485 unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated
1486 based upon the percentage of stabilization accomplished in the project or section thereof. These
1487 requirements are in addition to all other provisions of law relating to the issuance of such permits
1488 and are not intended to otherwise affect the requirements for such permits.

1489 1973, c. 486, § 21-89.7; 1980, c. 35; 1988, cc. 694, 891, § 10.1-565; 1996, c. [275](#); 2012, cc. [785](#),
1490 [819](#); 2013, cc. [756](#), [793](#).

1491 **§ 62.1-44.15:58. Monitoring, reports, and inspections.**

1492 A. The VESCP authority (i) shall provide for periodic inspections of the land-disturbing activity
1493 and require that an individual holding a certificate of competence, as provided by § [62.1-](#)
1494 [44.15:52](#), who will be in charge of and responsible for carrying out the land-disturbing activity
1495 and (ii) may require monitoring and reports from the person responsible for carrying out the
1496 erosion and sediment control plan, to ensure compliance with the approved plan and to determine
1497 whether the measures required in the plan are effective in controlling erosion and sediment.
1498 However, any VESCP authority may waive the certificate of competence requirement for an
1499 agreement in lieu of a plan for construction of a single-family residence. The owner, permittee,
1500 or person responsible for carrying out the plan shall be given notice of the inspection. If the
1501 VESCP authority, where authorized to enforce this article, or the Department determines that
1502 there is a failure to comply with the plan following an inspection, notice shall be served upon the
1503 permittee or person responsible for carrying out the plan by mailing with confirmation of
1504 delivery to the address specified in the permit application or in the plan certification, or by
1505 delivery at the site of the land-disturbing activities to the agent or employee supervising such
1506 activities. The notice shall specify the measures needed to comply with the plan and shall specify
1507 the time within which such measures shall be completed. Upon failure to comply within the time
1508 specified, the permit may be revoked and the VESCP authority, where authorized to enforce this
1509 article, the Department, or the Board may pursue enforcement as provided by § [62.1-44.15:63](#).

1510 B. Notwithstanding the provisions of subsection A, a VESCP authority is authorized to enter into
1511 agreements or contracts with districts, adjacent localities, or other public or private entities to
1512 assist with the responsibilities of this article, including but not limited to the review and
1513 determination of adequacy of erosion and sediment control plans submitted for land-disturbing
1514 activities as well as monitoring, reports, inspections, and enforcement where an authority is
1515 granted such powers by this article.

1516 C. Upon issuance of an inspection report denoting a violation of this section, § [62.1-44.15:55](#) or
1517 [62.1-44.15:56](#), in conjunction with or subsequent to a notice to comply as specified in subsection
1518 A, a VESCP authority, where authorized to enforce this article, or the Department may issue an
1519 order requiring that all or part of the land-disturbing activities permitted on the site be stopped
1520 until the specified corrective measures have been taken or, if land-disturbing activities have
1521 commenced without an approved plan as provided in § [62.1-44.15:55](#), requiring that all of the
1522 land-disturbing activities be stopped until an approved plan or any required permits are obtained.
1523 Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion

1524 of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where
1525 the land-disturbing activities have commenced without an approved erosion and sediment control
1526 plan or any required permits, such an order may be issued whether or not the alleged violator has
1527 been issued a notice to comply as specified in subsection A. Otherwise, such an order may be
1528 issued only after the alleged violator has failed to comply with a notice to comply. The order for
1529 noncompliance with a plan shall be served in the same manner as a notice to comply, and shall
1530 remain in effect for seven days from the date of service pending application by the VESCP
1531 authority, the Department, or alleged violator for appropriate relief to the circuit court of the
1532 jurisdiction wherein the violation was alleged to have occurred or other appropriate court. The
1533 order for disturbance without an approved plan or permits shall be served upon the owner by
1534 mailing with confirmation of delivery to the address specified in the land records of the locality,
1535 shall be posted on the site where the disturbance is occurring, and shall remain in effect until
1536 such time as permits and plan approvals are secured, except in such situations where an
1537 agricultural exemption applies. If the alleged violator has not obtained an approved erosion and
1538 sediment control plan or any required permit within seven days from the date of service of the
1539 order, the Department or the chief administrative officer or his designee on behalf of the VESCP
1540 authority may issue a subsequent order to the owner requiring that all construction and other
1541 work on the site, other than corrective measures, be stopped until an approved erosion and
1542 sediment control plan and any required permits have been obtained. The subsequent order shall
1543 be served upon the owner by mailing with confirmation of delivery to the address specified in the
1544 permit application or the land records of the locality in which the site is located. The owner may
1545 appeal the issuance of any order to the circuit court of the jurisdiction wherein the violation was
1546 alleged to have occurred or other appropriate court. Any person violating or failing, neglecting,
1547 or refusing to obey an order issued by the Department or the chief administrative officer or his
1548 designee on behalf of the VESCP authority may be compelled in a proceeding instituted in the
1549 circuit court of the jurisdiction wherein the violation was alleged to have occurred or other
1550 appropriate court to obey same and to comply therewith by injunction, mandamus, or other
1551 appropriate remedy. Upon completion and approval of corrective action or obtaining an
1552 approved plan or any required permits, the order shall immediately be lifted. Nothing in this
1553 section shall prevent the Department, the Board, or the chief administrative officer or his
1554 designee on behalf of the VESCP authority from taking any other action specified in § [62.1-](#)
1555 [44.15:63](#).

1556 1973, c. 486, § 21-89.8; 1986, c. 328; 1988, cc. 694, 891, § 10.1-566; 1992, c. 298; 1993, c. 925;
1557 2001, c. [490](#); 2003, c. [827](#); 2012, cc. [249](#), [785](#), [819](#); 2013, cc. [756](#), [793](#).

1558 **§ 62.1-44.15:59. Reporting.**

1559 Each VESCP authority shall report to the Department, in a method such as an online reporting
1560 system and on a time schedule established by the Department, a listing of each land-disturbing
1561 activity for which a plan has been approved by the VESCP under this article.

1562 2005, c. 102, § 10.1-566.1; 2012, cc. 785, 819; 2013, cc. 756, 793.

1563 **§ 62.1-44.15:60. Right of entry.**

1564 The Department, the VESCP authority, where authorized to enforce this article, or any duly
1565 authorized agent of the Department or such VESCP authority may, at reasonable times and under
1566 reasonable circumstances, enter any establishment or upon any property, public or private, for
1567 the purpose of obtaining information or conducting surveys or investigations necessary in the
1568 enforcement of the provisions of this article.

1569 In accordance with a performance bond with surety, cash escrow, letter of credit, any
1570 combination thereof, or such other legal arrangement, a VESCP authority may also enter any
1571 establishment or upon any property, public or private, for the purpose of initiating or maintaining
1572 appropriate actions that are required by the permit conditions associated with a land-disturbing
1573 activity when a permittee, after proper notice, has failed to take acceptable action within the time
1574 specified.

1575 2012, cc. 785, 819, § 10.1-566.2; 2013, cc. 756, 793.

1576 **§ 62.1-44.15:61. Cooperation with federal and state agencies.**

1577 A VESCP authority and the Board are authorized to cooperate and enter into agreements with
1578 any federal or state agency in connection with the requirements for erosion and sediment control
1579 with respect to land-disturbing activities.

1580 1973, c. 486, § 21-89.9; 1988, c. 891, § 10.1-567; 2012, cc. 785, 819; 2013, cc. 756, 793.

1581 **§ 62.1-44.15:62. Judicial appeals.**

1582 A. A final decision by a county, city, or town, when serving as a VESCP authority under this
1583 article, shall be subject to judicial review, provided that an appeal is filed within 30 days from
1584 the date of any written decision adversely affecting the rights, duties, or privileges of the person
1585 engaging in or proposing to engage in land-disturbing activities.

1586 B. Final decisions of the Board, Department, or district shall be subject to judicial review in
1587 accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

1588 1973, c. 486, § 21-89.10; 1986, c. 615; 1988, c. 891, § 10.1-568; 2012, cc. 785, 819; 2013, cc.
1589 756, 793.

1590 **§ 62.1-44.15:63. Penalties, injunctions and other legal actions.**

1591 A. Violators of § 62.1-44.15:55, 62.1-44.15:56, or 62.1-44.15:58 shall be guilty of a Class 1
1592 misdemeanor.

1593 B. Any person who has violated or failed, neglected, or refused to obey any regulation or order
1594 of the Board, any order, notice, or requirement of the Department or VESCP authority, any
1595 condition of a permit, or any provision of this article or associated regulation shall, upon a
1596 finding of an appropriate court, be assessed a civil penalty. If a locality or district serving as a
1597 VESCP authority has adopted a uniform schedule of civil penalties as permitted by subsection K
1598 of § 62.1-44.15:54, such assessment shall be in accordance with the schedule. The VESCP
1599 authority or the Department may issue a summons for collection of the civil penalty. In any trial
1600 for a scheduled violation, it shall be the burden of the locality or Department to show the liability
1601 of the violator by a preponderance of the evidence. An admission or finding of liability shall not
1602 be a criminal conviction for any purpose. Any civil penalties assessed by a court shall be paid
1603 into the treasury of the locality wherein the land lies, except that where the violator is the locality
1604 itself, or its agent, or where the Department is issuing the summons, the court shall direct the
1605 penalty to be paid into the state treasury.

1606 C. The VESCP authority, the Department, or the owner of property that has sustained damage or
1607 which is in imminent danger of being damaged may apply to the circuit court in any jurisdiction
1608 wherein the land lies or other appropriate court to enjoin a violation or a threatened violation
1609 under § 62.1-44.15:55, 62.1-44.15:56, or 62.1-44.15:58 without the necessity of showing that an
1610 adequate remedy at law does not exist; however, an owner of property shall not apply for
1611 injunctive relief unless (i) he has notified in writing the person who has violated the VESCP, the
1612 Department, and the VESCP authority that a violation of the VESCP has caused, or creates a
1613 probability of causing, damage to his property, and (ii) neither the person who has violated the
1614 VESCP, the Department, nor the VESCP authority has taken corrective action within 15 days to
1615 eliminate the conditions that have caused, or create the probability of causing, damage to his
1616 property.

1617 D. In addition to any criminal or civil penalties provided under this article, any person who
1618 violates any provision of this article may be liable to the VESCP authority or the Department, as
1619 appropriate, in a civil action for damages.

1620 E. Without limiting the remedies that may be obtained in this section, any person violating or
1621 failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained
1622 pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to
1623 exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by
1624 the VESCP authority wherein the land lies or the Department. Any civil penalties assessed by a

1625 court shall be paid into the treasury of the locality wherein the land lies, except that where the
1626 violator is the locality itself, or its agent, or other VESCP authority, or where the penalties are
1627 assessed as the result of an enforcement action brought by the Department, the court shall direct
1628 the penalty to be paid into the state treasury.

1629 F. With the consent of any person who has violated or failed, neglected, or refused to obey any
1630 regulation or order of the Board, any order, notice, or requirement of the Department or VESCP
1631 authority, any condition of a permit, or any provision of this article or associated regulations, the
1632 Board, the Director, or VESCP authority may provide, in an order issued by the Board or
1633 VESCP authority against such person, for the payment of civil charges for violations in specific
1634 sums, not to exceed the limit specified in subsection E. Such civil charges shall be instead of any
1635 appropriate civil penalty that could be imposed under subsection B or E.

1636 G. Upon request of a VESCP authority, the attorney for the Commonwealth shall take legal
1637 action to enforce the provisions of this article. Upon request of the Board, the Department, or the
1638 district, the Attorney General shall take appropriate legal action on behalf of the Board, the
1639 Department, or the district to enforce the provisions of this article.

1640 H. Compliance with the provisions of this article shall be prima facie evidence in any legal or
1641 equitable proceeding for damages caused by erosion or sedimentation that all requirements of
1642 law have been met and the complaining party must show negligence in order to recover any
1643 damages.

1644 1973, c. 486, § 21-89.11; 1988, cc. 694, 891, § 10.1-569; 1992, c. 298; 1993, c. 925; 1995, c.
1645 [832](#); 1996, c. [518](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

1646 **§ 62.1-44.15:64. Stop work orders by Department; civil penalties.**

1647 A. An aggrieved owner of property sustaining pecuniary damage resulting from a violation of an
1648 approved erosion and sediment control plan or required permit, or from the conduct of land-
1649 disturbing activities commenced without an approved plan or required permit, may give written
1650 notice of the alleged violation to the VESCP authority and to the Director.

1651 B. Upon receipt of the notice from the aggrieved owner and notification to the VESCP authority,
1652 the Director shall conduct an investigation of the aggrieved owner's complaint.

1653 C. If the VESCP authority has not responded to the alleged violation in a manner that causes the
1654 violation to cease and abates the damage to the aggrieved owner's property within 30 days
1655 following receipt of the notice from the aggrieved owner, the aggrieved owner may request that
1656 the Director require the violator to stop the violation and abate the damage to his property.

1657 D. If (i) the Director's investigation of the complaint indicates that the VESCP authority has not
1658 responded to the alleged violation as required by the VESCP, (ii) the VESCP authority has not
1659 responded to the alleged violation within 30 days from the date of the notice given pursuant to
1660 subsection A, and (iii) the Director is requested by the aggrieved owner to require the violator to
1661 cease the violation, then the Director shall give written notice to the VESCP authority that the
1662 Department intends to issue an order pursuant to subsection E.

1663 E. If the VESCP authority has not instituted action to stop the violation and abate the damage to
1664 the aggrieved owner's property within 10 days following receipt of the notice from the Director,
1665 the Department is authorized to issue an order requiring the owner, permittee, person responsible
1666 for carrying out an approved erosion and sediment control plan, or person conducting the land-
1667 disturbing activities without an approved plan or required permit to cease all land-disturbing
1668 activities until the violation of the plan or permit has ceased or an approved plan and required
1669 permits are obtained, as appropriate, and specified corrective measures have been completed.
1670 The Department also may immediately initiate a program review of the VESCP.

1671 F. Such orders are to be issued after a hearing held in accordance with the requirements of the
1672 Administrative Process Act (§ [2.2-4000](#) et seq.), and they shall become effective upon service on
1673 the person by mailing with confirmation of delivery, sent to his address specified in the land
1674 records of the locality, or by personal delivery by an agent of the Director. Any subsequent
1675 identical mail or notice that is sent by the Department may be sent by regular mail. However, if
1676 the Department finds that any such violation is grossly affecting or presents an imminent and
1677 substantial danger of causing harmful erosion of lands or sediment deposition in waters within
1678 the watersheds of the Commonwealth, it may issue, without advance notice or hearing, an
1679 emergency order directing such person to cease all land-disturbing activities on the site
1680 immediately and shall provide an opportunity for a hearing, after reasonable notice as to the time
1681 and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.

1682 G. If a person who has been issued an order or emergency order is not complying with the terms
1683 thereof, the Board may institute a proceeding in the appropriate circuit court for an injunction,
1684 mandamus, or other appropriate remedy compelling the person to comply with such order.

1685 H. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or
1686 other remedy obtained pursuant to subsection G shall be subject, in the discretion of the court, to
1687 a civil penalty not to exceed \$2,000 for each violation. Any civil penalties assessed by a court
1688 shall be paid into the state treasury.

1689 1993, c. 925, § 10.1-569.1; 2012, cc. [785](#), [819](#). 2013, cc. [756](#), [793](#).

1690 **§ 62.1-44.15:65. Authorization for more stringent regulations.**

1691 A. As part of a VESCP, a district or locality is authorized to adopt more stringent soil erosion
1692 and sediment control regulations or ordinances than those necessary to ensure compliance with
1693 the Board's regulations, provided that the more stringent regulations or ordinances are based
1694 upon factual findings of local or regional comprehensive watershed management studies or
1695 findings developed through the implementation of an MS4 permit or a locally adopted watershed
1696 management study and are determined by the district or locality to be necessary to prevent any
1697 further degradation to water resources, to address total maximum daily load requirements, to
1698 protect exceptional state waters, or to address specific existing water pollution including nutrient
1699 and sediment loadings, stream channel erosion, depleted groundwater resources, or excessive
1700 localized flooding within the watershed and that prior to adopting more stringent regulations or
1701 ordinances, a public hearing is held after giving due notice. The VESCP authority shall report to
1702 the Board when more stringent stormwater management regulations or ordinances are
1703 determined to be necessary pursuant to this section. However, this section shall not be construed
1704 to authorize any district or locality to impose any more stringent regulations for plan approval or
1705 permit issuance than those specified in §§ [62.1-44.15:55](#) and [62.1-44.15:57](#).

1706 B. Any provisions of an erosion and sediment control program in existence before July 1, 2012,
1707 that contains more stringent provisions than this article shall be exempt from the analysis
1708 requirements of subsection A.

1709 1973, c. 486, § 21-89.12; 1988, c. 891, § 10.1-570; 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

1710 **§ 62.1-44.15:66. No limitation on authority of Department of Mines, Minerals and Energy.**

1711 The provisions of this article shall not limit the powers or duties of the Department of Mines,
1712 Minerals and Energy as they relate to strip mine reclamation under Chapters 16 (§ [45.1-180](#) et
1713 seq.) and 19 (§ [45.1-226](#) et seq.) of Title 45.1 or oil or gas exploration under the Virginia Gas
1714 and Oil Act (§ [45.1-361.1](#) et seq.).

1715 1973, c. 486, § 21-89.13; 1988, c. 891, § 10.1-571; 1996, c. [688](#); 2012, cc. [785](#), [819](#); 2013, cc.
1716 [47](#), [129](#), [756](#), [793](#).

1717

1718 **Article 2.5. Chesapeake Bay Preservation Act**

1719 **§ 62.1-44.15:67. Cooperative state-local program.**

1720 A. Healthy state and local economies and a healthy Chesapeake Bay are integrally related;
1721 balanced economic development and water quality protection are not mutually exclusive. The
1722 protection of the public interest in the Chesapeake Bay, its tributaries, and other state waters and
1723 the promotion of the general welfare of the people of the Commonwealth require that (i) the
1724 counties, cities, and towns of Tidewater Virginia incorporate general water quality protection
1725 measures into their comprehensive plans, zoning ordinances, and subdivision ordinances; (ii) the
1726 counties, cities, and towns of Tidewater Virginia establish programs, in accordance with criteria
1727 established by the Commonwealth, that define and protect certain lands, hereinafter called
1728 Chesapeake Bay Preservation Areas, which if improperly developed may result in substantial
1729 damage to the water quality of the Chesapeake Bay and its tributaries; (iii) the Commonwealth
1730 make its resources available to local governing bodies by providing financial and technical
1731 assistance, policy guidance, and oversight when requested or otherwise required to carry out and
1732 enforce the provisions of this article; and (iv) all agencies of the Commonwealth exercise their
1733 delegated authority in a manner consistent with water quality protection provisions of local
1734 comprehensive plans, zoning ordinances, and subdivision ordinances when it has been
1735 determined that they comply with the provisions of this article.

1736 B. Local governments have the initiative for planning and for implementing the provisions of
1737 this article, and the Commonwealth shall act primarily in a supportive role by providing
1738 oversight for local governmental programs, by establishing criteria as required by this article,
1739 and by providing those resources necessary to carry out and enforce the provisions of this article.

1740 1988, cc. 608, 891, § 10.1-2100; 2013, cc. [756](#), [793](#).

1741 **§ 62.1-44.15:68. Definitions.**

1742 For the purposes of this article, the following words shall have the meanings respectively
1743 ascribed to them:

1744 "Chesapeake Bay Preservation Area" means an area delineated by a local government in
1745 accordance with criteria established pursuant to § [62.1-44.15:72](#).

1746 "Criteria" means criteria developed by the Board pursuant to § [62.1-44.15:72](#) for the purpose of
1747 determining the ecological and geographic extent of Chesapeake Bay Preservation Areas and for
1748 use by local governments in permitting, denying, or modifying requests to rezone, subdivide, or
1749 use and develop land in Chesapeake Bay Preservation Areas.

1750 "Department" means the Department of Environmental Quality.

1751 "Director" means the Director of the Department of Environmental Quality.

1752 "Secretary" means the Secretary of Natural Resources.

1753 "Tidewater Virginia" means the following jurisdictions:

1754 The Counties of Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax,
1755 Gloucester, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King
1756 William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince
1757 George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York, and
1758 the Cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg,
1759 Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond,
1760 Suffolk, Virginia Beach, and Williamsburg.

1761 1988, cc. 608, 891, § 10.1-2101; 2005, c. [41](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

1762 **§ 62.1-44.15:69. Powers and duties of the Board.**

1763 The Board is responsible for carrying out the purposes and provisions of this article and is
1764 authorized to:

1765 1. Provide land use and development and water quality protection information and assistance to
1766 the various levels of local, regional, and state government within the Commonwealth.

1767 2. Consult, advise, and coordinate with the Governor, the Secretary, the General Assembly, other
1768 state agencies, regional agencies, local governments, and federal agencies for the purpose of
1769 implementing this article.

1770 3. Provide financial and technical assistance and advice to local governments and to regional and
1771 state agencies concerning aspects of land use and development and water quality protection
1772 pursuant to this article.

1773 4. Promulgate regulations pursuant to the Administrative Process Act (§ [2.2-4000](#) et seq.).

1774 5. Develop, promulgate, and keep current the criteria required by § [62.1-44.15:72](#).

1775 6. Provide technical assistance and advice or other aid for the development, adoption, and
1776 implementation of local comprehensive plans, zoning ordinances, subdivision ordinances, and
1777 other land use and development and water quality protection measures utilizing criteria
1778 established by the Board to carry out the provisions of this article.

1779 7. Develop procedures for use by local governments to designate Chesapeake Bay Preservation
1780 Areas in accordance with the criteria developed pursuant to § [62.1-44.15:72](#).

1781 8. Ensure that local government comprehensive plans, zoning ordinances, and subdivision
1782 ordinances are in accordance with the provisions of this article. Determination of compliance
1783 shall be in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

1784 9. Make application for federal funds that may become available under federal acts and to
1785 transmit such funds when applicable to any appropriate person.

1786 10. Take administrative and legal actions to ensure compliance by counties, cities, and towns
1787 with the provisions of this article including the proper enforcement and implementation of, and
1788 continual compliance with, this article.

1789 11. Perform such other duties and responsibilities related to the use and development of land and
1790 the protection of water quality as the Secretary may assign.

1791 1988, cc. 608, 891, § 10.1-2103; 1997, c. [266](#); 2013, cc. [756](#), [793](#).

1792 **§ 62.1-44.15:70. Exclusive authority of Board to institute legal actions.**

1793 The Board shall have the exclusive authority to institute or intervene in legal and administrative
1794 actions to ensure compliance by local governing bodies with this article and with any criteria or
1795 regulations adopted hereunder.

1796 1988, cc. 608, 891, § 10.1-2104; 1997, c. [266](#); 2013, cc. [756](#), [793](#).

1797 **§ 62.1-44.15:71. Program compliance.**

1798 Program compliance reviews conducted in accordance with § [62.1-44.15:69](#) and the regulations
1799 associated with this article shall be coordinated where applicable with those being implemented
1800 in accordance with the erosion and sediment control and stormwater management provisions of
1801 this chapter and associated regulations. The Department may also conduct a comprehensive or
1802 partial program compliance review and evaluation of a local government program more
1803 frequently than the standard schedule.

1804 Following completion of a compliance review of a local government program, the Department
1805 shall provide results and compliance recommendations to the Board in the form of a corrective
1806 action agreement should deficiencies be found; otherwise, the Board may find the program
1807 compliant. When deficiencies are found, the Board will establish a schedule for the local
1808 government to come into compliance. The Board shall provide a copy of its decision to the local
1809 government that specifies the deficiencies, actions needed to be taken, and the approved
1810 compliance schedule. If the local government has not implemented the necessary compliance
1811 actions identified by the Board within 30 days following receipt of the corrective action
1812 agreement, or such additional period as is granted to complete the implementation of the

1813 compliance actions, then the Board shall have the authority to issue a special order to any local
1814 government imposing a civil penalty not to exceed \$5,000 per day with the maximum amount
1815 not to exceed \$20,000 per violation for noncompliance with the state program, to be paid into the
1816 state treasury and deposited in the Virginia Stormwater Management Fund established by § [62.1-](#)
1817 [44.15:29](#).

1818 The Administrative Process Act (§ [2.2-4000](#) et seq.) shall govern the activities and proceedings
1819 of the Board under this article and the judicial review thereof.

1820 In lieu of issuing a special order, the Board is also authorized to take legal action against a local
1821 government to ensure compliance.

1822 2012, cc. [785](#), [819](#), § 10.1-2104.1; 2013, cc. [756](#), [793](#).

1823 **§ 62.1-44.15:72. Board to develop criteria.**

1824 A. In order to implement the provisions of this article and to assist counties, cities, and towns in
1825 regulating the use and development of land and in protecting the quality of state waters, the
1826 Board shall promulgate regulations that establish criteria for use by local governments to
1827 determine the ecological and geographic extent of Chesapeake Bay Preservation Areas. The
1828 Board shall also promulgate regulations that establish criteria for use by local governments in
1829 granting, denying, or modifying requests to rezone, subdivide, or use and develop land in these
1830 areas.

1831 B. In developing and amending the criteria, the Board shall consider all factors relevant to the
1832 protection of water quality from significant degradation as a result of the use and development of
1833 land. The criteria shall incorporate measures such as performance standards, best management
1834 practices, and various planning and zoning concepts to protect the quality of state waters while
1835 allowing use and development of land consistent with the provisions of this chapter. The criteria
1836 adopted by the Board, operating in conjunction with other state water quality programs, shall
1837 encourage and promote (i) protection of existing high quality state waters and restoration of all
1838 other state waters to a condition or quality that will permit all reasonable public uses and will
1839 support the propagation and growth of all aquatic life, including game fish, which might
1840 reasonably be expected to inhabit them; (ii) safeguarding the clean waters of the Commonwealth
1841 from pollution; (iii) prevention of any increase in pollution; (iv) reduction of existing pollution;
1842 and (v) promotion of water resource conservation in order to provide for the health, safety, and
1843 welfare of the present and future citizens of the Commonwealth.

1844 C. Prior to the development or amendment of criteria, the Board shall give due consideration to,
1845 among other things, the economic and social costs and benefits which can reasonably be
1846 expected to obtain as a result of the adoption or amendment of the criteria.

1847 D. In developing such criteria the Board may consult with and obtain the comments of any
1848 federal, state, regional, or local agency that has jurisdiction by law or special expertise with
1849 respect to the use and development of land or the protection of water. The Board shall give due
1850 consideration to the comments submitted by such federal, state, regional, or local agencies.

1851 E. In developing such criteria, the Board shall provide that any locality in a Chesapeake Bay
1852 Preservation Area that allows the owner of an on-site sewage treatment system not requiring a
1853 Virginia Pollutant Discharge Elimination System permit to submit documentation in lieu of proof
1854 of septic tank pump-out shall require such owner to have such documentation certified by an
1855 operator or on-site soil evaluator licensed or certified under Chapter 23 (§ [54.1-2300](#) et seq.) of
1856 Title 54.1 as being qualified to operate, maintain, or design on-site sewage systems.

1857 F. Effective July 1, 2014, requirements promulgated under this article directly related to
1858 compliance with the erosion and sediment control and stormwater management provisions of this
1859 chapter and regulated under the authority of those provisions shall cease to have effect.

1860 1988, cc. 608, 891, § 10.1-2107; 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2014, c. [151](#).

1861 **§ 62.1-44.15:73. Local government authority.**

1862 Counties, cities, and towns are authorized to exercise their police and zoning powers to protect
1863 the quality of state waters consistent with the provisions of this article.

1864 1988, cc. 608, 891, § 10.1-2108; 2013, cc. [756](#), [793](#).

1865 **§ 62.1-44.15:74. Local governments to designate Chesapeake Bay Preservation Areas; incorporate**
1866 **into local plans and ordinances; impose civil penalties.**

1867 A. Counties, cities, and towns in Tidewater Virginia shall use the criteria developed by the Board
1868 to determine the extent of the Chesapeake Bay Preservation Area within their jurisdictions.

1869 Designation of Chesapeake Bay Preservation Areas shall be accomplished by every county, city,
1870 and town in Tidewater Virginia not later than 12 months after adoption of criteria by the Board.

1871 B. Counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of
1872 state waters into each locality's comprehensive plan consistent with the provisions of this article.

1873 C. All counties, cities, and towns in Tidewater Virginia shall have zoning ordinances that
1874 incorporate measures to protect the quality of state waters in the Chesapeake Bay Preservation

1875 Areas consistent with the provisions of this article. Zoning in Chesapeake Bay Preservation
1876 Areas shall comply with all criteria set forth in or established pursuant to § [62.1-44.15:72](#).

1877 D. Counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of
1878 state waters in Chesapeake Bay Preservation Areas into their subdivision ordinances consistent
1879 with the provisions of this article. Counties, cities, and towns in Tidewater Virginia shall ensure
1880 that all subdivisions developed pursuant to their subdivision ordinances comply with all criteria
1881 developed by the Board.

1882 E. In addition to any other remedies which may be obtained under any local ordinance enacted to
1883 protect the quality of state waters in Chesapeake Bay Preservation Areas, counties, cities, and
1884 towns in Tidewater Virginia may incorporate the following penalties into their zoning,
1885 subdivision, or other ordinances:

1886 1. Any person who (i) violates any provision of any such ordinance or (ii) violates or fails,
1887 neglects, or refuses to obey any local governmental body's or official's final notice, order, rule,
1888 regulation, or variance or permit condition authorized under such ordinance shall, upon such
1889 finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$5,000 for each
1890 day of violation. Such civil penalties may, at the discretion of the court assessing them, be
1891 directed to be paid into the treasury of the county, city, or town in which the violation occurred
1892 for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation
1893 Areas therein, in such a manner as the court may direct by order, except that where the violator is
1894 the county, city, or town itself, or its agent, the court shall direct the penalty to be paid into the
1895 state treasury.

1896 2. With the consent of any person who (i) violates any provision of any local ordinance related to
1897 the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails,
1898 neglects, or refuses to obey any local governmental body's or official's notice, order, rule,
1899 regulation, or variance or permit condition authorized under such ordinance, the local
1900 government may provide for the issuance of an order against such person for the one-time
1901 payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each
1902 violation. Such civil charges shall be paid into the treasury of the county, city, or town in which
1903 the violation occurred for the purpose of abating environmental damage to or restoring
1904 Chesapeake Bay Preservation Areas therein, except that where the violator is the county, city, or
1905 town itself, or its agent, the civil charges shall be paid into the state treasury. Civil charges shall
1906 be in lieu of any appropriate civil penalty that could be imposed under subdivision 1. Civil
1907 charges may be in addition to the cost of any restoration required or ordered by the local
1908 governmental body or official.

1909 F. Localities that are subject to the provisions of this article may by ordinance adopt an appeal
1910 period for any person aggrieved by a decision of a board that has been established by the locality
1911 to hear cases regarding ordinances adopted pursuant to this article. The ordinance shall allow the
1912 aggrieved party a minimum of 30 days from the date of such decision to appeal the decision to
1913 the circuit court.

1914 1988, cc. 608, 891, § 10.1-2109; 1998, cc. [700](#), [714](#); 2008, c. [15](#); 2013, cc. [756](#), [793](#).

1915 **§ 62.1-44.15:75. Local governments outside of Tidewater Virginia may adopt provisions.**
1916 Any local government, although not a part of Tidewater Virginia, may employ the criteria
1917 developed pursuant to § [62.1-44.15:72](#) and may incorporate protection of the quality of state
1918 waters into their comprehensive plans, zoning ordinances, and subdivision ordinances consistent
1919 with the provisions of this article.

1920 1988, cc. 608, 891, § 10.1-2110; 2013, cc. [756](#), [793](#).

1921 **§ 62.1-44.15:76. Local government requirements for water quality protection.**
1922 Local governments shall employ the criteria promulgated by the Board to ensure that the use and
1923 development of land in Chesapeake Bay Preservation Areas shall be accomplished in a manner
1924 that protects the quality of state waters consistent with the provisions of this article.

1925 1988, cc. 608, 891, § 10.1-2111; 2013, cc. [756](#), [793](#).

1926 **§ 62.1-44.15:77. Effect on other governmental authority.**
1927 The authorities granted herein are supplemental to other state, regional, and local governmental
1928 authority. No authority granted to a local government by this article shall affect in any way the
1929 authority of the Board. No authority granted to a local government by this article shall limit in
1930 any way any other planning, zoning, or subdivision authority of that local government.

1931 1988, cc. 608, 891, § 10.1-2113; 2013, cc. [756](#), [793](#).

1932 **§ 62.1-44.15:78. State agency consistency.**
1933 All agencies of the Commonwealth shall exercise their authorities under the Constitution and
1934 laws of Virginia in a manner consistent with the provisions of comprehensive plans, zoning
1935 ordinances, and subdivision ordinances that comply with §§ [62.1-44.15:74](#) and [62.1-44.15:75](#).

1936 1988, cc. 608, 891, § 10.1-2114; 2013, cc. [756](#), [793](#).

1937 **§ 62.1-44.15:79. Vested rights protected.**
1938 The provisions of this article shall not affect vested rights of any landowner under existing law.

1939 1988, cc. 608, 891, § 10.1-2115; 2013, cc. [756](#), [793](#).

1940 **Chapter 3.1. State Water Control Law**

1941 **Article 1. General Provisions.**

1942 **§ 62.1-44.2. Short title; purpose.**

1943 The short title of this chapter is the State Water Control Law. It is the policy of the
1944 Commonwealth of Virginia and the purpose of this law to: (1) protect existing high quality state
1945 waters and restore all other state waters to such condition of quality that any such waters will
1946 permit all reasonable public uses and will support the propagation and growth of all aquatic life,
1947 including game fish, which might reasonably be expected to inhabit them; (2) safeguard the
1948 clean waters of the Commonwealth from pollution; (3) prevent any increase in pollution; (4)
1949 reduce existing pollution; (5) promote and encourage the reclamation and reuse of wastewater in
1950 a manner protective of the environment and public health; and (6) promote water resource
1951 conservation, management and distribution, and encourage water consumption reduction in order
1952 to provide for the health, safety, and welfare of the present and future citizens of the
1953 Commonwealth.

1954 Code 1950, § 62.1-14; 1968, c. 659; 1970, c. 638; 1978, c. 827; 2000, c. [972](#).

1955 **§ 62.1-44.3. Definitions.**

1956 Unless a different meaning is required by the context, the following terms as used in this chapter
1957 shall have the meanings hereinafter respectively ascribed to them:

1958 "Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but
1959 are not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste
1960 assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of
1961 instream flows for purposes of the protection of navigation, maintenance of waste assimilation
1962 capacity, the protection of fish and wildlife resources and habitat, recreation, cultural and
1963 aesthetic values is an instream beneficial use of Virginia's waters. Offstream beneficial uses
1964 include, but are not limited to, domestic (including public water supply), agricultural uses,
1965 electric power generation, commercial, and industrial uses.

1966 "Board" means the State Water Control Board.

1967 "Certificate" means any certificate issued by the Board.

1968 "Establishment" means any industrial establishment, mill, factory, tannery, paper or pulp mill,
1969 mine, coal mine, colliery, breaker or coal-processing operations, quarry, oil refinery, boat, vessel,
1970 and every other industry or plant or works the operation of which produces industrial wastes or

1971 other wastes or which may otherwise alter the physical, chemical or biological properties of any
1972 state waters.

1973 "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or
1974 rock.

1975 "Industrial wastes" means liquid or other wastes resulting from any process of industry,
1976 manufacture, trade, or business or from the development of any natural resources.

1977 "The law" or "this law" means the law contained in this chapter as now existing or hereafter
1978 amended.

1979 "Member" means a member of the Board.

1980 "Normal agricultural activities" means those activities defined as an agricultural operation in §
1981 [3.2-300](#) and any activity that is conducted as part of or in furtherance of such agricultural
1982 operation but shall not include any activity for which a permit would have been required as of
1983 January 1, 1997, under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

1984 "Normal silvicultural activities" means any silvicultural activity as defined in § [10.1-1181.1](#) and
1985 any activity that is conducted as part of or in furtherance of such silvicultural activity but shall
1986 not include any activity for which a permit would have been required as of January 1, 1997,
1987 under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

1988 "Other wastes" means decayed wood, sawdust, shavings, bark, lime, garbage, refuse, ashes, offal,
1989 tar, oil, chemicals, and all other substances except industrial wastes and sewage which may cause
1990 pollution in any state waters.

1991 "Owner" means the Commonwealth or any of its political subdivisions, including but not limited
1992 to sanitation district commissions and authorities and any public or private institution,
1993 corporation, association, firm, or company organized or existing under the laws of this or any
1994 other state or country, or any officer or agency of the United States, or any person or group of
1995 persons acting individually or as a group that owns, operates, charters, rents, or otherwise
1996 exercises control over or is responsible for any actual or potential discharge of sewage, industrial
1997 wastes, or other wastes to state waters, or any facility or operation that has the capability to alter
1998 the physical, chemical, or biological properties of state waters in contravention of § [62.1-44.5](#).

1999 "Person" means an individual, corporation, partnership, association, governmental body,
2000 municipal corporation, or any other legal entity.

2001 "Policies" means policies established under subdivisions (3a) and (3b) of § [62.1-44.15](#).

2002 "Pollution" means such alteration of the physical, chemical, or biological properties of any state
2003 waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or
2004 injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life;
2005 (b) unsuitable with reasonable treatment for use as present or possible future sources of public
2006 water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other
2007 reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property
2008 of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state
2009 waters by any owner which by itself is not sufficient to cause pollution but which, in
2010 combination with such alteration of or discharge or deposit to state waters by other owners, is
2011 sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state
2012 waters; and (iii) contributing to the contravention of standards of water quality duly established
2013 by the Board, are "pollution" for the terms and purposes of this chapter.

2014 "Pretreatment requirements" means any requirements arising under the Board's pretreatment
2015 regulations including the duty to allow or carry out inspections, entry, or monitoring activities;
2016 any rules, regulations, or orders issued by the owner of a publicly owned treatment works; or any
2017 reporting requirements imposed by the owner of a publicly owned treatment works or by the
2018 regulations of the Board.

2019 "Pretreatment standards" means any standards of performance or other requirements imposed by
2020 regulation of the Board upon an industrial user of a publicly owned treatment works.

2021 "Reclaimed water" means water resulting from the treatment of domestic, municipal, or
2022 industrial wastewater that is suitable for a direct beneficial or controlled use that would not
2023 otherwise occur. Specifically excluded from this definition is "gray water."

2024 "Reclamation" means the treatment of domestic, municipal, or industrial wastewater or sewage
2025 to produce reclaimed water for a direct beneficial or controlled use that would not otherwise
2026 occur.

2027 "Regulation" means a regulation issued under § [62.1-44.15](#) (10) .

2028 "Reuse" means the use of reclaimed water for a direct beneficial use or a controlled use that is in
2029 accordance with the requirements of the Board.

2030 "Rule" means a rule adopted by the Board to regulate the procedure of the Board pursuant to §
2031 [62.1-44.15](#) (7) .

2032 "Ruling" means a ruling issued under § [62.1-44.15](#) (9) .

2033 "Sewage" means the water-carried human wastes from residences, buildings, industrial
2034 establishments or other places together with such industrial wastes and underground, surface,
2035 storm, or other water as may be present.

2036 "Sewage treatment works" or "treatment works" means any device or system used in the storage,
2037 treatment, disposal, or reclamation of sewage or combinations of sewage and industrial wastes,
2038 including but not limited to pumping, power, and other equipment, and appurtenances, and any
2039 works, including land, that are or will be (i) an integral part of the treatment process or (ii) used
2040 for the ultimate disposal of residues or effluent resulting from such treatment. These terms shall
2041 not include onsite sewage systems or alternative discharging sewage systems.

2042 "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other
2043 construction, devices, and appliances appurtenant thereto, used for conducting sewage or
2044 industrial wastes or other wastes to a point of ultimate disposal.

2045 "Special order" means a special order issued under subdivisions (8a), (8b), and (8c) of § [62.1-](#)
2046 [44.15](#).

2047 "Standards" means standards established under subdivisions (3a) and (3b) of § [62.1-44.15](#).

2048 "State waters" means all water, on the surface and under the ground, wholly or partially within or
2049 bordering the Commonwealth or within its jurisdiction, including wetlands.

2050 "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a
2051 frequency and duration sufficient to support, and that under normal circumstances do support, a
2052 prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands
2053 generally include swamps, marshes, bogs and similar areas.

2054 Code 1950, § 62.1-15; 1968, c. 659; 1970, c. 638; 1988, c. 167; 1990, c. 717; 1991, c. 702; 2000,
2055 cc. [972](#), [1032](#), [1054](#); 2003, c. [614](#); 2007, c. [659](#).

2056 **§ 62.1-44.3:1. Certified mail; subsequent mail or notices may be sent by regular**
2057 **mail.**

2058 Whenever in this chapter the Board or the Department is required to send any mail or notice by
2059 certified mail and such mail or notice is sent certified mail, return receipt requested, then any
2060 subsequent, identical mail or notice that is sent by the Board or the Department may be sent by
2061 regular mail.

2062 2011, c. [566](#).

2063 **§ 62.1-44.4. Control by Commonwealth as to water quality.**

2064 (1) No right to continue existing quality degradation in any state water shall exist nor shall such
2065 right be or be deemed to have been acquired by virtue of past or future discharge of sewage,
2066 industrial wastes or other wastes or other action by any owner. The right and control of the
2067 Commonwealth in and over all state waters is hereby expressly reserved and reaffirmed.

2068 (2) Waters whose existing quality is better than the established standards as of the date on which
2069 such standards become effective will be maintained at high quality; provided that the Board has
2070 the power to authorize any project or development, which would constitute a new or an increased
2071 discharge of effluent to high quality water, when it has been affirmatively demonstrated that a
2072 change is justifiable to provide necessary economic or social development; and provided, further,
2073 that the necessary degree of waste treatment to maintain high water quality will be required
2074 where physically and economically feasible. Present and anticipated use of such waters will be
2075 preserved and protected.

2076 Code 1950, § 62.1-16; 1968, c. 659; 1970, c. 638.

2077 **§ 62.1-44.5. Prohibition of waste discharges or other quality alterations of state**
2078 **waters except as authorized by permit; notification required.**

2079 A. Except in compliance with a certificate or permit issued by the Board or other entity
2080 authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be
2081 unlawful for any person to:

2082 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or
2083 deleterious substances;

2084 2. Excavate in a wetland;

2085 3. Otherwise alter the physical, chemical or biological properties of state waters and make them
2086 detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for
2087 domestic or industrial consumption, or for recreation, or for other uses; or

2088 4. On and after October 1, 2001, conduct the following activities in a wetland:

2089 a. New activities to cause draining that significantly alters or degrades existing wetland acreage
2090 or functions;

2091 b. Filling or dumping;

2092 c. Permanent flooding or impounding; or

2093 d. New activities that cause significant alteration or degradation of existing wetland acreage or
2094 functions.

2095 5. Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land
2096 disturbing activities.

2097 B. Any person in violation of the provisions of subsection A who discharges or causes or allows
2098 (i) a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance
2099 into or upon state waters or (ii) a discharge that may reasonably be expected to enter state waters
2100 shall, upon learning of the discharge, promptly notify, but in no case later than 24 hours the
2101 Board, the Director of the Department of Environmental Quality, or the coordinator of
2102 emergency services appointed pursuant to § [44-146.19](#) for the political subdivision reasonably
2103 expected to be affected by the discharge. Written notice to the Director of the Department of
2104 Environmental Quality shall follow initial notice within the time frame specified by the federal
2105 Clean Water Act.

2106 Code 1950, § 62.1-17; 1968, c. 659; 1970, c. 638; 1990, c. 717; 1996, c. [119](#); 2000, cc. [1032](#),
2107 [1054](#); 2001, cc. [354](#), [383](#); 2004, c. [372](#); 2013, cc. [756](#), [793](#).

2108 **§ 62.1-44.6. Chapter supplementary to existing laws.**

2109 This chapter is intended to supplement existing laws and no part thereof shall be construed to
2110 repeal any existing laws specifically enacted for the protection of health or the protection of fish,
2111 shellfish and game of the Commonwealth, except that the administration of any such laws
2112 pertaining to the pollution of state waters, as herein defined, shall be in accord with the purpose
2113 of this chapter and general policies adopted by the Board.

2114 Code 1950, § 62.1-18; 1968, c. 659; 1970, c. 638.

2115 **Article 5. Enforcement and Appeal**
2116 **Article 5. Enforcement and Appeal**
2117 **Procedure**

2117 **§ 62.1-44.20. Right to entry to obtain information, etc.**

2118 Any duly authorized agent of the Board may, at reasonable times and under reasonable
2119 circumstances, enter any establishment or upon any property, public or private, for the purpose
2120 of obtaining information or conducting surveys or investigations necessary in the enforcement of
2121 the provisions of this chapter.

2122 Code 1950, § 62.1-34; 1968, c. 659; 1970, c. 638.

2123 **§ 62.1-44.21. Information to be furnished to Board.**

2124 The Board may require every owner to furnish when requested such plans, specifications, and
2125 other pertinent information as may be necessary to determine the effect of the wastes from his
2126 discharge on the quality of state waters, or such other information as may be necessary to
2127 accomplish the purposes of this chapter. The Board shall not at any time disclose to any person
2128 other than appropriate officials of the Environmental Protection Agency pursuant to the
2129 requirements of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500) any
2130 secret formulae, secret processes, or secret methods other than effluent data used by any owner
2131 or under that owner's direction.

2132 Code 1950, § 62.1-35; 1968, c. 659; 1970, c. 638; 1974, c. 237.

2133 **§ 62.1-44.22. Private rights not affected.**

2134 The fact that any owner holds or has held a certificate issued under this chapter shall not
2135 constitute a defense in any civil action involving private rights.

2136 Code 1950, § 62.1-36; 1968, c. 659; 1970, c. 638.

2137 **§ 62.1-44.23. Enforcement by injunction, etc.**

2138 Any person violating or failing, neglecting or refusing to obey any rule, regulation, order, water
2139 quality standard, pretreatment standard, or requirement of or any provision of any certificate
2140 issued by the Board, or by the owner of a publicly owned treatment works issued to an industrial
2141 user, or any provisions of this chapter, except as provided by a separate article, may be
2142 compelled in a proceeding instituted in any appropriate court by the Board to obey same and to
2143 comply therewith by injunction, mandamus or other appropriate remedy.

2144 Code 1950, § 62.1-37; 1952, c. 702; 1968, c. 659; 1970, c. 638; 1977, c. 263; 1988, c. 167; 1990,
2145 c. 717; 1994, c. [489](#); 2013, cc. [756](#), [793](#).

2146 **§ 62.1-44.23:1. Intervention of Commonwealth in actions involving surface water**
2147 **withdrawals.**

2148 The Board, in representing the public's interest, shall have the authority and standing to intervene
2149 as an interested party in any civil action, including actions both within and without the
2150 Commonwealth, pertaining to the withdrawal of any of the surface waters of the Commonwealth.

2151 1989, c. 218 .

2152 **§ 62.1-44.24. Testing validity of regulations; judicial review.**

2153 (1) The validity of any regulation may be determined through judicial review in accordance with
2154 the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

2155 (2) [Repealed.]

2156 (3) An appeal may be taken from the decision of the court to the Court of Appeals as provided by
2157 law.

2158 1970, c. 638; 1984, c. 703; 1986, c. 615.

2159 **§ 62.1-44.25. Right to hearing.**

2160 Any owner under §§ [62.1-44.16](#), [62.1-44.17](#), and [62.1-44.19](#) aggrieved by any action of the
2161 Board taken without a formal hearing, or by inaction of the Board, may demand in writing a
2162 formal hearing of such owner's grievance, provided a petition requesting such hearing is filed
2163 with the Board. In cases involving actions of the Board, such petition must be filed within thirty
2164 days after notice of such action is mailed to such owner by certified mail.

2165 1970, c. 638.

2166 **§ 62.1-44.26. Hearings.**

2167 A. The formal hearings held under this chapter shall be conducted pursuant to § [2.2-4009](#) or [2.2-](#)
2168 [4020](#) and may be conducted by the Board itself at a regular or special meeting of the Board, or
2169 by at least one member of the Board designated by the chairman to conduct such hearings on
2170 behalf of the Board at any other time and place authorized by the Board.

2171 B. A verbatim record of the proceedings of such hearings shall be taken and filed with the Board.
2172 Depositions may be taken and read as in actions at law.

2173 C. The Board shall have power to issue subpoenas and subpoenas duces tecum, and at the request
2174 of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear
2175 or to testify or to produce documents shall be acted upon by the Board in the manner prescribed
2176 in § [2.2-4022](#). Witnesses who are subpoenaed shall receive the same fees and mileage as in civil
2177 actions.

2178 1970, c. 638; 1977, c. 291; 1993, c. 897; 2008, cc. [276](#), [557](#).

2179 **§ 62.1-44.27. Rules of evidence in hearings.**

2180 In all hearings under this chapter:

2181 (1) All relevant and material evidence shall be received, except that (a) the rules relating to
2182 privileged communications and privileged topics shall be observed; (b) hearsay evidence shall be
2183 received only if the declarant is not readily available as a witness; and (c) secondary evidence of
2184 the contents of a document shall be received only if the original is not readily available. In
2185 deciding whether a witness or document is readily available, the Board or hearing officer shall
2186 balance the importance of the evidence against the difficulty of obtaining it, and the more
2187 important the evidence is the more effort should be made to produce the eyewitness or the
2188 original document.

2189 (2) All reports of inspectors and subordinates of the Board and other records and documents in
2190 the possession of the Board bearing on the case shall be introduced by the Board at the hearing.

2191 (3) Subject to the provisions of subdivision (1) of this section every party shall have the right to
2192 cross-examine adverse witnesses and any inspector or subordinate of the Board whose report is
2193 in evidence and to submit rebuttal evidence.

2194 (4) The decision of the Board shall be based only on evidence received at the hearing and matters
2195 of which a court of record could take judicial notice.

2196 1970, c. 638.

2197 **§ 62.1-44.28. Decisions of the Board in hearings pursuant to §§ 62.1-44.15 and**
2198 **62.1-44.25.**

2199 To be valid and operative, the decision by the Board rendered pursuant to hearings under
2200 subdivisions (8a), (8b), and (8c) of §§ [62.1-44.15](#) and [62.1-44.25](#) must be reduced to writing and
2201 contain the explicit findings of fact and conclusions of law upon which the decision of the Board
2202 is based and certified copies thereof must be mailed by certified mail to the parties affected by it.

2203 1970, c. 638.

2204 **§ 62.1-44.29. Judicial review.**

2205 Any owner aggrieved by or any person who has participated, in person or by submittal of written
2206 comments, in the public comment process related to a final decision of the Board under § [62.1-](#)
2207 [44.15](#) (5), [62.1-44.15](#) (8a), (8b), and (8c), [62.1-44.15:20](#), [62.1-44.15:21](#), [62.1-44.15:22](#), [62.1-](#)
2208 [44.15:23](#), [62.1-44.16](#), [62.1-44.17](#), [62.1-44.19](#), or [62.1-44.25](#), whether such decision is affirmative
2209 or negative, is entitled to judicial review thereof in accordance with the provisions of the
2210 Administrative Process Act (§ [2.2-4000](#) et seq.) if such person meets the standard for obtaining
2211 judicial review of a case or controversy pursuant to Article III of the United States Constitution.
2212 A person shall be deemed to meet such standard if (i) such person has suffered an actual or
2213 imminent injury which is an invasion of a legally protected interest and which is concrete and

2214 particularized; (ii) such injury is fairly traceable to the decision of the Board and not the result of
2215 the independent action of some third party not before the court; and (iii) such injury will likely
2216 be redressed by a favorable decision by the court.

2217 1970, c. 638; 1986, c. 615; 1996, c. [1032](#); 2000, cc. [1032](#), [1054](#); 2007, c. [659](#).

2218 **§ 62.1-44.30. Appeal to Court of Appeals.**

2219 From the final decision of the circuit court an appeal may be taken to the Court of Appeals as
2220 provided in § [17.1-405](#).

2221 1970, c. 638; 1984, c. 703.

2222 **Article 6. Offenses and Penalties**

2223 **§ 62.1-44.31. Violation of special order or certificate or failure to cooperate with**
2224 **Board.**

2225 It shall be unlawful for any owner to fail to comply with any special order adopted by the Board,
2226 which has become final under the provisions of this chapter, or to fail to comply with a
2227 pretreatment condition incorporated into the permit issued to it by the owner of a publicly owned
2228 treatment works or to fail to comply with any pretreatment standard or pretreatment requirement,
2229 or to discharge sewage, industrial waste or other waste in violation of any condition contained in
2230 a certificate issued by the Board or in excess of the waste covered by such certificate, or to fail or
2231 refuse to furnish information, plans, specifications or other data reasonably necessary and
2232 pertinent required by the Board under this chapter.

2233 For the purpose of this section, the term "owner" shall mean, in addition to the definition
2234 contained in § [62.1-44.3](#), any responsible corporate officer so designated in the applicable
2235 discharge permit.

2236 Code 1950, § 62.1-43; 1952, c. 478; 1968, c. 659; 1970, c. 638; 1977, c. 263; 1988, c. 167.

2237 **§ 62.1-44.32. Penalties.**

2238 (a) Except as otherwise provided in this chapter, any person who violates any provision of this
2239 chapter, or who fails, neglects, or refuses to comply with any order of the Board, or order of a
2240 court, issued as herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each
2241 violation within the discretion of the court. Each day of violation of each requirement shall
2242 constitute a separate offense. Such civil penalties shall be paid into the state treasury and
2243 deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund
2244 pursuant to Chapter 25 of Title 10.1, excluding penalties assessed for violations of Article 9 (§
2245 [62.1-44.34:8](#) et seq.) or 10 (§ [62.1-44.34:10](#) et seq.) of Chapter 3.1 of Title 62.1, or a regulation,

2246 administrative or judicial order, or term or condition of approval relating to or issued under those
2247 articles.

2248 Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into
2249 the treasury of the county, city, or town in which the violation occurred, to be used for the
2250 purpose of abating environmental pollution therein in such manner as the court may, by order,
2251 direct, except that where the owner in violation is such county, city or town itself, or its agent,
2252 the court shall direct such penalty to be paid into the state treasury and deposited by the State
2253 Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of
2254 Title 10.1, excluding penalties assessed for violations of Article 9 or 10 of Chapter 3.1 of Title
2255 62.1, or a regulation, administrative or judicial order, or term or condition of approval relating to
2256 or issued under those articles.

2257 In the event that a county, city, or town, or its agent, is the owner, such county, city, or town, or
2258 its agent, may initiate a civil action against any user or users of a waste water treatment facility
2259 to recover that portion of any civil penalty imposed against the owner proximately resulting from
2260 the act or acts of such user or users in violation of any applicable federal, state, or local
2261 requirements.

2262 (b) Except as otherwise provided in this chapter, any person who willfully or negligently violates
2263 any provision of this chapter, any regulation or order of the Board, any condition of a certificate
2264 or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not
2265 more than 12 months and a fine of not less than \$2,500 nor more than \$32,500, either or both.
2266 Any person who knowingly violates any provision of this chapter, any regulation or order of the
2267 Board, any condition of a certificate or any order of a court issued as herein provided, or who
2268 knowingly makes any false statement in any form required to be submitted under this chapter or
2269 knowingly renders inaccurate any monitoring device or method required to be maintained under
2270 this chapter, shall be guilty of a felony punishable by a term of imprisonment of not less than one
2271 year nor more than three years, or in the discretion of the jury or the court trying the case without
2272 a jury, confinement in jail for not more than 12 months and a fine of not less than \$5,000 nor
2273 more than \$50,000 for each violation. Any defendant that is not an individual shall, upon
2274 conviction of a violation under this subsection, be sentenced to pay a fine of not less than
2275 \$10,000. Each day of violation of each requirement shall constitute a separate offense.

2276 (c) Except as otherwise provided in this chapter, any person who knowingly violates any
2277 provision of this chapter, and who knows at that time that he thereby places another person in
2278 imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony
2279 punishable by a term of imprisonment of not less than two years nor more than 15 years and a
2280 fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon

2281 conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the
2282 greater of \$1 million or an amount that is three times the economic benefit realized by the
2283 defendant as a result of the offense. The maximum penalty shall be doubled with respect to both
2284 fine and imprisonment for any subsequent conviction of the same person under this subsection.

2285 (d) Criminal prosecution under this section shall be commenced within three years of discovery
2286 of the offense, notwithstanding the limitations provided in any other statute.

2287 Code 1950, § 62.1-44; 1968, c. 659; 1970, c. 638; 1974, c. 237; 1977, c. 263; 1980, c. 378; 1981,
2288 cc. 582, 596; 1989, c. 627; 1990, cc. 13, 717; 1991, c. 718; 2005, c. [706](#); 2013, cc. [756](#), [793](#).

2289

Attachment 4

STORMWATER ISSUES RAISED IN INITIAL INDIVIDUAL MEETINGS WITH SAG MEMBERS

1. Product – amend and retain existing statutes, create one consolidated statutory scheme
2. Costs/fees
 - a. Amount of fees
 - b. Fairness
 - c. Why 2 separate permits and fees for E&S and stormwater
 - d. One stop shopping fees
 - e. Fee split – local gov't/state
 - f. Sufficient fees for adequate staffing
 - g. Who sets – role of Water Commission
 - h. Can local gov't subsidize
 - i. Fees in lieu of programs
 - j. Waiver of VSMP fees
3. Enforcement - roles of local and state entities
 - a. Local gov't and DEQ as co-regulators
 - b. Less federalization of enforcement – DEQ do more
 - c. Inspections – eliminate routine local inspections
 - d. Who enforces and how to enforce long term maintenance requirements of BMPs
 - e. Uniform compliance schedules
 - f. More local autonomy
 - g. Consistency across localities
4. One stop shopping – how to effectuate
 - a. Why 2 permits for E&S and stormwater
 - b. Whether or not to include CBLAD in consolidation
 - c. If localities do E&S, why can't they do storm water too?
 - d. Combination of pre and post construction – is it a good idea
5. Statewide uniformity with flexibility
 - a. regulation of outcomes as alternative,
 - b. more stringent rules if locality chooses
 - c. small locality vs. big locality – same rules or different
 - d. consistency across localities on same project
6. Grandfathering - still some confusion
7. BMPs
 - a. Better process for adding new ones
 - b. Better appeals process
 - c. Liens for long term maintenance
 - d. Enforcement of long term maintenance
 - e. Coordinate with Bay bmps
 - f. BMPs in RPA
 - g. Run off reduction spread sheet
 - h. Serial use of BMPs - harder to meet criteria the more you use
8. Nutrient trading
 - a. Relationship to MS4 regs

- b. Relationship to ag regs
- 9. Coordination with other laws besides big 3 – ag regs, TMDL, federal
- 10. Overlap of E&S and Stormwater
- 11. Whether to incorporate CBLAD in streamlining or not
- 12. Post construction issues in GP